IN THE COURT OF SH. PULASTYA PRAMACHALA
DISTRICT JUDGE, (COMMERCIAL COURT)-01,
PATIALA HOUSE COURT, NEW DELHI

INDEX

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

PULASTYA PRAMACHALA

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In OMP (COMM) No. 134/2022

In the matter of: -

M/s. Ashoka Oil Mills,
B-23, Focal Points, Moga,
District Moga, Punjab.
through its partner Ashok Kumar Kansal.

…Petitioner

Versus

1. **District Manager,**
   Food Corporation of India, District Office,
   FCI Road, Moga, District Moga, Punjab.

2. **Sh. Mihir Kumar Moitra,**
   Sole Arbitrator, H-205, Wembley Estate,
   Rosewood City, Sohna Road, Gurgaon-122001
   (Haryana)

3. **Registrar, Indian Council of Arbitration,**
   Federation House, Tansen Marg, New Delhi-110001 (India)

...Respondents

Date of Institution	:	25.08.2022
Arguments heard on	:	15.05.2026
Decided on	**:**	**01.06.2026**

Decision in OMP (Comm.) No. 134/2022 : Petition is allowed.

AND

In ARBTN 1239/2022

In the matter of: -

Food Corporation of India
Through Its Divisional Manager,
Division Office, Moga, Punjab.

…Petitioner

Versus

1. **M/s. Ashoka Oil Mills**
   B-23, Focal Point, District Moga, Punjab.
   Through its Partner: Ashok Kumar.

…**Respondent No. 1**

2. **Ashok Kumar**
   S/o. Sh. Gridhari Lal Kansal,
   C/o. M/s. Ashoka Oil Mills,
   B-23, Focal Point, District Moga, Punjab

...**Respondent No. 2**

3. **Vijay Kumar Kansal,**
   S/o. Sh. Gridhari Lal Kansal,
   C/o. M/s. Ashoka Oil Mills,
   B-23, Focal Point, District Moga, Punjab

...Respondent No. 3

4. **Naresh Kansal**
   S/o. Sh. Prem Paul Kansal,
   C/o. M/s. Ashoka Oil Mills,
   B-23, Focal Point, District Moga, Punjab

...Respondent No. 4

Date of Institution	:	12.10.2022
Conclusion of arguments	:	15.05.2026
Date of Judgment	:	01.06.2026
Decision in ARBTN 1239/2022	**:**	**Petition is allowed.**

JUDGMENT

DESCRIPTION OF THE CASE

1. Vide this common judgment, I shall decide two petitions filed by both rival parties, u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), assailing the same arbitral award dated 30.09.2011. For the sake of clarity and convenience, **M/s. Ashoka Oil Mills with its partners** shall be referred to as **Miller** and **Food Corporation of India** shall be referred to as **FCI**. Both parties have assailed the award on

different grounds. In the arbitration proceedings, FCI was the claimant and Miller was respondent.

BRIEF FACTS OF THE CASE

2. Miller and FCI had entered into an agreement dt. 06.10.1994 and Miller had to provide certain facility of storage place for paddy and other services i.e. milling the paddy etc. A time frame was also fixed for milling the paddy and supply rice to FCI. Miller did not mill all the paddy stored with it, and subsequently FCI retrieved such stock of paddy and sold them in the open market. FCI thereafter, claimed damages from Miller, and thus, the dispute was referred to Arbitrator. Vide award dated 30.09.2011, award of Rs.11.34.812/- was passed in favour of FCI and against the Miller.

3. Initially the petition of Miller was filed before Ld. District Judge Moga, but vide order dated 22.07.2022, Ld. Additional Sessions Judge ordered for return of petition, for want of jurisdiction and it was ordered that petition be filed before the court at New Delhi within 45 days from the date of order. Thus, the said petition was filed before this court.

4. Miller averred that the dispute is for the crop year 1994-95, wherein there was bumper crop of paddy in the State of Punjab, which was procured by Food Corporation of India and Punjab government agencies. Due to heavy rains, paddy was not millable and saleable. As per rice specifications fixed at that time, due to its poor quality and due to damage of the paddy with natural calamities, the paddy procurement was delayed in 1994-

95. Miller averred that as per agreement dt. 06.10.1994, last date of milling was 28.02.1995, which was subsequently extended up to 31.08.1995. Miller deposited Rs.40,000/- as security with FCI. Miller further averred that as per the policy of the year 1994-95 and alleged agreement, Miller was supposed to deliver advance rice in the shape of two wagons. Only thereafter, equivalent paddy was to be released to the Miller and the paddy was under the custody and control of FCI. Miller was not supposed to even touch the paddy without Release Orders. As per government's notification, FCI disposed of/retrieved, transfer the stored paddy, which was under their custody and control. This process started from 13.01.1995 before the stipulated last date of the said agreement.

