A FOOD CORPORATION OF INDIA & ORS.

v.

ABHIJIT PAUL

(Civil Appeal Nos. 8572-8573/2022)

NOVEMBER 18, 2022

B **[A. S. BOPANNA AND**

PAMIDIGHANTAM SRI NARASIMHA, JJ.]

Contract – Demurrage – Food Corporation of India (Corporation) entered into a contract with Respondent (Contractor) C *for transporting food grains – Subsequently, corporation called upon contractor to reimburse the amount of demurrages imposed on it by the railways – As contractor incurred heavy losses on account of demurrages due to the contractor's inability to provide trucks – This unilateral action of corporation was challenged – Whether the contractual clause enabling the Corporation to recover* D *"charges" includes the recovery of demurrages – Held: The scope of the expression "charges" must be understood as intended by the parties to the contract – The expression charges has to be examined in the context of its related words in the contract, which are costs, damages, registeration fees, and expenses – The preamble of the contract, i.e., the Work Order, reads that the contractor is engaged* E *for "transportation of foodgrains fromdepots, mandis, rail heads of Churaibari to various destinations" –It is evident from the contractual provisions and also the admissions of the Corporation that the task of loading or unloading of food grains from the railway wagons was not a part of the contract – Thus, based on interpretation* F *of the expression "charges" in the contractual context, it did not include liability on account of demurrages – Hence, the Corporation cannot impose and collect demurrages from the contractors – Even by referring to other similar contracts entered by the corporation in 2010 and 2018, it is ascertained that responsibility of loading* G *and unloading of foodgrains wagons is absent in the present contract – Thus the expression "charges" cannot be interpreted to include demurrages.*

Disposing of the appeals, the Court

HELD: 1. The preamble of the contract, i.e., the Work Order, reads that the contractor is engaged for "*transportation of* H

***foodgrains from depots, mandis, rail heads of Churaibari to various destinations as per appendix 1*". This Court scanned the entire contract, in addition to scrutinising the provisions extracted above, and seen that there is no contractual provision requiring the contractors to undertake the task of loading and unloading of foodgrains from the railway wagons. [Paras 23 and 24][739-C-D; G-H]**

2. The real question is whether the contractors had any obligation towards loading and unloading of foodgrains from the railway wagons. It is evident from the contractual provisions and also the admissions of the Corporation in written submissions, that the task of loading or unloading of foodgrains from the railway wagons was not a part of the contract. Thus, based on interpretation of the expression "charges" in the contractual context, we are of the opinion that it did not include liability on account of demurrages. Consequently, the Corporation cannot impose and collect demurrages from the contractors. [Para 26][740-E-F]

3. Interpretation of contracts concerns the discernment of the true and correct intention of the parties to it. Words and expressions used in the contract are principal tools to ascertain such intention. While interpreting the words, courts look at the expressions falling for interpretation in the context of other provisions of the contract and also in the context of the contract as a whole. These are intrinsic tools for interpreting a contract. As a principle of interpretation, courts do not resort to materials external to the contract for construing the intention of the parties. There are, however, certain exceptions to the rule excluding reference or reliance on external sources to interpret a contract. One such exception is in the case of a *latent ambiguity*, which cannot be resolved without reference to extrinsic evidence. Latent ambiguity exists when words in a contract appear to be free from ambiguity; however, when they are sought to be applied to a particular context or question, they are amenable to multiple outcomes. [Para 27][740-G-H; 741-A-B]

Bihar State Electricity Board, Patna and Ors. v. M/s Green Rubber Industries and Ors. **(1990) 1 SCC 731 : [1989] 2 Suppl. SCR 275;** *Union of India v. Raman Iron Foundry* **(1974) 2 SCC 231 : [1974] 3 SCR 556;** *Provash Chandra Dalui and Anr. v. Biswanath Banerjee*

A *and Anr.* **1989 Supp (1) SCC 487 : [1989] 2 SCR 401;** *BESCOM v. E.S. Solar Power Pvt Ltd and Ors* **(2021) 6 SCC 718 : 2021 (5) JT 33 – relied on.**

Raich and Amulakh Shah and Anr. v. Union of India **(1964) 5 SCR 148;** *Trustees of the Port of Madras v.*
B *Aminchand Pyarelal &Ors.* **(1976) 3 SCC 167 : [1976] 1 SCR 721 – held inapplicable.**

