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

Judgment reserved on:03.11.2025
Judgment pronounced on: 11.02.2026

\+ **O.M.P. (COMM) 174/2016**

FRESH AND HEALTHY ENTERPRISE LTD ……Petitioner

Through: Mr. M.M. Kalra, Ms. Savita Rustogi, Advs.

versus

GLOBAL AGRISYSTEM PVT LTD ……Respondent

Through: Mr. Anand Varma, Ms. Apoorva Pandey, Advs.

O.M.P. (COMM) 181/2016

GLOBAL AGRISYSTEM PVT LTD ……Petitioner

Through: Mr. Anand Varma, Ms. Apoorva Pandey, Advs.

versus

FRESH AND HEALTHY ENTERPRISE LTD ……Respondent

Through: Mr. M.M. Kalra, Ms. Savita Rustogi, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. These are cross petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") seeking to set aside the Arbitral Award dated 02.08.2013 passed in the matter of "*Global Agri Systems Private Limited, New Delhi vs. Fresh & Healthy Enterprises Limited New Delhi*". Both the parties have filed their respective petition to challenge the aforesaid Award.

2. M/s Global AgriSystem Pvt. Ltd. ("***GAPL***") was the claimant in the arbitration proceedings and M/s Fresh and Healthy Enterprise Ltd. ("***FHEL***") was the respondent and counter-claimant.

FACTUAL BACKGROUND (for the sake of convenience factual matrix has been taken from O.M.P. (COMM) 174/2016)

3. FHEL, a wholly owned subsidiary of M/s Container Corporation of India Ltd. (a Government of India Undertaking under the Ministry of Railways), provides cold storage services at FHEL CA Store, HSIIDC Industrial Estate, Rai, Sonepat-131029.

4. GAPL carries the business of fruit and vegetable and has its registered office at K-13A Hauz Khas Enclave, New Delhi-110016.

5. In 2010, GAPL approached FHEL for storing carrots in the cold storage and started storing them in the cold storage facility of the FHEL.

6. In 2011, GAPL again approached FHEL for storing carrots in the cold storage and supplied a written draft agreement to FHEL *vide* email dated 03.02.2011. Thereafter, emails were exchanged between the parties, which contained the terms and conditions of the work agreed between the parties. In the e-mail dated 18.02.2011, FHEL mentioned as following:-

"1) We can offer Storage for 2500 MT of Carrots.

2) Storage can be extended maximum till 15th Sept. 2011 only. Beyond that date FHEL will have to take necessary action as the chambers will be need by it for its own use.

3) Space required for washing, sorting and grading etc needs to be jointly discussed.

4) Charges for power, water, waste disposal, manpower for waste disposal will be extra and can be jointly decided.

5) Rental Payment has to be on advance and on monthly basis.

6) One month rental to be given as security money.

7) Labour arrangement and charges can be mutually decided among you, FHEL and the labour contractor.

8) We envisage 3 fork lifts will need to be deployed for your work the charges for the same shall be @ Rs 3000/- per day.

9)Our liability stands restricted till maintaining of Protocols jointly agreed only. 10% reading can be above the agreed protocols.

10) For any other services the charges will be extra and can be mutually agreed.

11)For any movement other then loading and unloading the charges will be extra.

12) Operations need to be discussed in detail before hand with our operations team, like how the carrots will be received? How it will be transfeered in to big bins? when washing etc will take place? what will be final packing? etc.

13) For any shifting during storage period the handling cost will be extra.

the above points need to be discussed for finalisation of the agreement, hence you may visit Rai for final discussions."

7. In response to the said e-mail, GAPL sent an e-mail dated 21.02.2011 and mentioned that point Nos. 5, 6 and 8 were not acceptable and that the parties can continue with the year 2010 agreement for the year 2011. The said email reads as under:-

"Dear Mr. Deepak,

• Point No. 5, 6 and 8 of the issues enlisted are unacceptable.

• We can continue with our last year's agreement ,for this year also.

xxxxxxxx"

8. Pursuant to the email dated 21.02.2011, FHEL *vide* another e-mail dated 31.03.2011 stated that the handling charges for loading and unloading is fixed @ 11.96/- per kg and the rental @ 0.56/- per kg per month and that payment of rental within two week of taking out of the material from the cold storage *vide* email dated 23.03.2011.

9. Thereafter, GAPL's representative *vide* e-mail dated 18.03.2011 further reminded FHEL about importance of maintaining Relative Humidity between 90-95% temperature during the storage period. FHEL replied to the same assuring that the same is maintained.

10. One of the contested issues is with the emails exchanged between the parties whether a concluded contract came into being or not. However, GAPL started storing carrots in FHEL's storage facility.

11. As per FHEL, it received 85,608 bags amounting to a total of about 3,570 MT of carrots from the GAPL. As per GAPL, it delivered 85,598 bags amounting to a total of about 3,588.88 MT of carrots. FHEL had informed GAPL that as on 08.06.2011 an amount of Rs. 42.14 lakhs is due towards the rental and handling charges.