5. Miller averred that on 28.02.1998, an arbitration reference was made by FCI to ICA, for the adjudication in the year 1998. ICA directed FCI to obtain the consent from the Millers for the arbitration, as ICA could not have nominated or appointed the arbitrator, as per the clause of the agreement. Only the Zonal Manager and Senior Regional Manager, Punjab were competent to nominate/appoint the arbitrator out of the penal arbitrators of ICA. FCI challenged the said order before Hon'ble Delhi High Court and Hon'ble Justice S.K. Mahajan, dismissed the plea of FCI. FCI challenged that order before Division Bench of Delhi High Court, but its petition was also dismissed. Thereafter, FCI challenged the order before Hon'ble Supreme Court of India, which was decided in the year 2003 and ICA was directed to

nominate the arbitrator with the liberty to the respondents to raise the objections under section 16 of the Arbitration & Conciliation Act, 1996 (as amended upto date). Thereafter, arbitration proceedings started and Miller raised the objections under Section 16 of the Act. FCI filed claim for 1.5 times economic cost against Miller, on account of non-milling of the paddy, which was sold by FCI as per the public policy declared by Ministry of Food, Union of India. As per the Statement of Claim (herein after referred to as SOC) lodged in this case, there was no shortage on account of the paddy.

6. As per the SOC, total paddy stored was 3219.20 quintal, which was dispatched to other districts and 1918 quintal was sold @ 395/- per quintal and 3456.70 quintal was retrieved and FCI calculated the costs of retrieved paddy @ Rs.395/- per quintal. FCI calculated the 1.5 times economic cost on the total unmilled paddy and deducted the amount, which was realized by them by the sale of the paddy. Miller averred that there was no clause in the alleged agreement for the sale of the paddy. There was mandatory clause no. 13 in the agreement, stating that if the miller failed to mill the paddy within the stipulated period, then it was incumbent upon the District Manager of Food Corporation of India to get the paddy milled from the other rice millers and the differential costs of that milling was recoverable out of the security deposited by the miller and if the same was in excess, then only said charges were recoverable. Miller alleged that FCI had not complied with this mandatory clause and disposed of the

paddy against the terms of the agreement. Miller further averred that Senior Regional Manager himself retrieved/lifted and sold the paddy, as per public policy declared by the Ministry of Foods. Even the cost of gunny bags was not recoverable, as the paddy was lifted and sold in the same gunny bags and paddy sale price was fixed including the costs of gunny bags and the sale price was fixed at Rs. 396.25p that is (395+1.25p) per bag for jute bags.

7. Miller further averred that it had milled the paddy, which was allowed by FCI as per the policy/agreement after receiving advance rice and the remaining paddy was partially retrieved and partially disposed of by FCI under the public sale policy in respect of paddy. During the crop year of 1994-95, FCI sold the rice old and fresh @ Rs.600/- per quintal to the exporters, and prior to decision of public sale policy for 1994-95 paddy crop was taken by the Union of India in the first week of March 1995. Therefore, under these circumstances, FCI and the government had taken the decision to dispose of the paddy @ Rs. 442/- per quintal against the purchase price of Rs. 360/-per quintal and thereafter @ Rs.395/- per quintal for superfine variety of paddy. The paddy sold at these rates were better than sale of rice @ Rs.600/- per quintal. So, FCI decided to dispose of paddy as per the public policy. Miller averred that although the paddy was stored in the rice mill premises of the miller, but same was under the direct control and custody of the concerned inspectors of FCI and the said paddy was fully protected by the staff of FCI and no

damage was caused or occurred to paddy. Government of India issued a Letter No.8-5/2000-DR-III dated 29.03.2000 and indicated therein that the President of India had sanctioned the payment of sum of Rs.120 crores to FCI (Respondent Corporation), as re-imbursement of the amount paid by it out of the subsidy to the State Government of Punjab and its procuring agencies towards re-imbursement of losses incurred by them in disposing of un-milled paddy procured for central pool in 1994-95 through open sale, as full and final settlement. That out of 120 crores, Rs.72.3 crores were assigned to FCI and remaining amount was allotted to other Punjab procuring agencies. During the pendency of the arbitration proceedings, Food Corporation of India appointed the Committee of Senior Officers of the Corporation in respect of the claims lodged by them before Indian Council of Arbitration, wherein the matters were pending in the arbitration. Said committee obtained the report from all the districts of Punjab and decided that where there was no shortage of any kind of the paddy, and the paddy was disposed of or retrieved by Food Corporation of India, they made 3 categories of all the cases i.e. 374 cases for the crop year 1994-95 and as per 3 categories, 40 cases were those, wherein the paddy was misappropriated by the millers and in that category, there was no "Deed of Settlement". 61 cases were those, wherein Food Corporation of India issued 'No Due Certificates' and the remaining cases were those, in which the entire paddy was disposed of or retrieved and the entire amount had been deposited with Food Corporation of India. In the light of these categories, they directed the Senior Regional Manager, Food Corporation of India, Chandigarh to execute the "Deed of Settlements". Said draft "Deed of Settlement" was conveyed to all the District Manager of Food Corporation of India for its execution and thereafter, "Deed of Settlements" were prepared and signed by the millers. Miller averred that in the present case, the deed of settlement was signed by miller as well as District Manager of FCI. The District Manager was competent to execute the deed of settlement, as the original agreement as well as claim before the Arbitral Tribunal were lodged by the District Managers. This deed of settlement was executed at the instance of the senior zonal office committee in respect of the paddy for the crop 1994-95. The deed of settlement was prepared by the senior panel advocates of Hon'ble Supreme Court of India. Later on, this deed of settlement was also upheld by Hon'ble Supreme Court in six SLPs titled as **FCI v. DEEP RICE MILLS AND OTHRS**. Hon'ble Supreme Court of India had declined the plea of Food Corporation of India that "Deed of Settlement" was not approved by their CMD, whereas there was no such document on the record which showed that "Deed of Settlement" had ever been sent to CMD and same had ever been put before CMD in any agenda. The entire record of Food Corporation of India in this regard was also called by Hon'ble Supreme Court of India in said Special Leave Petitions (SLPs), but FCI had failed to show any document on the record in respect of their allegations. So, in light of this, "Deed of Settlement" was upheld by Hon'ble Apex Court of India.

