* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 16.09.2011

<u>OMP No. 556 of 2011</u>

Global Agri System Pvt. Ltd. ......Petitioner
Through: Mr. Sansdeep Sethi, Sr. Adv. with
Mr. Anand Varma, and
Mr. Yakshay Chheda, Advs.

Versus

Fresh and Healthy Enterprises Ltd. ……Respondent
Through: Mr. M.M. Kalra, Adv. with
Mr. Kunal Kalra, Adv.

CORAM:-
HON'BLE MR JUSTICE MANMOHAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

<u>MANMOHAN SINGH, J</u>

1. This petition has been filed by the petitioner under section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") seeking directions from this court to protect the legal rights of the petitioner arising from an agreement for cold storage entered into between the petitioner and the respondent.

2. The brief facts of the case are that in March 2011, the petitioner and the respondent entered into an agreement for storage of approximately 3500 MT of carrots form March to September 2011, in the respondent's cold storage works at Rai, Haryana. According to the petitioner, the said agreement provided that the respondent shall keep the cold store under close supervision and maintain the temperature at 1 degree Celsius. Further, the said agreement provided that in case of any loss suffered by the petitioner due to failure in maintaining the cold storage or negligence of the guard, the respondent shall be accountable and shall pay damages to the petitioner for the same to compensate the loss suffered by it. As per the petitioner, everything contained in the said agreement had been decided between the parties and they were at consensus ad idem with respect to all the stipulations in the agreement, except regarding the payment of charges and it was decided that this issue would be finalized at a later stage after further discussion.

3. It is stated by the petitioner that by an email dated 18.02.2011, the respondent agreed to restriction of liability to maintain the protocols which had been jointly agreed upon by the parties and therefore, even though the agreement was not formally signed but, it

was agreed to by the respondent through the said email and also by its conduct. On 18.03.2011, the petitioner's Chairman sent an email to the respondent stressing upon the high standard of care that was needed to be exercised by the respondent and the reply to the said email was sent by the respondent to the petitioner on the same day assuring him about the their precautions and standards of care.

4. Further, it is stated by the petitioner that the petitioner supplied best quality carrot to the respondent's cold storage which was checked and verified by the respondent itself. All the consignments of carrots were accepted and the receipts were issued by the respondent to the petitioner for the quantity and quality without any adverse comments except only in one case where it was observed that the carrots were soft and the same was mentioned in the email but, all the other consignments were accepted without demur.

5. The grievance of the petitioner is that within 8 days of loading its last consignment, the petitioner received a letter dated 27.04.2011 form the respondent wherein it was stated by the respondent, that upon their recent check of the material, they noticed rotting in some chambers and asked the petitioner to market those

products at the earliest. Respondent also enclosed a status report with the said letter which indicated that carrots in 14 out of 33 chambers had rotten over the period of storage. Thereafter, the respondent raised a bill dated 28.04.2011 of Rs.22,14,581/- as “cooling charges’ and “labour charges” for the months of March and April 2011. As the carrots were to be immediately disposed of, therefore, by its emails dated 02.05.2011 and 03.05.2011, the petitioner requested the respondent to provide labour and forklifts to withdraw the carrots from its cold storage but the respondent failed to do so.

6. Thereafter, the petitioner’s Chairman sent an email dated 05.05.2011 to the respondent inform it that the carrots in 3 chambers had remained preserved and suggested certain steps to ensure that the remaining carrots at the respondents cold storage were stored in accordance with the agreement. But, as per the petitioner, despite repeated requests, the respondent failed to comply with its obligations under the agreement. On 07.06.2011, 49125 bags of carrots had been withdrawn by the petitioner from the cold storage and out of these bags 28728 bags were partially damaged thus, were sent for washing and recovery and 20397 bags were completely destroyed and had to be

dumped.

7. On 08.06.2011 the petitioner received an email from the respondent wherein the respondent disowned all the responsibility for spoiling of the carrots. The relevant extract of the said email reads as follows:

> "…FHEL provide cold storage conditions as per the protocols required by the client. We do not check the quality of incoming material and hence can not be held responsible for the quality after storage.. " and that.. "the quality of carrots could have deteriorated due to number of reasons which are not in our control or jurisdiction…"