12. Although, the facts stated in O.M.P. (COMM) 181/2016 filed by GAPL are almost identical, in the said petition GAPL has highlighted the fact that GAPL was denied access to FHEL's storage facility on 08.06.2011 and *vide* email dated 08.06.2011 FHEL disowned all responsibility for the spoiling of the carrots. It is further stated that GAPL raised the issue of denial of access *vide* email dated 08.06.2011, however, FHEL still did not allow GAPL and its employees access to the cold storage and thereafter, GAPL again reiterated the issue of denial of access *vide* letter dated 27.06.2011.

13. Since, disputes arose between the parties, it was agreed that the carrots lying in the cold storage will be sold with joint efforts of the parties and the proceeds of the sales would be kept with FHEL provided that it agrees for the arbitration. FHEL agreed to refer the matter for arbitration. *Vide* letter dated 21.07.2011, GAPL was informed that FHEL has agreed to appoint an Arbitrator, but the condition that the money will be kept by the GAPL was not acceptable to FHEL.

14. Thereafter, GAPL filed a petition under Section 9 of the 1996 Act being O.M.P. No. 556/2011 seeking that FHEL be restrained from dealing with or disposing off the carrots stored at its cold storage. A Coordinate Bench of this Court *vide* order dated 16.09.2011 disposed of the said petition and directed FHEL to hand over the carrots lying

in the cold storage to GAPL and permitted FHEL to be present at the time of sale of carrots. It was also directed that the entire proceedings from the sale of the carrots will be deposited by GAPL with the Registrar General of this Court and in pursuance of the said order, an amount of Rs. 22 lakhs was deposited by GAPL.

15. Thereafter, the parties initiated arbitration proceedings and after completion of pleadings, the Sole Arbitrator framed the following issues:-

> *"i. Whether there exists any contractual relationship or consensus ad idem agreement between the parties?*
>
> *ii. What is the storage condition agreed to by the two sides; as per material documents comprising of communications between the two parties made before and during the deal/defining contractual relationship, if any ?*
>
> *iii. Whether ascertaining the pre-storage physical condition of carrots, in terms of it being with or without field soil, grading, washing, pre-cooled or at ambient field temperature before its loading into cold storage chamber etc., is important in case of storage of carrots for determining further storage protocols? If so, then whether the same has been agreed to by the two parties?*
>
> *iv. Whether the rate of pull-down of product temperature from its ambient temperature immediately after its loading into chamber is important for storage of carrots at any prescribed or agreed to holding condition of temperature*

and humidly ? If so, whether the same has been agreed to by the two parties?

v. Has the claim of GAPL that the carrots tendered by GAPL for storage at cold storage of FHEL had been of the highest quality substantiated / proved by furnishing details regarding pre-storage quality standards for carrots for its storage in cold storage vis vis inspection records for pre-storage quality parameters at time of tendering, or by any other evidence?

vi. If the pre-storage quality conditions of each lot of carrots had been furnished by GAPL to FHEL at the time of tendering for storage for fine tuning storage conditions?

vii. If from the receipt for quantity received issued by FHEL without demur it can be construed that FHEL had ascertained quality of carrots tendered to it by GAPL for storage?

viii. If the two sides to the dispute had agreed that FHEL shall maintain 1° c temperature as per prescribed technical norms for carrot storage with temperature variation of (+) / (-) 1°C in the cold store during the storage term? Moreover, if the parties had also agreed, though at a later stage, that FHEL shall maintain RH between 90- 95% in the cold store during the storage?

ix. Whether FHEL was under contractual obligation to store agriculture produce as per Industry Standards and to that extent whether, FHEL was under obligation to substitute /

interpolate the recommendations of Commodity Storage Manual of the WFLO and the Agricultural Handbook of the United States Department of Agriculture in aspects of storage conditions not stipulated as terms & conditions in any of the communication between the two parties?

x. If FHEL had failed in maintain agreed storage conditions?

xi. Whether the FHEL as a warehouseman had taken due care in agreeing to storage protocols and storage conditions of carrots in totality, keeping in view the perishable nature of commodity offered for storage?

xii. Whether the FHEL as a warehouseman had taken due care to ascertain pre-storage quality of carrots tendered to it by GAPL for storage, for deciding its storage worthiness and adequacy of storage protocols planned to be adopted by it?

xiii. Whether FHEL had maintained the agreed storage conditions?

xiv. Whether the respective parties have discharged their obligations in respect of salvaging the value of carrots when onset of damage to it is noticed by them?

xv. Whether the cold storage services are within the purview of any statute, if so what are the statutory obligations of the service provider/warehouseman?

xvi. Whether GAPL is entitled to get any damages in account of alleged loss to the carrots? Is so of what amount?

xvii. Whether FHEL is entitled to recover rental and other charges in respect of the facility of cold storage provided to GAPL? If so what period and what amount?"

16. After hearing the arguments from both sides, the Sole Arbitrator passed the impugned Award dated 02.08.2013, whereby the Sole Arbitrator allowed the claims of GAPL to tune of Rs. 80,44,961/- as well as the counter-claims of FHEL to the tune of Rs. 87,16,956/-.

17. Later, GAPL moved an application under Section 33 of the 1996 Act and sought interpretation of the impugned Award and changes in the Award. The said application was dismissed by the Sole Arbitrator *vide* order dated 04.10.2013.

18. Aggrieved by the impugned Award dated 02.08.2013 and order dated 04.10.2013, both parties have partially challenged the impugned Award.