GROUNDS OF CHALLENGE (in OMP No.134/2022)

8. Aggrieved by the arbitral award dated 30.09.2011, Miller has preferred the present objections under Section 34 of the Act, inter alia, on the following relevant grounds: -

i. That award passed by ld. Arbitrator is totally against the law and facts of the case;

ii. That ld. Arbitrator has not framed the legal issues in spite of the objections raised by petitioner;

iii. That there was deed of settlement, which was duly executed and admitted by FCI, but ld. Arbitrator had not decided the issue no.1 as per facts.

iv. That the findings given by ld. Arbitrator are not related to the issue no.2, which are also against the law.

v. That there was no original claim before ld. Arbitrator and only on the basis of the photo copies, award was passed, which is totally against the law.

vi. That as per the terms of the agreement, no breach was committed by Miller. As per the public policy, the documents placed on the record before ld. Arbitrator clearly showed that the entire loss in sale of the paddy was compensated by the Central Government out of the subsidiary account. So, it is settled law that once the claim had been settled, that could not be claimed afterwards from the Miller as the Miller was not responsible for the sale of the paddy, as there was no clause for the agreement for the sale of the paddy.

vii. That the CAG report had been furnished before ld. Arbitrator, which clearly showed that the sale was affected due to poor control and negligence on the part of the officials of Food Corporation of India. Thus, the findings of ld. Arbitrator on issue no. 3 are also not legal and are liable to be set aside.

viii. That ld. Arbitrator did not give any finding on limitation issue as reference was hopelessly time barred, as no document had been produced on record by FCI, which showed that the reference was within time.

ix. That the findings on issue no.4 are also wrong, since ld. Arbitrator admitted that FCI was responsible for delay and not allowed the interest, thus, finding on this issue are also against the law.

x. That the findings on issue no.5 are also wrong.

xi. That the alleged agreement was not legal and valid agreement, as no authorized person on behalf of the firm had executed the same.

xii. That mandatory notice for invoking the arbitration had never been served as required under Section 21 of the Arbitration and Conciliation Act.

GROUNDS OF CHALLENGE (in ARBTN No. 1239/2022)

9. Aggrieved by the arbitral award dated 30.09.2011, FCI has preferred the objections under Section 34 of the Act, inter alia, on the following relevant grounds: -

i. That the impugned Award is in excess of and an improper exercise of jurisdiction of the Tribunal and as such is liable to be interfered under Section 34 of the Act. That Award is not based on sound principles of the law and has been made deliberately causing loss to the public exchequer. (Ref. **Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd. (2003) 5 SCC, 705**) and it is contrary to the terms of the contract. That impugned Award is patently illegal on the face of it. (Ref. **Dhanna Lal v. Kalawatibai and Others, (2002) 6 SCC, 16** and **ONGC** Supra))

ii. That the Tribunal has failed to appreciate Clauses 7, 8(3) & 16, and that in case there was a shortfall in the delivery of rice/paddy, FCI was entitled to the amount equivalent to one and half times of economic cost i.e. 1 and 1⁄2 times of Rs. 584.14 that would be Rs. 876. 21 per quintal of paddy. That the Tribunal has failed to appreciate Clause 15 of the agreement and adjusted the amount of security deposit against the claim of the FCI and awarded an amount of Rs. 11,34,812/-. That while passing the impugned Award, the Tribunal erred in not appreciating the provisions of milling agreement dated 06.10.1994, containing the arbitration Clause No. 21 thereof in the right perspective.

iii. That the Tribunal failed to appreciate that interest claimed by FCI was from 28.02.1995 @ 18% p.a. due to loss suffered, as a result of breach of contract by Miller from the time stipulated for the performance of contract in the storage cum milling agreement dated 06.10.1994, and the Tribunal awarded interest at the rate of 12% p.a. in case Miller failed to pay awarded amount within three (3) months from the date of communication of the award.

