



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



D.B. Civil Miscellaneous Appeal No. 1302/2019

1. Director, Integrated Child Development Services, Government Of Rajasthan, 2, Jal Path, Gandhi Nagar, Jaipur.
2. State Of Rajasthan Through Principal Secretary, Women And Child Development, Govt. Secretariat, Jaipur.
3. State Of Rajasthan Through Chief Secretary, Secretariat, Jaipur.

----Appellants

Versus

M/s Murliwala Agrotech Pvt. Ltd., Registered Office At Ab-16, Community Centre, Safdarjang Enclave, New Delhi- 110029, Through Laxman Singh Shekhawat S/o Sh. Devi Singh, Authorised Representative.

----Respondent

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For Appellant(s) : Mr. Naman Maheshwari  
Ms. Pooja Sharma, AAAG  
For Respondent(s) : Mr. Harsh Pratap Singh

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**HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA  
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU**

**Order**

**REPORTABLE**

**19/03/2026**

1. This is an appeal preferred under Section 13 of the Commercial Courts Act, 2015 (for short 'the Act of 2015') read with Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') against the order passed by the Presiding Officer, Commercial Court No.2, Jaipur Metropolitan dated 03.01.2019, whereby the objection application filed by the appellants under Section 34 of the Act of 1996 has been rejected and the order dated 31.07.2015 passed by the learned Sole





Arbitrator has been upheld. The brief facts, which need to be noticed while deciding the appeal, are as under:

"3. That a Tender no. 33105 dated 06.05.2010 (amended by Tender no. 41833 dated 20.09.2010) was issued by the Appellant no.1, Director-cum-Dy. Secretary to the Government, for supply of 'Panjari' (Sattu), 'Halwa pre-mix' (Deshi Mithai), 'Upma pre-mix' (namkeen) for the Integrated Child Development Services of the State of Rajasthan for ultimate consumption by women and children. The Respondent-Claimant was awarded the contract for supply of the said material for Zone-B (Udaipur Division), Pali and Jodhpur Districts of Zone-C (Jodhpur Division). Accordingly, an agreement was executed between the State and the Respondent/Claimant on 20.10.2010. The said contract was for the period ending on 31.03.2011; however, the same was further extended upto 31.03.2012, as mutually agreed by both the parties.

4. That as per the Integrated Child Development Services and Sabla Scheme of the State of Rajasthan, the Respondent was contracted to supply subsidized nutritious food in the areas mentioned in the Agreement dated 20.10.2010 in the Districts of Pali, Jodhpur, Dungarpur, Udaipur, Chittorgarh, Rajsamand and Pratapgarh."

2. On a genuine complaint relating to the service provided by the respondent, the appellants vide order dated 18.06.2012 issued a recovery notice, whereby demand of total amount of Rs.9,53,20,558.54/- was initiated. Since an amount of Rs.7,90,62,647/- was payable to the claimant in view of the material supplied previously, the said amount was deducted from the total penalty imposed i.e. Rs.9,53,20,558.54/-. Thus, an amount of Rs.1,22,00,911.50/- was found recoverable from the claimant. Thereafter, the claimant filed an application under Section 11 of the Act of 1996 before the High Court for appointment of an independent Sole Arbitrator. The High Court was pleased to appoint Late Hon'ble Mr. Justice Panachand Jain as the Sole Arbitrator and the learned Sole Arbitrator after taking into consideration the submissions advanced by both the parties and the documents placed before it, passed an award on 31.07.2015





for a sum of Rs.18,75,37,607.63/- along with interest at the rate of 12% per annum in favour of the claimant. The same was challenged by the appellants under Section 34 of the Act of 1996 before the Commercial Court. The Commercial Court upheld the award, thereafter the present appeal was filed.

3. Learned counsel appearing for the appellants vehemently argued that the previous award and the order passed by the Commercial Court deserve to be set aside on merely two grounds. Firstly, that there was no arbitration clause in the agreement and therefore, the Arbitrator has wrongly invoked his jurisdiction to pass an award under the Act of 1996 and even if there was a clause, there was no provision for awarding interest on the amount and the said interest awarded was wholly illegal.

4. We have carefully considered the arguments raised by learned counsel for the parties before us. We find that the appellants themselves admit in the memo of appeal that there was Clause 17 of the agreement, which provided for resolution of dispute through an Arbitrator. The Arbitrator was named as the Director of the ICDS, however, the claimant approached the High Court under Section 11 of the Act of 1996 for appointing an independent Sole Arbitrator and the High Court appointed Late Hon'ble Mr. Justice Panachand Jain as a Sole Arbitrator. Thus, the submission being raised before us that there was no arbitration clause is clearly misconceived and does not have any basis. It is true that even at the stage of appeal, an argument can be raised with regard to the basic question of existence of arbitration clause and the plea of favour by the other side would not be accepted. It would be appropriate to mention that a three Judge Bench of the





Hon'ble Supreme Court passed a judgment in the case of **State of Chattisgarh and Anr vs SAL Udyog Private Limited (2022) 2 SCC 275**. Relevant para of which has been reproduced as hereinunder:-