State of Maharashtra v.Digambar **(1995) 4 SCC 683: [1995] 1 Suppl. SCR 492;** *Agmatel India Pvt Ltd v.Resoursys Telecom & Ors* **(2022) 5 SCC 362;** *State of*
C *Karnataka v. Shree Rameshwara Rice Mills* **(1987) 2 SCC 160 : [1987] 2 SCR 398.;** *BSNL and Anr. v. Motorola India (P) Ltd* **(2009) 2 SCC 337 : [2008] 13 SCR 445;** *J.G. Engineers (P) Ltd v. Union of India* **(2011) 5 SCC 758 : [2011] 8 SCR 486 – referred to.**

D *Halsbury's Laws of England* **(5th edn, 2012) vol 32, para 409, 394.**

Case Law Reference

[1995] 1 Suppl. SCR 492	**relied on**	**Para 10**
E **[1964] 5 SCR 148**	**held inapplicable**	**Para 12**
[1976] 1 SCR 721	**held inapplicable**	**Para 12**
[1987] 2 SCR 398	**referred to**	**Para 15**
[2008] 13 SCR 445	**referred to**	**Para 15**
F **[2011] 8 SCR 486**	**referred to**	**Para 15**
[1989] 2 Suppl. SCR 275	**relied on**	**Para 18**
[1974] 3 SCR 556	**relied on**	**Para 19**
[1989] 2 SCR 401	**relied on**	**Para 20**

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.8572-8573 of 2022.

From the Judgment and Order dated 07.09.2018 of the High Court of Tripura at Agartala in Writ Appeal No.56 of 2018 and Order dated 02.01.2019 in Review Pet. No.02 of 2019.

H

With

Civil Appeal Nos.8574-8579 And 8580-8581 of 2022.

Sanjay Parikh, Sr. Adv., Ajit Pudussery, Vijay A. K., Shoeb Alam, Ujjwal Singh, Prashant Shukla, Piyush Dwivedi, Suyash Srivastava, Ms. Shreya Mishra, Shanker Singh, Ms. Aaina Walia, Satyajeet Kumar, Abhay Kumar, Shagum Ruhil, Saurabh Mishra, Advs. for the appearing parties.

The Judgment of the Court was delivered by

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.

2. Food Corporation of India[1], the Appellant herein, procures and distributes foodgrains across the length and breadth of the country as a part of its statutory duties. In the process, it enters into many contracts with transport contractors. In one such contract, the subject matter of present appeals, the Corporation empowered itself (under clause XII (a)) to recover damages, losses, *charges*, costs and other expenses suffered due to the contractors' negligence from the sums payable to them. The short question arising for consideration is whether the demurrages imposed on the Corporation by the Railways can be, in turn, recovered by the Corporation from the contractors as "charges" recoverable under clause XII (a) of the contract. In other words, does contractors' liability for "charges", if any, include demurrages?

3. The Single Judge and the Division Bench of the High Court of Tripura have held that demurrages cannot be recovered as a charge by the Corporation. After examining the contract in its entirety, including its nature and scope, we conclude that the parties did not intend to include liability on account of demurrages as part and parcel of the expression "charges". The liability of the contractors in the present contracts is clearly distinguishable from other contracts entered into by the FCI in 2010 and 2018, having a different scope and objective. Because of our conclusions, we have upheld the judgments of the High Court and dismissed the appeals filed by the Corporation. Before considering the submissions, analysis and the conclusions, we will refer to the necessary facts and contractual provisions.

4. There are three appeals. In the first set of appeals arising out of Special Leave Petition Nos. 16009-16010 of 2019, the Corporation

[1] hereinafter referred to as 'Corporation'.

A notified a Tender inviting a bid from road transport contractors for transporting foodgrains from railway siding, Churaibari in Assam, to Food Security Depot Chandrapur in Tripura, on a regular basis for a period of two years. The Respondent – Mr. Abhijit Paul, was selected as the successful tenderer[2]. He deposited an amount of Rs. 44,95,000/- towards the security deposit, leading to the execution of the contract[3]. The B Corporation awarded several such Work Orders to the Respondent and also to other contractors for transportation of foodgrains between its multiple Food Security Depots.