iv. That the Tribunal did not appreciate that Miller failed to perform the obligations under milling contract, within time stipulated under the contract and thereby Miller committed breach of contract by not delivering the milled resultant rice against the paddy lifted.

v. That the Tribunal erred in passed the impugned Award without going into the merits and in appreciating that due to breach of contract on the part of the Miller, FCI had to sell/dispose of the un-milled paddy in order to mitigate the losses further and to minimize and save the same from further deterioration. That as miller failed to mill the paddy, there was likelihood of the un-milled paddy being deteriorated/damaged and in such situation, FCI had no option but to sell the paddy at a very low price. This extreme step was taken by FCI after expiry of last date of delivery of rice as per the agreement. That as per the terms of aforesaid milling agreement i.e. Clause 7 & 16, in case there was a shortfall in delivery of rice/paddy, FCI was entitled to amount equivalent to one and half time of economic cost of paddy.

vi. Prayer has been made to set aside/modify the impugned Award to the extent of the genuine claim of FCI, which remained unawarded; and/or award a sum of Rs. 29,43,045/- as per Statement of Claim filed by FCI.

REPLY OF FCI (Respondents in OMP (Comm.) 134/2022)

10. FCI filed the reply contesting the petition of Miller and contended that petition is not maintainable within the four corners of Section 34, as ld. Arbitrator passed well-reasoned

award. FCI averred that this court does not sit as court of appeal over the findings of ld. Arbitrator. On merits FCI denied all the grounds taken by Miller.

REPLY OF MILLER (Respondents in ARBTN 1239/2022)

11. Reply was filed on behalf of Miller to the petition of FCI, denying every content, averment, allegation, statement and pleadings of FCI. Objections were taken on the ground of territorial jurisdiction of the court in Delhi, however, in view of order passed on the petition of Miller, said objection does not survive.

12. It has been further mentioned that present dispute was not referable to ld. Arbitrator in the light of public policy of the Govt. of India, vide which paddy was sold in public auction. Govt. of India had credited the amount of Rs 120 Crore on account of sale of paddy for crop year 1994-95. It has been further mentioned that as per agreement, ICA was not competent to appoint Arbitrator and court could not rewrite the arbitration clause. As per agreement, only Zonal Manger/Sr. Regional Manger were competent to appoint ld. Arbitrator, and not the ICA. It has been further mentioned that present petition is not maintainable within the framework of Section 34 of the Act. It has been further mentioned that ld. Arbitrator has gone through merits of the case in full details and petitioner was given full opportunity to explain its case and the Tribunal has delivered the award rightly under the rules and on the facts of the case.

13. It has been further mentioned that FCI was requested to have

paddy milling trials in their presence and the rice specifications was to be determined according to resultant rice and the recommendations were made by the District Manager and the SRM of Punjab, but FCI remained adamant and the paddy could not be milled due to its poor quality and was rather unmillable in the year due to bumper crop. It has been further mentioned that the said milling agreement for crop year 1994-95 did contain the arbitration clause no.21, but the Food Corporation of India did not comply with the same. It has been further submitted that during Kharif crop year 1994-95, paddy of fine variety so called super fine weighing 12168 quintals in 18720 bags, were stored at the Millers' rice mill premises, under the joint custody for milling and it was partially milled. The balance paddy was retrieved, lifted and sold by Miller. It has been further mentioned that paddy was stored at mill premises as per the milling agreement and Miller was not allowed to lift paddy without release order after delivering rice in advance. The paddy was subject to inspection and verification by Food Corporation of India from time to time and they found that there was no shortage. It has been further mentioned that there were only 40 cases of misappropriation in Punjab, as per report of Zonal Office Committee dated 24.08.2004 appointed by the Head Quarter of Food Corporation of India and these cases were of other Districts and Miller was not included in that list. It has been further mentioned that FCI had started lifting paddy from rice mill of Miller and from other mills of Faridkot district in January/February 1995 and transported the same to its godowns and continued retrieving paddy and its sale. The balance paddy from Miller's was sold finally on 10.02.1996 in full and final as per the government notification. It was wrong plea that paddy was sold at cheaper rates. It has been further mentioned that Government of India had declared public policy vide its letter dated 14.03.1995 and had fixed the sale price of paddy according to its varieties. The paddy sale public policy was declared because of buffer stocks lying in FCI godowns and to vacate the storage space for the coming wheat crop of 1995 year and also due to shortage of funds to carry over surplus stocks for further 2-3 years.