SUBMISSIONS ON BEHALF OF FHEL (Petitioner in O.M.P. (COMM) 174/2016)

19. Mr. Kalra, learned counsel for FHEL, submits that the impugned Award is not only contrary to the terms agreed between the parties but also deals with the dispute not falling within the terms agreed between the parties.

20. It is submitted that the Sole Arbitrator himself observed that no agreement was signed between the parties and that the parties agreed on the terms through e-mails and also held that the same terms of

storage as of the year 2010 were to be followed during year 2011. Hence, the Sole Arbitrator erred in holding that there existed a contractual relationship or *consensus ad idem* agreement between the parties. Further, in absence of any agreement in writing, the question of FHEL being a bailee does not come into operation.

21. Further, it is submitted that the Sole Arbitrator observed that in the absence of any signed agreement the storage conditions agreed to by the parties are to be inferred from the e-mails exchanged between the between the parties. The Arbitrator also observed that GAPL in its proposed storage conditions did not mention any requirement of specific air velocity and required rate of cooling and therefore, the agreed terms and conditions between the parties were: -

- Holding Temperature = 1° C with temperature variation of +/-1 C and
- Relative Humidity = 90%-95% (10% of reading can be above the agreed protocols).

22. After holding the above, the Sole Arbitrator went beyond the agreed terms between the parties by holding that FHEL was responsible for the damages due to temperature and relative humidity in cold storage chamber.

23. It is submitted that the Sole Arbitrator after observing that there was no agreement between the parties regarding pre-storage conditions such as washing, sorting, rate of cooling for attaining holding temperature etc. and also that GAPL failed to specify pre-storage physical conditions of carrots, erred in relying upon the terms of the draft agreement, which were never agreed. The entire reference to the

draft agreement was misplaced. Further, the Arbitrator erred by relying upon the Commodity Storage Manual of the World Food Logistics Organization ("***WFLO***") and Agriculture Handbook NBO. 66 published by United States Department of Agriculture ("***USDA***"), since the same is not applicable.

24. It is further submitted that the Sole Arbitrator wrongly held that GAPL and FHEL took calculated business risk by adopting storage protocols developed by them jointly based on outcome during the previous year, when the same were in deviation with those prescribed by WFLO or USDA. FHEL never agreed that it will keep the carrots by following WFLO or USDA and the only thing agreed between the parties was that the parties will follow the protocols of the previous year i.e., 2010.

25. It is further submitted that the Sole Arbitrator first observed that the cold storage facility of FHEL was designed for receiving apples at initial fruit temperature of 15°C and lacked pre-cooling facility. Further, it was an admitted fact that GAPL already used the storage facility in the year 2010 and was fully aware of the fact that cold storage system could not provide a rapid cooling service for carrots coming at higher ambient temperature. After making such observations, the Arbitrator has contradicted its own findings by awarding compensation to GAPL for alleged breach of the agreement, as the rate of cooling was never stipulated and the same has also been observed by the Sole Arbitrator. Therefore, the interpretation of the Sole Arbitrator given in the Issue No. 10 and 13 of the impugned Award is beyond the terms of reference.

26. It is submitted that the Sole Arbitrator failed to acknowledge that the carrots were damaged due to fungus. The same is evident from the observation of the Sole Arbitrator in the impugned Award at page 69 and 70 and from the photographs of carrots submitted by GAPL which showed that the carrots were packed in gunny bags with poor ventilation. As a result of which, the temperature sensor probably recorded a lower temperature than what was prevailing inside the bags. Further, the soil may have promoted growth of fungus, which was on account of wrong packing and without pre-cooling the carrots by GAPL and, therefore, no negligence can be attributed to FHEL. Hence, the Sole Arbitrator erred in holding that there was negligence on the part of FHEL for damages caused to the carrots, especially after observing that GAPL used the defective packing material and did not give pre-cooling treatment.

27. It is submitted that the Sole Arbitrator correctly observed that GAPL's claim that the receipt issued by FHEL for storage was towards quantity as well as for quality of carrots is not substantiated and that FHEL maintained the prescribed protocols for storage and GAPL failed to establish that FHEL was under obligation to store the carrots as per any other Industry Standards. However, subsequently the Sole Arbitrator wrongly and in contradiction held that FHEL was responsible for breach of the contract and hence, the Sole Arbitrator has gone beyond the terms of the agreement and has wrongly decided a dispute without jurisdiction.

28. It is submitted that the Sole Arbitrator erred in holding that FHEL was responsible for the delay, as it was FHEL who pointed out that the

carrots were damaged due to fungus and requested GAPL to remove the carrots immediately. However, GAPL instead of sorting out the carrots, delayed it by filing petition under Section 9 of the 1996 Act.

29. It is submitted that the Sole Arbitrator wrongly awarded damages to GAPL. GAPL has failed to lead any evidence to prove breach by FHEL. FHEL's only responsibility was to keep the protocol of the temperature, and it was so maintained. Hence, since there was no breach, the damages cannot be awarded. It is further submitted that the Arbitrator himself observed that the carrots packed in gunny bags had poor ventilation, as a result of which the temperature sensors probably recorded a lower temperature than actually prevailing inside bags and that FHEL indicated to GAPL that there is fungus growing in carrots and it was not possible to check every bag. After making such observations, the Sole Arbitrator erred in awarding damages to GAPL. Further, the Sole Arbitrator has also wrongly calculated the net amount payable and failed to appreciate that GAPL has not led any evidence to show the cost at which it purchased the carrots and what amount was spent on the carrots.

