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DELHI HIGH COURT ON LIQUIDATED DAMAGES IN CONTRACT BREACH

A. Introduction

Delhi High Court, in *Bhopal Dal Udyog v. Food Corporation of India*,¹ observed that on a breach of contract, if the actual damages are ascertained, then an award passed by the sole arbitrator as liquidated damages (“LD”), which is over and above such actual damages, is not justified.

B. Facts

1. In November 1979, Bhopal Dal Udyog (“BDU”) entered into Agreement with Food Corporation of India (“FCI”) for acquiring Arhar Whole, a legume² for conversion into Arhar Dall. As per the Agreement, the conversion was to be completed within a specified period after issue of acceptance of tender by FCI.
2. FCI terminated the Agreement on the ground that BDU failed to make financial arrangements for lifting of the legume, thereby violating the terms of the Agreement. The resulting dispute was referred for arbitration.
3. The arbitrator passed award of about INR 6 lacs in favour of BDU, which was subsequently set aside by the Additional District Judge, Delhi.
4. BDU appealed before Single Judge Bench of the Delhi High Court (“HC”), which directed the parties to appoint a fresh arbitrator. Upon appointment, the arbitrator allowed FCI’s claims and directed BDU to make a payment of over INR 13 lacs along with an interest of 15% p.a.
5. BDU challenged the arbitral award before the Single Judge Bench under the Arbitration and Conciliation Act, 1996³ but that was dismissed.
6. The matter was then presented before the Division Bench where the issue in consideration was whether LD could be awarded over and above actual damages.

C. Observations and Judgment

The HC observed as follows:

1. It was in consonance with the arbitrator’s view that BDU was in breach of the Agreement but did not agree on the LD awarded to FCI.

¹ *Bhopal Dal Udyog v. Food Corporation of India* (04.01.2022 – Delhi HC): MANU/DE/0038/2022.

² ‘Toor Dall’ or pigeon peas.

³ Section 30 and 33 of the Arbitration and Conciliation Act, 1996.

2. It interpreted to the Indian Contract Act, 1872 (“ICA”)⁴ on LD with the help of the 2015 judgment in *Kailash Nath Associates* case⁵ where the same HC held as follows:

“Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court’ and ‘The expression “whether or not actual damage or loss is proved to have been caused thereby” means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.:

3. Based on this, the HC held that the LD awarded by the arbitrator, which is over and above the actual damages, is not payable since the arbitrator had accepted the actual damages suffered by FCI.

D. Conclusion

This judgment reiterates the position of law for awarding LD in situations where actual damages can be proved, whereby protecting contractual parties agreeing to LD.

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⁴ Section 74 of the ICA.

⁵ *Kailash Nath Associates v. DDA & Anr.*, (04.01.2022 – Delhi HC): MANU/SC/0019/2015.