"24. We are afraid, the plea of waiver taken against the appellant State on the ground that it did not raise such an objection in the grounds spelt out in the Section 34 petition and is, therefore, estopped from taking the same in the appeal preferred under Section 37 or before this Court, would also not be available to the respondent Company having regard to the language used in Section 34(2-A) of the 1996 Act that empowers the Court to set aside an award if it finds that the same is vitiated by patent illegality appearing on the face of the same. Once the appellant State had taken such a ground in the Section 37 petition and it was duly noted in the impugned judgment, the High Court ought to have interfered by resorting to Section 34(2-A) of the 1996 Act, a provision which would be equally available for application to an appealable order under Section 37 as it is to a petition filed under Section 34 of the 1996 Act. In other words, the respondent Company cannot be heard to state that the grounds available for setting aside an award under sub-section (2-A) of Section 34 of the 1996 Act could not have been invoked by the Court on its own, in exercise of the jurisdiction vested in it under Section 37 of the 1996 Act. Notably, the expression used in the sub-section is "the Court finds that". Therefore, it does not stand to reason that a provision that enables a Court acting on its own in deciding a petition under Section 34 for setting aside an award, would not be available in an appeal preferred under Section 37 of the 1996 Act."

5. However, we find that the argument regarding there being no arbitration clause was neither taken up before the High Court when the Sole Arbitrator was appointed under Section 11 of the Act of 1996 nor the same was notarized in the present appeal by pleadings.

6. Learned counsel submits that before the learned Judge, Commercial Court No.2, Jaipur Metropolitan, no such plea was raised. Therefore, the only submission is that there being specific pleadings in appeal, oral submissions would not lie as there are no pleadings in the appeal filed against the order passed under Section 34 of the Act of 1996 with respect to there being no





arbitration clause and such arguments advanced at the final stage are found to be without merits and liable to be rejected.

7. Having reached to the conclusion that an arbitration clause existed and independent Sole Arbitrator was appointed and there was no objection raised by the appellants under Section 34 of the Act of 1996 nor in the present memo of appeal, we cannot allow oral arguments to be advanced which are not a part of the pleadings.

8. The second argument raised by learned counsel for the appellants is with regard to the interest. It is submitted that the learned Sole Arbitrator has not given any reasons for awarding interest and the interest awarded was clearly illegal and unjustified. However, we noticed that the learned Sole Arbitrator has devoted a separate para with regard to the interest awarded. The learned Sole Arbitrator has noticed as under:

"In T.P. George Vs. State, AIR 2001 SC 816, it has been held that an Arbitrator has power to award interest at all the stages i.e. from the date of cause of action to the date of Arbitrator entering upon reference, pendente-lite period and from the date of award to the date of payment. It is a matter within the discretion of the Arbitral Tribunal to be exercised in the light of facts and circumstances. From the date of passing of the decree further interest can be awarded. Section 31(7) (b) of the Arbitration Act provides that unless the award otherwise directs shall carry interest at the rate of eighteen per cent per annum from the date of award to the date of payment, that is, discretion is left with the Arbitrator for grant of lesser rate of interest. In Section 31(7) of the Arbitration Act, 1996, the law with regard to grant of interest by Arbitral Tribunal has been very much simplified. Now the Arbitral Tribunal has been empowered to grant interest at such rate as it deems reasonable. In Krishna Bhagya Jal Nigam Ltd. Vs. G. Harishchandra Reddy, AIR 200\$ Sc 816 the Hon'ble Supreme Court has observed as under :

.....We may add that we do not wish to interfere with the award except to say that after economic reforms in our country the interest regime has changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the Arbitrator at 18% per annum for the pre-arbitration period, for the pendente-lite period and future interest be reduced to 9%."





9. Not only the arbitrator has considered the provisions of Section 37-B of the Act but also considered the law laid down by the Hon'ble Supreme Court in the case of **Krishna Bhagya Jala Nigam Ltd vs G. Harischandra Reddy And Anr (2007) 2 SCC 720** and the judgments passed by the High Court with regard to award of interest. The learned Sole Arbitrator has observed as under:

"It is a case in which all actions of the public functionaries who passed the impugned order are not guided by reason but by caprice or personal predilections of the persons entrusted with the task on behalf of the state and exercise of power was not for public good instead of being an abuse of the power.

It is a case where the contract entered into between the State and the claimant was terminated even without giving show cause notice or an opportunity of hearing. It is a case where there was total violation of the principles of natural justice. In this case samples were collected in complete violation of procedural laws and in non-adherence of the guidelines of the Department. In the circumstances I have allowed all claims of the claimant and disallowed the counter claim of the respondent, as such, the claimants are entitled to full costs. I, therefore, direct that the claimants shall be entitled to all claims with interest @12% per annum and total amount of fee paid by it as cost and the same shall be recoverable from the respondent in accordance with law counter claim is dismissed with cost."

10. Accordingly, the Civil Misc. Appeal is dismissed. The award passed by the learned Sole Arbitrator shall now be implemented.

11. All pending application(s), if any, stand disposed of.

(BALJINDER SINGH SANDHU),J (SANJEEV PRAKASH SHARMA),ACTING CJ

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