14. It has been further mentioned that as per milling agreement and under its clause 7, 8(3) and 16, FCI could recover losses if paddy or rice was short at the rate of one and half times of economic costs alongwith interest. But there was no shortage and rice was always delivered in advance and after equivalent paddy was issued to Miller against release orders. It was further mentioned that no notice for misappropriation was served on Miller and neither there was shortage nor misappropriation as alleged by FCI, rather it was against their own pleadings of FCI. It has been further mentioned that Hon'ble Apex Court delivered judgment on 17.07.2003 directing the ICA to nominate arbitrators, leaving all issues and objections open including the interpretation of the arbitration clause and left all issue open for the arbitrator to decide. It has been further mentioned that the Zonal Office committee recommendations for 'out of court settlement' was

subject to the approval by the head office. The said recommendations were approved by the head office and thereafter District Manager/Area Manager signed the 'deed of settlement' dated 22.03.2006 without any condition as alleged. Finally, District Manager vide letter dated 01/03.02.2006 took action and signed the deed of settlement dated 22.03.2006 under authorization and on behalf of SRM and this letter was also in the arbitration file. It has been further mentioned that FCI had to be blamed itself because FCI did not follow rightly the arbitration clause no. 21 of the rice milling agreement.

ARGUMENTS OF MILLER (in OMP (Comm.) 134/22)

15. Ld. counsel for Miller argued that ld. Arbitrator has not at all considered the aspect of deed of settlement and had decided the claim and passed an award without appreciating the documents placed on record that entire loss in sale of paddy was compensated by the central government out of the subsidiary account. Ld. counsel argued that no document was filed by FCI to show that reference was within the stipulated time and entire claim was decided only on the basis of photocopies of documents and without original claim being filed before ld. Arbitrator. Ld. counsel argued that ld. Arbitrator grossly erred in not considering the vast documentary evidence available on record in right perspective. Ld. counsel argued that the reference was without any mandatory notice as required under section 21-A of the Arbitration & Conciliation Act, 1996 (as amended upto date), as it is admitted case that there is no notice on the arbitration record.

Ld. counsel further argued that the present reference is against the public policy declared by Union of India for the disposal of the entire paddy stored in the different rice mills. The 'Deed of Settlement' was executed as per the public policy prepared by Food Corporation of India Head Office and plea had been taken by the Food Corporation of India before the arbitrator that said 'Deed of Settlement' was not approved by CMD, but there was no such condition at the time of execution of 'Deed of Settlement'. The agreement was signed by the then District Manager, and District Manager was competent to sign the 'Deed of Settlement' as per the directions of their Head Office. Ld. counsel argued that in this case, FCI was claiming 1.5 times economic costs on unmilled paddy, but there is no clause in the agreement entitling FCI to claim economic costs on unmilled paddy. Ld. counsel relied upon judgment of **Food Corporation of India v. S. K. International Rice Mills, MANU/DE/3980/2018** and referred to following observations: -

> *"39. The court cannot lose sight of the fact that awards have to be passed in consonance with public policy. The documents on record show that there were various levels of consultation which went into the decision to sell the paddy by means of open sale. This shows that the Government had reconciled to the fact that the best step to take was to sell in the market and recover the cost of the paddy. Further the FCI was also given a benefit of Rs. 120 crores by the Central Government to compensate for the losses suffered by it. This is evident from letter dated 29th March, 2000.*
>
> *40. The initiation of arbitration claim against the millers in the light of open sale notices and the correspondence, which is set out in the present case, clearly seems to be an erroneous step by*

the FCI against the miller and the documents on record shows clearly that even in the settlements entered into by FCI, it did not insist on the 1½ times of the economic cost of paddy. FCI is clearly being selective in the manner in which the arbitration cases are being pursued for more than two decades now. The FCI itself having taken a decision and given the option to the miller to purchase the paddy or having recovered the cost of the paddy by selling in the open market, was clearly in the knowledge of the fact that it had taken a policy decision consciously not to press the claim of economic cost. Despite this, in the arbitration proceedings it raised claims for the same which are totally untenable - except in the case where the millers had indulged in pilferage and siphoning off of paddy. Thus, the claim of 1½ times of the economic cost is not liable to be granted in favour of the FCI, in the facts of the present case."

16. Ld. counsel for Miller also relied upon in **Food Corporation of India v. Shankar Rice and General Mills and Ors MANU/DE/4150/2018** as well as **Food Corporation of India (Amritsar) Vs. Lekh Raj Dhawan Rice & General Mills and Ors. MANU/DE/0103/2019.**

17. Ld. counsel for Miller also relied upon the judgment in **Food Corporation of India v. M/s Deep Rice Mills 2011:DHC:5378-DB**, wherein it was held that: -

"3. The award in question has recognized the validity of a deed of settlement signed on 12.7.2006 between the General Manager, Food Corporation of India (FCI), Punjab region (acting through Area Manager) and M/s.Deep Rice Mills. Other awards pertained to similar agreements signed between Rice Mill owners and FCI.