30. It is further submitted that the carrots were spoilt at the instance of GAPL and it alone was responsible for the damage. GAPL mixed the carrots from other cold storage and sold them together, hence, it was not possible to ascertain the loss caused to carrots during the period it was stored in cold storage of FHEL. Hence, the circumstances established that it was GAPL who breached its obligations by not paying the rental charges due and payable to FHEL.

31. Further, GAPL was not entitled to claim any damages, as it failed to

prove that it took reasonable care of carrots or that FHEL committed any breach. GAPL even failed to prove as to what loss was suffered by it. FHEL is not liable to reimburse the profit which GAPL could have made and hence, FHEL is not liable to pay the damages at all. The Sole Arbitrator has erred by first holding that there is no breach attributable to FHEL and then awarding damages to GAPL.

32. Lastly, it is submitted that the Sole Arbitrator after holding that FHEL was entitled to rental charges not paid by GAPL, should have granted interest on the said amount also. Reliance is placed on ***Executive Engineer, Dhankanal Minor Irrigation Division vs. N.C. Budharaj, (2001) 2 SCC 721***, to argue that when a person is deprived of the use of money he was legitimately entitled to should be compensated for the deprivation by interest.

SUBMISSIONS ON BEHALF OF GAPL (Petitioner in O.M.P. (COMM) 181/2016)

33. Mr. Varma, learned counsel for GAPL, partially challenges the impugned Award to the extent of Rs. 87,16,956/- awarded to FHEL towards rental and handling charges and the order dated 04.10.2013, as the same are in contravention of the public policy of India as understood under Section 34(2)(b)(ii) of the 1996 Act and is patently illegal.

34. It is submitted that the impugned Award is in violation of Sections 148, 151, 152, 158, 160, 161 and 170 of the Indian Contract Act, 1872, as the amount awarded towards rental and handling charges to FHEL is in ignorance of the principles of bailment. FHEL as a bailee had a duty to take care of the goods, and in the absence of any proof

towards discharge of such duty by FHEL, no charges in lieu of bailment were payable by GAPL.

35. It is submitted that rental and handling charges for the period of March to November, 2011 for all chambers have been awarded to FHEL, despite the fact that GAPL's representatives access to the cold storage facility was prohibited from 08.06.2011. GAPL to withdraw the rotting carrots, wrote letter dated 08.06.2011 raising issues of denial of access *vide* emails dated 08.06.2021 and 27.06.2011. The Sole Arbitrator failed to acknowledge that GAPL's representatives were allowed entry to cold storage facility only after judgment dated 16.09.2011 passed in O.M.P. No. 556/2011. Hence, award of rental charges for the period of 08.06.2011 to 16.09.2011 was not payable as the same is contrary to Section 108(c) of the Transfer of Property Act, 1882, which contemplates that a lessor should have unhindered and uninterrupted right to enjoy the leased property. It is contended that, without prejudice to the argument that the agreement between the parties was one of bailment, even if the agreement is assumed to be one of lease, no rental charges was payable by GAPL for the period when it was denied access to the storage chambers.

36. It is submitted that the Sole Arbitrator observed that FHEL was not able to maintain the storage conditions for 16 out of 36 storage chambers and despite the said finding, the Sole Arbitrator awarded rental charges to FHEL. As per agreement between the parties, as per the draft written agreement and emails, FHEL was obligated to maintain the storage conditions and awarding rental and handling charges to FHEL after finding FHEL negligent in maintaining storage

conditions is contrary to the agreed terms, particularly when the agreement contemplated payments for the storage facility upon the release of carrots from the facility in September-October 2011.

37. It is submitted that the contention of FHEL that there was no agreement between the parties, and therefore, the award of damages to GAPL is wrong and misconceived. It is settled law that an agreement can be arrived at even by exchange of emails, which may or may not be signed, reliance is placed on ***Aloka Bose v. Parmatma Devi, AIR 2009 SC 1527*** and ***Tarsem Singh v. Sukhminder Singh, (1998) 3 SCC 471***. Further, all the essential requirements of Section 10 of Indian Contract Act, 1872 were satisfied and FHEL has raised no contention denying satisfaction of Section 10 of Indian Contract Act, 1872. It is argued that the contract has been arrived at between the parties by exchange of emails and contentions of FHEL that there is no contractual understanding between the parties merely because the contract has not been signed is wrong.

38. It is further submitted that the contractual understanding between the parties is evident from the conduct of the parties i.e., GAPL delivering around 85,598 bags of carrots to FHEL's storage facility in March-April 2011, which were loaded into the cold storage chambers and upon FHEL accepting delivery of the carrots. Reliance is placed upon ***Bharat Petroleum Corpn. Ltd. v. Great Eastern Shipping Co. Ltd., (2008) 1 SCC 503*** and in ***McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181***, to argue that a party's conduct of a positive act also bind such party and constitute an acceptance.

ANALYSIS AND FINDINGS

39. I have heard learned counsel for the parties and perused the material available on record including the judgments cited.