8. With effect from 08.06.2011, the petitioner came to know that the respondent did not allow the petitioner's employees from any access in its store premises and asked them to stop all operations. Thereafter the respondent sent a bill of Rs.53,17,006/- vide its email dated 09.06.2011 for the period from March to June. Some correspondence was also exchanged between the parties but as no solution could be arrived at between them as the cold storage agreement between the petitioner and the respondent contains an arbitration clause, therefore, the petitioner proposed that the disputes be referred to the Sole Arbitrator for arbitration and vide its emails and letter dated 18.07.2011 and 21.07.2011 respectively the respondent

agreed to arbitration. Further, it is stated that by letter dated 22.07.2011, the petitioner confirmed the acceptance of Mr. Bijay Kumar, IAS, MD, NHB as the Sole Arbitrator to adjudicate upon the disputes. But, by its letter dated 25.07.2011, the respondent informed the petitioner that unless the petitioner gave it a bank guarantee for the dues, the respondent would not agree for the sale proceeds to be kept in a separate account. However, the, respondent came to know that in fact the respondent tried to sell the carrots in the market through an auction and had even published an auction notice to that effect on its website for approximately 1600 MT English carrots.

9. Being aggrieved by such acts of the respondent, the petitioner filed the instant petition.

10. In the reply filed on behalf of the respondent to his petition it stated that there was no agreement between the parties for storing the carrots as the agreement could not be signed due to difference of opinion on various clauses in the draft agreement and regarding that the respondent had even sent an email dated 18.02.2011 to the petitioner. In response to said email, the petitioner had sent an email dated 21.02.2011 informing the respondent that certain points raised

by the respondent by its email are not acceptable to them. Thus, it cannot be said that there was any valid agreement between the parties.

11. Further, it is stated that a meeting had taken place between the parties wherein it was agreed that an Arbitrator would be appointed to adjudicate upon the disputes and it was also agreed that the petitioner and the respondent would jointly sell the carrots and the sale proceeds would be kept with the respondent. But, vide its letter dated 16.07.2011 the petitioner backed out from the point of sale proceeds being kept with the respondent. Further, the petitioner has concealed the fact that the respondent has not been paid its dues amounting to Rs.69,41,000/-(public money) despite issuing various reminders. It is also stated by the respondent that as the goods are of perishable nature, therefore, it is in the best interest of both the parties that the carrots be disposed of in an auction and the money so collected be kept with the respondent against its dues.

12. The matter was adjourned from time to time so that both parties may jointly sell the carrots and the sale proceeds could be deposited with the Registrar General of this Court in fixed deposit scheme till the disposal of arbitration proceedings. However, the said

things could not be materialized. It is submitted by the petitioner that as per expert opinion taken by the petitioner after giving the sample of the respondent's cold storage, now the value of the goods is not more than Rs.10 lac. On the other side, it appears that the respondent is not inclined to take its responsibility to sell the carrot so that if any more value be received.

13. On the last date, learned counsel for the respondent has suggested that since the respondent is not an expert in this line, therefore, the petitioner may be allowed to dispose of the goods at their level but, the petitioner should deposit the entire outstanding amount against the bill and both the parties may raise their respective claims before the Arbitrator and till the award is passed, the amount deposit by the petitioner be kept in the said deposit.

14. Mr. Sandeep Sethi, learned Senior Counsel, has partly agreed with the suggestion of the respondent to the effect that the total proceeds of selling the carrot be deposited with the Registrar General of this Court till the time award is passed by the Arbitrator but he says that the petitioner is not prepared to deposit the alleged outstanding amount claimed by the respondent. On the other hand,

Mr. Sethi says, that it is the petitioner who has suffered losses which are more than one crore of rupees due to fault of the respondent and his clients would be raising the said claim before the arbitration proceedings, thus the suggestion of the respondent cannot be accepted. Even otherwise, as the respondent has not filed any petition under Section 9 against the petitioner, no order can be passed as per the suggestion made in the present petition.

15. After having considered the rival submissions of the parties and the material placed on record, the petition is disposed of with the following directions :

(a) That the respondent shall hand over the carrots lying in the cold storage to the petitioner after issuing the reasonable advance notice by the petitioner for the purpose of removing the said materials. The respondent or its authorized representative is allowed to join the petitioner at the time of sale if it feels necessary.

(b) After the sale of carrots the entire proceeds be deposited by the petitioner with Registrar General of this court within one week from the date of sale. The deposited amount shall be invested by the Registry in FDR initially for a period of one year and the same may be renewed from time to time till the award is passed by the sole Arbitrator. The petitioner shall file an affidavit for the said compliance. The entire process should be completed within 10 days from today.

(c) Both the parties are allowed to raise their respective claims/counter claim before the Arbitrator. The request of the respondent to deposit the entire outstanding amount as charges for storing the carrots would be considered by the sole Arbitrator as per its own merit on filing the requisite petition.

16. The petition stands disposed of. No cost.

MANMOHAN SINGH, J.

SEPTEMBER 16, 2011