6. Similar disputes were pending between FCI and other Rice Mills. The number of Rice Mills being large, a policy decision was taken to try and effect a negotiated settlement and indeed, *the Regional Managers of FCI, Zonal Manager of FCI as also the Area Managers of FCI started negotiating.*

11. FCI challenges the award alleging that the settlement was not approved by the Chairman-cum-Managing Director FCI.

15. FCI is a statutory corporation. It is not the Government of India. Thus, concept of Business Allocation Rules would not be applicable to FCI. It relates to the indoor management of FCI as to who has the authority to act on behalf of FCI it was for FCI to have led evidence before the learned Arbitrator to show that the Area Manager was not authorized to enter into any such agreement and attempt made before us to rely upon some office orders is of no use. We highlight that before the learned Arbitrator the only stand taken was that the agreement in question did not have the approval of the Chairman-cum-Managing Director of FCI.

16. It was never told to M/s.Deep Rice Mills that the Area Manager has no authority to execute any deed of settlement. Learned counsel for the appellant has no answer to the question: If the Area Manager had no authority to enter into any settlement why was he put in the forefront to negotiate. To the preceding sentence, we need to add that learned counsel for FCI admits that a policy decision was taken to negotiate with the rice millers and try and resolve the dispute across the table. Learned counsel further concedes that it was pursuant to the said policy decision that the Area Manager, FCI commenced the negotiations with M/s.Deep Rice Mills. Counsel concedes that there is no material with FCI to show that the brief entrusted to the Area Manager, FCI was to do preliminary ground-work i.e. if a settlement was possible, to outline the contours thereof and before finalizing the settlement to take the approval from the senior officers.

17. Be that as it may, we are concerned with the validity of an award and the view taken based upon the evidence. The issue adjudicated by the Arbitrator is: Whether the settlement in question binds FCI. Within the contours of Section 34 of the Arbitration & Conciliation Act 1996, we see no scope to set *aside the award and therefore we concur with the view taken by the learned Single Judge that the award cannot be set aside."*

18. Ld. counsel also relied upon copy of orders passed by Hon'ble Supreme Court in **FCI v. M/s Deep Rice Mills bearing SLP (C) CC No. 5424**, wherein vide order dated 17.09.2012 Supreme Court after perusal of all records of FCI, dismissed SLP against above-mentioned judgment of Delhi High Court.

WRITTEN ARGUMENTS FILED BY FCI (in ARBTN 1239/22)

19. In the written submissions filed on behalf of FCI, it has been mentioned that there is a mistake of calculation in the amount awarded by the Tribunal, which has to be modified and has to be calculated correctly. It has been further mentioned that Miller is barred to raise the objections in Section 34 of the Act, as scope is limited and same cannot be treated like a first appeal. It has been further mentioned that the proposal until finally accepted, cannot be a binding contract and that the deed of settlement was not concluded and same was not a valid document. The grounds raised by Miller have no illegal effect. It has been further mentioned that no such ground of payment to FCI was argued before ld. Arbitrator, nor was any document proved in the evidence.

20. It has been further mentioned that Public Interest Litigation was filed before Hon'ble High Court of Punjab & Haryana titled as **P.S. Khurana v. Union of India & Ors. CWC no.18980 of 1995** and **Ajay Jagga v. Union of India & Ors.** and **CWC no. 18981 of**

1995. Hon'ble High Court of Punjab & Haryana took note of the fact that huge stock of paddy was lying with miller including Miller herein and condition of paddy was deteriorating and millers were not milling the paddy. Thereafter, Hon'ble High Court directed to take appropriate order regarding disposal of 1994-95 paddy stock and further directed that in case of paddy stock of 1994-95 crops were not disposed of within a period of three months, such milling stock would be sold in open market and that eventuality no rice miller in the State of Punjab would be allowed to purchase the stock either directly or indirectly. Hon'ble High Court further ordered that said order would not in any way prevent and hamper the FCI to claim damages or compensation from the mill owner for the alleged violation of the agreement executed by them. Accordingly, petitioner had no option, but to sell/dispose of the un-milled paddy in order to mitigate the losses further and to minimize the losses, sold the paddy. As per the directions, the paddy was sold in an open market at a much lesser price.

21. It has been further mentioned that time period of delivery of the rice was clearly mentioned in paragraph 9(III) of the agreement between the parties. It has been further mentioned that 3219.20 quintals of paddy were dispatched in 5120 bags and balance of 5699.75 quintal in 8650 bags of paddy remained un-milled, therefore, Miller committed a breach of the terms and conditions of the agreement. It has been further mentioned that ld. Arbitrator calculated cost of entire paddy only one time of economic cost,

instead of 1x1⁄2 time. The one-time economic cost is only 584.14, which made the calculation erroneous by not adding 1⁄2 of the economic cost i.e. Rs. 292.07 (total comes to Rs. 584.14+ 292.07= Rs. 876.21), which needs to be corrected and modified.