40. The Court under Section 34 of the 1996 Act has a limited and narrow scope of interference in a challenge to an Arbitral Award. The Court does not sit in appeal over an Award or re-appreciates the evidence. It is for the Arbitrator to interpret the terms of the contract and if the Arbitral Tribunal has adopted a view which is plausible, the Court is not to reassess the factual findings or substitute its own views with those arrived at by the Arbitrator. Only under the limited grounds expressly provided in Section 34 of the 1996 Act or when the Arbitral Award is contrary to terms of the contract or provisions of the law, the Court can set aside an Arbitral Award.

41. The said principles with regard to the limited scope of interference of the Court under Section 34 of the 1996 Act have been reiterated time and again by the Hon'ble Supreme Court. Reliance is placed on ***Ramesh Kumar Jain v. Bharat Aluminium Co. Ltd.***, ***2025 SCC OnLine SC 2857***, wherein the Hon'ble Supreme Court observed as under:-

> *"28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section*

34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited, this court held that an award can be set aside under Section 34 on the following grounds:"(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

29. .... Hence, it is very well settled that arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37.It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37. This court in Punjab State Civil Supplies Corporation Limited v. Sanman Rice Mills, at Paragraph 12 observed that even when the arbitral awards may appear to be unreasonable and non-speaking

that by itself would not warrant the courts to interfere with the award unless that unreasonableness has harmed the public policy or fundamental policy of Indian law. It might be a possibility that on re-appreciation of evidence, the courts may take another view which may be even more plausible but that also does not leave scope for the courts to reappraise the evidence and arrive at a different view. This court in Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited held that the arbitrator is generally considered as ultimate master of quality and quantity of evidence. Even an award which is based on little or no evidence would not be held to be invalid on this score. At times, the decisions are taken by the arbitrator acting on equity and such decisions can be just and fair therefore award should not be overridden under section 34 and 37 of the A&C Act on the ground that the approach of the arbitrator was arbitrary or capricious."

(Emphasis added)

42. With said principles in mind, I shall now consider the rival contentions of the parties.

FHEL Challenges To Impugned Award [O.M.P.(COMM.)174/2016]

43. Before delving into the merits of the matter, it is pertinent to lay down the agreed terms of the work between the parties. The same were laid down by the Sole Arbitrator while answering Issue No. 2 in the impugned Award as under:-

a) Holding Temperature =1°C with temperature variation of +/-1°C

b) Relative Humidity = 90% - 95% (10% of reading can be above the agreed protocols)

44. The said terms are not disputed by either party before this Court. While recording the agreed terms of the work between the parties, the Sole Arbitrator also observed that GAPL did not propose desired storage conditions including specific air velocity and required rate of cooling. The same is also not disputed by the GAPL in its objections before this Court.

45. The Sole Arbitrator went further to observe that the storage facility of FHEL was designed for storing apples at initial temperature of 15°C and cooling the same to holding temperature of (-) 2° C and 90% Relative Humidity in 5 days. Hence, the cold storage facility of FHEL was not capable of providing rapid cooling service for carrots coming at higher temperature and despite the same, GAPL failed to mentioned any specific stipulations regarding rate of cooling.

46. Further, the Sole Arbitrator while answering Issue No. 3 in the impugned Award held that: *"To sum up, it is clear that no stipulations had been agreed to regarding pre-storage conditions of fruit such as fruit temperature, fruit pressure, maturity index, whether topped or bunched, washing, sorting, grading, packaging type, rate of cooling for attaining holding temperature etc. In other words, GAPL had not specified the pre-storage physical conditions of carrots at any stage such as in the draft agreement sent by it or thereafter. FHEL too has not insisted upon getting the same specified and to that extent, it can be inferred that the two parties had not dealt with and there was no stipulations in the agreement between the two parties on pre-storage*

physical condition of carrots to be stored."

47. From the following, it is clear that the only agreed terms between the parties were regarding Holding Temperature at 1°C with variation of +/-1°C and Relative Humidity at 90% - 95% (10% of reading can be above the agreed protocols). The Sole Arbitrator observed that other stipulations such as air velocity, required rate of cooling, pre-storage conditions etc. were also necessary conditions but primarily held GAPL responsible for not specifying them to FHEL at any point in time.

48. Additionally, in answer to Issue No. 5 of the impugned Award, the Sole Arbitrator held that the onus to prove that the carrots stored at FHEL's storage facility were of highest quality was on GAPL and GAPL failed to submit any evidence to substantiate its claim and also failed to show that the receipt issued by FHEL acknowledged quality of carrots. Hence, the Sole Arbitrator declined the contention of GAPL that because FHEL found defect only in one consignment of carrots, all other carrots were of highest quality. The onus was on GAPL to prove the quality of carrots stored, which it failed to discharge. Additionally, in answer to Issue No. 7 of the impugned Award, the Arbitrator held that the receipt issued by FHEL to GAPL does not indicate the quality of carrots as there was no stipulation even in the draft agreement that FHEL would inspect the quality and GAPL has failed to prove otherwise. In answer to Issue No. 6 of the impugned Award, the Arbitrator held that even GAPL has not claimed that it furnished pre-storage quality conditions of carrots to FHEL.

49. The above findings of the Sole Arbitrator, clearly shows that the

Arbitrator after analysing the material on record, pleadings and evidence of the parties, came to the conclusion that GAPL failed to prove quality of carrots at FHEL's storage facility.

