

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10959/2013

FOOD CORPORATION OF INDIA
REPRESENTED BY ITS MANAGING DIRECTOR & ORS. Appellant(s)

VERSUS

ASISH KUMAR DEY Respondent(s)

O R D E R

We have heard the learned counsel appearing for the appellant(s).

Despite notice being served, none appears on behalf of the respondent.

The short issue for consideration in this appeal is, whether the High Court is right in relying upon Clause XII(d) of the Tender Document dated 04.01.2007 in coming to the conclusion that in the absence of any failure or omission on the part of the respondent/contractor, to take due care and caution of the goods, a consequential liability that may have arisen due to any loss occasioned, cannot be fastened upon him.

We have perused Clauses XII(a) to XII(d). Clause XII(a) deals with the liability of the contractor vis-a-vis the right of the appellant/corporation to take a decision. Under

Clause XII(b), the question of reimbursement, including the right of the corporation to deduct any sum from the dues owed to the contractor for the loss caused, has been dealt with. Clause XII(c) speaks about default on the part of the respondent/contractor in performing the contract. Clause XII(d) further reiterates that it is the respondent/contractor who is responsible for the safety of the goods. This aspect has been totally mis-interpreted by the High Court by merely relying on Clause XII(d) while ignoring Clauses XII(a) to XII(c).

Admittedly, the goods have been lost at the hands of the respondent. This has caused loss to the appellant(s). As a consequence, the respondent will have to make good the loss. The appellant(s) has rightly invoked Clause XII(b), by making due deduction from the running bills.

In our considered view, the view expressed by the High Court is totally erroneous and contrary to the agreed terms.

Thus, the impugned order passed by the High Court is set aside and the appeal stands allowed.

Pending application(s), if any, shall stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[NONGMEIKAPAM KOTISWAR SINGH]

NEW DELHI;
JANUARY 28, 2026.

ITEM NO.109

COURT NO.5

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 10959/2013

FOOD CORPORATION OF INDIA
REPRESENTED BY ITS MANAGING DIRECTOR & ORS.

Appellant(s)

VERSUS

ASISH KUMAR DEY

Respondent(s)

Date : 28-01-2026 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Appellant(s) Mr. Ajit Pudussery, AOR
Mr. Ashutosh Bamezai, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The appeal stands allowed in terms of the signed
order.

Pending application(s), if any, shall stand
disposed of.

(ASHA SUNDRIYAL)
DEPUTY REGISTRAR

(POONAM VAID)
ASSISTANT REGISTRAR

[Signed order is placed on the file]