APPRECIATION OF ARGUMENTS, FACTS & LAW

22. The crux of the legal principles explained by superior courts in respect of ambit of Section 34, is that Arbitrator is a Judge of the choice of the parties and his decision, unless there is an error apparent on the face of the award which makes it unsustainable, is not to be set aside by the court, even if the court of law could come to a different conclusion on the same facts. The court cannot reappraise the evidence and it is not open to the court to sit in appeal over the conclusion of the Arbitrator. It is not open to the court to set aside a finding of fact arrived at by the Arbitrator and only grounds on which the award can be set aside are mentioned in the Arbitration Act. Where the Arbitrator assigns cogent grounds and sufficient reasons and no error of law or misconduct is cited, the award will not call for interference by the court in exercise of the power vested in it.

23. In **Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49**, court held that an award could be said to be against the public policy of India, inter alia, in the following circumstances:-

> *"1. When an award is, on its face, in patent violation of a statutory provision.*
>
> *2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.*

3. When an award is in violation of the principles of natural justice.

4. When an award is unreasonable or perverse.

5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.

6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."

24. Hon'ble Supreme Court in the case of **Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India, 2019 SCC OnLine SC 677**, held that under Section 34 (2A) of the Act, a decision which is perverse while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. A finding based on the documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties and therefore, would also have to be characterized as perverse. It was held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision, would be perverse and liable to be set aside on the ground of patent illegality.

25. **Issues Framed & Findings Given by ld. Arbitrator**

i. **Whether there has been any settlement between the parties if so, its effect? OPR.**

Findings: (Relevant part)

"Moreover it is also a case of Respondent that the original deed or settlement is with the claimant meaning thereby that even after signing the deed of settlement by the district manager of the c1aimant the same was not despatched nor conveyed to the Respondent. The contention of claimant is that the proposal of amicable settlement was subject to approval of CMD, which was not approved. It is thus to be noted that the proposal until finally accepted cannot be a binding contract. The proceeding for approval was pending and the settlement deed was not finally approved. It is to be noted that parties were trying to arrive, on a settlement but the deed of settlement has not has been approved by CMD. Moreover, after the order of the Hon'ble High Court Delhi at New Delhi arbitration proceeding started. Even the Respondent is blowing hot and cold in the same breath. On one hand the Respondent is stating that there was no valid and legal agreement between the parties and on the other hand relies on the deed of settlement, which clearly relates to an agreement executed between the parties. Thus it appears that the deed or settlement was not concluded and moreover the same is not a valid document. It is to be noted that clause 21 of the agreement states that the rules of arbitration of Indian Council of arbitration shall apply. It is further not out of place to mention that under Rule 62 of ICA in case the parties arrive at the settlement of the dispute by common agreement, it is for the tribunal to be satisfied that such agreement in genuine and the arbitrator will render an award on the agreement of the parties. Thus in case there had been a settlement as stated by the Respondent he ought to have come to the tribunal to get an award made in terms of the settlement. Admittedly the arbitration proceeding have started but the same were not continuing due to one reason or the other and ultimately it started by the order of the Hon'ble Justice. Manmohan J. Even in the present proceedings Respondent have not asked for an award in terms of said deed of settlement. Rather stated that arbitral tribunal has no Jurisdiction. Thus I do not agree that there was a settlement deed arrived at between the parties."

ii. **Whether the Claimant committed breach of contract. OPR?**

Finding: (Relevant part)

> *"In the entire pleading and the arguments advanced and the evidence produced there was nothing on record that the claimant committed breach of contract. It was only the case of Respondent that the deed of settlement was arrived and the claimant is not entitled to continue the arbitration in view of the deed of settlement. This point is also covered in deciding issue No. 1."*

iii. **To what amount Claimant is entitled to recover from the Respondent. OPC (The counsel for the Claimant has suggested that the issue would be framed whether the Claimant is entitled for recovery of amount as per the Claim statement filed by the Claimant.) The above issue as suggested by the Counsel of Claimant is covered in the issue framed above.**

Finding: (Relevant part)

> *"………… The Claimant is claiming cost of paddy at 1.5 times of economy cost @Rs.876.21 paise per quintal. This shows that the economy cost of paddy had been Rs.584.14 paise per quintal. This is also not disputed by the Respondent in the written statement. Admittedly the Claimant had sold the paddy at much lower price than Rs.584.14. paise per quintal and suffered loss. The plea of the Respondent that the Claimant have not suffered any loss is thus not tenable. I thus find that the claimant is entitled to economic cost. The detail, which was given by the claimant, had been: -*
>
> *1.Paddy stored 12168,*
>
> *2.Paddy milled 3184.70,*
>
> *3.Rice received 2133.75,*
>
> *4.Paddy despatched 3219.20,*

5.Thus the balance paddy come to 5699.75 quintals,

6.Costs on the paddy Rs. 33,29,452/-,

7.Sale of paddy Rs. 7,57,768/-, (1918.40 quintals)

7 (A). Paddy retrieved Rs.1396872/- (3456.70 quintals)

8. And balance recoverable Rs. 11,74,812/-.

The other claims are not tenable and Respondent are entitled to the amount of 40,000/- of the security deposit. Thus the claimant is entitled to Rs. 11,34,812/-. The issue is decided accordingly."