50. Moving further, the Arbitrator while dealing with Issue No. 9 of the impugned Award, held that GAPL failed to prove that FHEL has any independent obligation regarding choosing and deciding the storage protocols. The Arbitrator held that GAPL failed to prove that *"FHEL was under contractual obligation to store agriculture produce as per any other Industry Standards or under obligation to substitute / interpolate recommendations of Commodity Storage Manual of the WFLO and the Agricultural Handbook of the United States Department of Agriculture in aspects of storage conditions not stipulated as terms & conditions in any of the communication between the two parties."*

51. After making all the above mentioned findings and in favour of FHEL, the Arbitrator while answering Issue Nos. 10 and 13 of the impugned Award found that 16 storage chambers did not meet the agreed terms and conditions. He ascertained the storage conditions maintained by FHEL from stage of loading of carrots till attaining agreed conditions and formed time-temperature curve for each chamber in a graphical form. The Arbitrator analysed the time-temperature curves based on the following criteria:-

a. *Though, there is no stipulation in agreed terms & conditions regarding rate of cooling of chamber, a reasonable condition in this regard has been interpolated by striking a balance between requirement of attaining holding temperature as early as possible and capacity of cooling system to perform this task. I have taken design details of cold chain facility of FHEL at Rai, Sonepat, Haryana from which it is clear that the cooling system is designed for cooling of apples with initial temperature of 15° C to (-) 2° C within 5 days when ambient temperature is 38°. On the contrary, ordinarily the carrots had been received at room temperature of 21-22 degree Celsius and product temperature being higher by about one degree Celsius; therefore, it is inferred that GAPL's contention that the carrots should have attained holding temperature of 1° C within 2-3 days is not only untenable but the same is also not feasible at the cold storage facility of FHEL. I take that if cooling system has taken about 10 days' time for attaining holding temperature of 1° C (+) / (-) 0.1° C from initial fruit temperature of about 20° C to 23° C, then the same may be treated as normal rate of cooling.*

b. *As there is no case of excessive weight loss of fruits, cognizance of RH level less being than 90% on certain occasions has not been taken.*

c. *It is also noted that Storage and Product Temperatures and RH data have not been made available by FHEL in respect of a number of chambers for a period of first few hours / few number of days from the date of sealing of chamber and at the same time, the first recorded reading for chamber and fruit temperatures is lower than normally found in other normal cases. This indicates that sensors were either not switched on or were out of order during initial period after sealing of chamber. Instances of missing temperature record and subsequent damages to carrots have been, in absence of evidence to the contrary, taken as default on part of FHEL.*

d. *It is also noted that one of the two temperature probes in a few chambers, like chamber No. 43 and 49, had never worked or there are a number of missing data for storage conditions prevailing in chambers for short durations of few hours; inference regarding prevailing conditions of temperature and RH has been drawn based on time gap and continuity of time-temperature curve in cases of missing data for short period of time.*

e. *As per above corollary, regular and uniform fall in chamber temperature accompanied by produce attaining holding temperature within about 8-10 days from date of sealing of chamber has been taken as normal; provided the product temperature also records uniform fall and the same is generally not less than chamber temperature. Any damage to fruits under such conditions may be attributed*

to poor product or poor packaging restricting free air flow through the product,

f. *Initial chamber and fruit temperature recording fluctuations with rise during first 12-24 hours has been taken as indicating towards inflow of damaged fruits which is emanating heat. If this is followed by uniform fall in chamber and fruit temperature, any damage to produce is attributed to initial defect in produce.*

g. *Plateau formation in time-temperature curve for chamber temperature or sustained rise in chamber and product temperature during storage period may be for reason of defect in fruits but as the same could be monitored and managed for damage control, the responsibility has been assigned in such cases on FHEL due to deficiency in monitoring and management of chamber by FHEL,*

h. *Cognizance has not been taken of spikes in time- temperature curve of duration of few hours when trend is uniform and regular,*

i. *In case, there is no damages to produce but storage data is also not made available, no responsibility is fixed on FHEL,*

j. *When storage data not furnished by FHEL and also not provided by GAPL as alternative source, for critical stages of storage, and there is damage to fruits, then FHEL is held responsible for the damages to the produce.*

Accordingly, chamber-wise finding has been made and enclosed as Appendix- 1.

52. A perusal of the same shows, that the Arbitrator found FHEL responsible for not providing storage and product temperatures and Relative Humidity data for some chambers for some period and also found that the sensors were either switched off or not working during initial period after sealing of chamber. He held FHEL responsible for subsequent damages to carrots, in the instances of missing temperature record. Further, the Sole Arbitrator also recorded that one of the reason for stored carrots gone bad could be plateau formation in time-temperature curve for chamber temperature or sustained rise in

chamber and product temperature. However, since the same could have been monitored and managed by FHEL, the Arbitrator held FHEL responsible for default in monitoring and managing the temperature in the storage chambers.

53. It is based on these factors that the Arbitrator found FHEL responsible for damages to carrots in 16 chambers, as explained in Appendix-1 of the impugned Award. Further, in dealing with Issue No. 11 and 12 of the impugned Award, the Arbitrator held both GAPL and FHEL jointly responsible for taking "calculated business risk" by adopting storage conditions developed by them based on results of last year's i.e., 2010 outcomes, even though as per the Arbitrator the same were inconsistent with those prescribed by WFLO or USDA. Hence, he held both parties liable for not discussing and finalising required pre-storage conditions such as washing, sorting, grading and stacking in crates / bins followed by rapid cooling before storing the carrots.