iv. **Whether the claim is barred by limitation? OPR.**

No findings: (Dropped as not insisted)

v. **Whether the Claimant is entitled to interest if any, at what rate and to what extents? OPC.**

Findings: **(Relevant part)**

"As already discussed that there have been a delay in getting the matter decided through arbitration on account of reasons stated hereinabove and the claimant is also liable for delay. Thus the claimant is not entitled to interest till the date of making of award. However in case the Respondent fails to pay amount awarded within a period of 3 months from the date or communication or award the claimant will be entitled to interest at the Rate or 12% per annum, alter 3 month from the date or communication of award."

vi. **Relief.**

Findings: (Relevant part)

"Thus, 1 make an award for amount of Rs. 11,34,812/- in favour or the claimant and against the Respondent. Both the parties will have to pay equally the arbitration fee and other expense or arbitration and will bear their own cost. The claimant is further entitled to interest at the Rate or 12% per annum, after 3 months from date of the communication of the

award if the amount is not paid within a period of 3 months. The award is made accordingly."

26. In the present case, the core issue between the parties had been depending on the acceptability of the "deed of settlement". Miller had been relying on the same, while FCI had been denying enforceability of the same. However, it is admitted situation that similar kind of cases involving same or similar kind of deed of settlement between FCI and other Millers, had been subject matter of judicial scrutiny before Hon'ble Delhi High Court in different matters. There is no denial of those decisions being given by Delhi High Court, from the side of FCI. However, ld. counsel for FCI submitted that those decisions do not lay down a precedent for this case. In order to assess this contention, it will be relevant to mention that FCI does not deny same kind of deed of settlement being executed with Miller in this case. It is also not the case of FCI that paddy was misappropriated by the Miller in this case. Thus, as per admitted facts, Miller herein had not milled the paddy, as per the initial contract between the parties. FCI had retrieved and sold off the unmilled paddy. In such situation, I find that the set of facts and deed of settlement as dealt with by Delhi High Court in the cases of **S.K. International Rice Mills** or **Deep Rice Mills** (supra), were the same as pertaining to this case. Therefore, I find that the interpretation given in those cases in respect of enforceability of deed of settlement, would be applicable to this case as well.

27. Besides aforesaid point, there is another catch as well, which needs to be mentioned here. Ld. counsel for Miller referred to

contract and submitted that as per terms and conditions of the contract (clause-13), in case the Miller did not mill the paddy within stipulated time, FCI had the option to get it milled from other miller and to claim damages incurred in that process from the original Miller. This argument could not be dislodged by ld. counsel for FCI. However, as per admitted case, FCI did not get paddy milled through other Miller, rather it sold paddy in open market. FCI has taken support from orders passed by Punjab & Haryana High Court in **CWC no.18980 of 1995 & 18981 of 1995**, to justify disposal of paddy in the market. However, fact remains that FCI also, did not get the paddy milled because of peculiar situation prevailing at that time.

28. Ld. counsel for FCI referred to clause 8 (iii) of the agreement to submit that FCI was entitled to claim cost of paddy at the rate of 1½ times economic cost of paddy. I have gone through all the relevant clauses of this agreement. The agreement did not provide for the damages in the eventuality of failure to mill the paddy within specific time period. The damages at the rate of 1.5 times of economic cost of paddy were provided for, in respect of different situations. Apparently and admittedly those particular factual situations were not invoked in the present case. Clause 16 of the agreement entitled FCI to terminate the agreement and miller was responsible only in respect of any shortages in paddy, rice, or gunny bags. Thus, the penalty of one and half times of the economic cost as claimed in this case, was not based on any particular contractual term. Hence, the observations made by

Delhi High Court in above-mentioned cases, become more relevant, so as to show that in the given scenario, when FCI was admittedly provided grant by the government out of a public policy peculiar to prevailing situation, then FCI was not justified to claim damages on account of economic loss, as done by it in this case as well as in other similar cases. The deed of settlement, was thus, very much enforceable because it was executed in the background of prevailing circumstances. FCI was not justified in disowning this settlement deed, on the grounds of same being not approved by its CMD. I need not add anything more on this aspect, in view of categorical observations already made by Delhi High Court in above-mentioned cases.

DECISION

29. In view of my foregoing discussions, observations and findings, I find that there was no occasion to entertain the claim made by FCI, but same was not only entertained, rather it was accepted also. Hence, award in question suffers from perversity, and cannot be sustained. Both petitions are allowed so far as they seek setting aside of the award, but for the reasons mentioned herein above. Accordingly, award in question stands set aside.

30. Copy of this judgment shall be placed in both the files. Both the files be consigned to record room after due compliance.

PULASTYA PRAMACHALA

Digitally signed by PULASTYA PRAMACHALA
Date: 2026.06.01 16:36:18 +0530

Pronounced in the Open Court on this 01st Day of June, 2026

(PULASTYA PRAMACHALA)
District Judge (Commercial Court)-01,
Patiala House Court,New Delhi