54. It is after making all the above mentioned findings, the Arbitrator in Issue No. 16 of the impugned Award, held that applying the principles of bailment as per the Indian Contract Act, 1872 FHEL as a bailee was responsible to take care of goods as any prudent man would take of his own goods.

55. It is a matter of dispute between the parties as to whether there was a contractual relationship between the parties thereby whether the Indian Contract Act, 1872 will apply to the present case or not.

56. There is a concluded contract as regards the two conditions i.e., FHEL will maintain Holding Temperature at 1°C with variation of +/-1°C and Relative Humidity at 90% - 95% (10% of reading can be above

the agreed protocols) and the emails exchanged between the parties show offer and acceptance of those conditions. Based on these terms GAPL stored the carrots in FHEL's storage facility. Hence, FHEL was a bailee *qua* GAPL with regard to maintaining Holding Temperature and Relative Humidity.

57. Based on the evidence on record, the Sole Arbitrator concluded that FHEL failed to maintain these conditions in 16 chambers and consequently, damages were awarded to GAPL.

58. I find no infirmity with the conclusion reached by the Sole Arbitrator regarding award of damages to GAPL. The said findings of the Sole Arbitrator is based on the factual findings, agreed terms between the parties, pleadings of the parties and thereafter, detailed calculation of damages.

59. An Arbitrator is the master of facts and evidences and unless the findings arrived at by the Arbitrator are found to be so perverse or unreasoned that no reasonable man would have arrived at, the Court under Section 34 of the 1996 Act must refrain itself from interfering with the view of the Arbitrator.

60. After analysing the above the Sole Arbitrator has awarded damages to the tune of Rs. 80,44,961/- against FHEL, as although the Sole Arbitrator primarily found GAPL responsible for not informing FHEL about storage conditions other than Holding Temperature and Relative Humidity, however, the Sole Arbitrator after thorough analysis of each storage chambers also came to a finding that FHEL failed to provide Holding Temperature and Relative Humidity for some chambers and some storage chambers readings even show that sensors were either

switched off or not working during initial period after sealing of chambers. Hence, for such chambers the Sole Arbitrator held FHEL responsible. The Chart annexed as Annexure-1 in the impugned Award shows the calculation sheet for gross amount of damages payable to GAPL. Thereafter, under Issue No. 16 of the impugned Award, the Arbitrator gave detailed calculation of the net amount of damages awarded to GAPL, which has been calculated after offsetting the corresponding amount of sales realization and the break up has been given in Chart-5 in Issue No. 16 of the impugned Award.

61. Hence, I find no merit in the contentions raised by learned counsel for FHEL to set aside the amount awarded by the Sole Arbitrator to GAPL towards damages. The computation of the same has not been objected by FHEL before this Court.

62. Lastly, coming to the contention raised by the learned counsel for FHEL pertaining to grant of interest on the awarded amount, the law in no more *res integra* and well settled that under Section 31(7)(b) of the 1996 Act the grant of post-award interest is mandatory and the only discretion with the Arbitrator is pertaining to the rate of interest. Where the arbitrator fails to fix the rate of interest, then the statutory rate as provided in Section 31(7)(b) of the 1996 Act applies. The said has been clearly laid by the Hon'ble Supreme Court in ***Sri Lakshmi Hotel (P) Ltd. v. Sriram City Union Finance Ltd., 2025 SCC OnLine SC 2473***, wherein it was held as under:-

> *"37. Clause (b) of Section 31(7) of the Act, 1996 confers discretion upon the Arbitral Tribunal to award interest for the post-award period but that discretion is not subject to*

any contract. If such discretion is not exercised by the Arbitral Tribunal, then the statute steps in and mandates the payment of interest at the rate specified for the post-award period. While clause (a) gives parties an option to contract out of interest, no such option is available in regard to the post-award period.

38. In R.P. Garg v. The General Manager, Telecom Department, 2024 INSC 743, this Court had the occasion to deal with the question as to whether the appellant was entitled to post-award interest on the sum awarded by the Arbitrator. .... The High Court allowed the revision against the said order and set aside the District Court's order while holding that the contract between the parties did not permit the grant of post-award interest. While allowing the appeal, this Court held that the sum directed to be paid under the arbitral award must carry interest. While taking note of the decision of this Court in Morgan Securities & Credits Pvt Ltd. v. Videocon Industries Ltd., 2022 INSC 898, this Court held as under:

> *"11. So far as the entitlement of the post-award Interest is concerned, sub-Section (b) of Section 31(7) provides that the sum directed to be paid by the Arbitral Tribunal shall carry interest. The rate of interest can be provided by the Arbitrator and in default the statutory prescription will apply. Clause (b) of Section 31(7) is therefore in contrast with clause (a) and is not subject to party*

autonomy. In other words, clause (b) does not give the parties the right to "contract out" interest for the post-award period. The expression 'unless the award otherwise directs' in Section 31(7)(b) relates to rate of interest and not entitlement of interest. The only distinction made by Section 31(7)(b) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate. The assumption of the High Court that payment of the interest for the post award period is subject to the contract is a clear error.

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39. In view of the aforesaid, the interpretation of clause (b) of Section 31(7) of the Act, 1996 is no more res integra. The grant of post-award interest under Section 31(7)(b) is mandatory. The only discretion which the arbitral tribunal has is to decide the rate of interest to be awarded. Where the arbitrator does not fix any rate of interest, then the statutory rate, as provided in Section 31(7)(b), shall apply.…"

(Emphasis added)

63. Even in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1,*** the Hon'ble Supreme Court observed as under:-

"75. For the post-award interest in terms of Section 31(7)(b), the courts will retain the power to modify the interest where the facts justify such modification. This is

why the standard rate stipulated in clause (b) applies when the award itself does not specify the applicable post-award interest. There can be a situation where the party to be paid money is at fault and is guilty of delay which may require a modification in the rate of interest. In the absence of grant of post-award interest in the award, the Court also possesses the power to grant post-award interest. Clearly, as per the legislative mandate, it is not the sole prerogative of the arbitrator.

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77. Our reasoning is bolstered when considering the practical aspects. The Arbitral Tribunals, when determining post-award interest, cannot foresee future issues that may arise. Post-award interest is inherently future-oriented and depends on facts and circumstances that unfold after the award is issued. Since the future is unpredictable and unknown to the arbitrator at the time of the award, it would be unreasonable to suggest that the arbitrator, as a soothsayer, could have anticipated or predicted future events with certainty. Therefore, it is appropriate for the Section 34 Court to have the authority to intervene and modify the post-award interest if the facts and circumstances justify such a change."

(Emphasis added)

64. Hence, the FHEL is entitled to post-award interest on the amount awarded by the Sole Arbitrator at the rate of 2% higher than the rate of

interest prevalent on the date of the impugned Award, from the date of impugned Award to the date of payment, in terms of Section 31(7)(b) of the 1996 Act.

GAPL Challenges To Impugned Award [O.M.P.(COMM.) 181/2016]

65. The primary objection of GAPL is that the Sole Arbitrator erred in awarding Rs. 87,16,956/- to FHEL towards rental/cooling and handling charges. It is contended that GAPL was denied access to the storage facility of FHEL since 08.06.2011 and was only allowed entry after judgment passed in O.M.P. No. 556/2011 on 16.09.2011. Hence, award of rental charges for the period of 08.06.2011 to 16.09.2011 is not payable by GAPL. Further, it is contended that the Sole Arbitrator awarded rental charges to FHEL, despite observing that FHEL failed to maintain the storage conditions for 16 storage chambers out of 36 chambers.

66. The Sole Arbitrator has dealt with said contentions of GAPL in Issue No. 17 of the impugned Award and held as under:-

> *"i. Admissibility of FHEL's Claim towards Cooling Charges / Rental & Handling Charges- GAPL has not been able to cite any provision of law or case law under which FHEL's entitlement for getting rentals and handling charges is annulled due to damages to produce stored in cold storage. Therefore, I determine that cooling charges and handling charges are payable by GAPL to FHEL. FHEL has been raising bills for cooling and handling charges and computation on these accounts have not been challenged by GAPL."*

67. It is an admitted fact that there is no agreed clause between the parties which states that damages will be provided to one party on account of breach by other party. Further, as observed Sole Arbitrator, that in the arbitration proceedings GAPL failed to substantiate its contention backed by law that FHEL is not entitled to rental and handling charges due to damages to the carrots in its storage facility.

68. It is also an admitted fact that the storage facilities of FHEL were utilised for storing of GAPL's carrots. If GAPL was not happy with the storage conditions and/or access was not provided, GAPL was always free to remove its carrots. It cannot be accepted that while using FHEL's storage facilities, GAPL would not pay handling and rental charges for the same. Hence, the Sole Arbitrator awarded Rs. 87,16,956/- to FHEL towards rental and handling charges.

69. I find no infirmity with the findings of the Sole Arbitrator. The said findings show that the Sole Arbitrator after due consideration to the facts of the matter and pleadings by the parties came to a conclusion that due to failure of GAPL to substantiate its objection to claims of FHEL towards rental and handling charges, the same is due and payable. The said findings of the Sole Arbitrator are a reasonable and plausible view and this Court under Section 34 petition is not to reassess the findings on facts if the same are reasonable.

70. Hence, I find no merits in the contentions raised by learned counsel for GAPL to set aside the amount awarded by the Sole Arbitrator to FHEL towards rental and handling charges. The computation of the same has not been objected by GAPL before this Court.

71. Additionally, as observed above, just like FHEL, GAPL is also

entitled to post-award interest on the amount awarded by the Sole Arbitrator at the rate of 2% higher than the rate of interest prevalent on the date of the impugned Award, from the date of impugned Award to the date of payment, in terms of Section 31(7)(b) of the 1996 Act.

CONCLUSION

72. In view of the aforesaid discussion, I find no merit in the submissions made by the learned counsels for either party to set aside the impugned Award. The impugned Award is not in contravention with the public policy of India or patently illegal.

73. However, both parties are entitled to post-award interest as indicated above.

74. Hence, both the petitions are dismissed, with the above observations.

JASMEET SINGH, J

FEBRUARY 11, 2026/ (HG)