5. The contract was discharged by performance by July 2014. More than a year thereafter, by a letter dated 22.12.2015 followed by a C Notice dated 29.11.2016, the Corporation called upon the contractor to reimburse the amount of demurrages imposed on it by the Railways. As this demand was bereft of any reason and rightly objected to, it was followed by another letter dated 27.06.2017 by the Corporation. In this letter, the Corporation explained that it had incurred heavy losses on D account of demurrages due to the contractor's inability to readily provide trucks at railway sidings, inhibiting the Corporation from unloading foodgrains from railway wagons within the "free time" specified by the Railways. The Corporation sought to recover the demurrages from the contractor by withholding the security deposit tendered under the Work Order.

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6. The contractor objected to this unilateral action, contending that there was no power to recover demurrages under the Work Order. Being unsuccessful in pursuing the Corporation to withdraw the letters, demand and the unilateral action, the contractor filed a writ petition[4] before the High Court of Tripura for quashing the illegal and arbitrary F action.

7. This writ petition was allowed by the Single Judge of High Court. It clarified that the Corporation was only entitled to recover losses that were incurred due to the contractor's dereliction of duties under the contract, as permissible under Section 73 of the Indian Contract Act G 1872, which provides for recovery of damages for the breach of a contract. This would not permit the recovery of losses that were causally

[2] hereinafter referred to as 'contractor'.

[3] Contract No. Cont.9/NEFR/TC/CBZ-CDR/2011 dated 25.04.2012, hereinafter referred to as 'Work Order' or the 'contract'.

H [4] WP No. 1351 of 2016.

distant from the contractor's actions. Further, it held that the Corporation had unilaterally determined and imposed demurrages on the contractor, and directed it to settle its claims through a civil suit of recovery. The Corporation filed a writ appeal[5] and the Division Bench of the High Court by its order dated 07.09.2018 dismissed the same on the ground of delay. A Review Petition[6] filed by the Corporation was also dismissed by the Division Bench of the High Court on 22.01.2019. The present appeals are against the orders in the writ appeal as well as in the review.

8. The second set of civil appeals are also filed by the Corporation. It arises out of Special Leave Petition Nos. 16063-16068 of 2019 and it impugns the decision of the Division Bench of the High Court of Tripura dated 15.05.2019. Therein, the High Court similarly dismissed the writ appeals on the ground that the Corporation had no power to recover demurrages from contractors under the clauses of the contract therein.

9. The third set of civil appeals, arising out of Special Leave Petition Nos. 4045-4046 of 2021, are filed by the contractors. They have challenged the orders of the Division Bench of the High Court of Tripura dismissing their writ appeals[7] and upholding the decision of the Single Judge of the High Court dated 25.11.2019, directing the contractors to avail alternative remedies.

10. *Submission of Parties* : Shri Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the Appellant started his submissions preempting a preliminary objection about the dismissal of a Special Leave Petition against an adverse order of the High Court on the same issue[8], and relatedly, aboutnot appealing another adverse decision of the High Court of Tripura on identical issues[9]. Relying on *State of Maharashtra* v. *Digambar*[10], he submitted that the dismissal of a Special Leave Petition at the admission stage did not operate as *res judicata.* He also explained that the Corporation refrained from appealing against the aforementioned judgment of the High Court because the amount recoverable therein was low. Moreover, in those cases, the Corporation had already issued No Dues Certificates to the contractors.

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[5] Writ Appeal No. 56 of 2018.
[6] Review Petition No. 02 of 2019.
[7] Writ Appeals Nos. 186 of 2020 dated 04.01.2021 and 187 of 2020 dated 18.01.2021.
[8] SLP No 3391 of 2018, dismissed *in limine* on 26.03.2018.
[9] Writ Appeal Nos. 25-27 of 2016 (Tripura High Court)
[10] (1995) 4 SCC 683.

A 11. Before proceeding any further, we make it clear here itself that we do not propose to dismiss the Corporation's appeals on preliminary objections. We will therefore consider Shri Kaul's submission on the merits of the case.

12. Referring to and relying on the contractual clauses, Shri Kaul B submitted that the expression "charges" in clause XII (a) of the Work Order clearly includes demurrages, and the Corporation is empowered to recover the same. He relied on the decision of this Court in *Raichand Amulakh Shahand Anr.* v. *Union of India*[11] and *Trustees of the Port of Madras* v. *Aminchand Pyarelal & Ors*[12] to say that demurrages constitute a charge. He also submitted that the Handbook used by C Corporation[13] would demonstrate that "charges" certainly include "demurrage".

13. Supplementing the above submissions, Shri Ajit Puduserry, AOR submitted that in the construction of contractual terms, the interpretation proposed by the author of the tender document must be D relied on. He referred to *Agmatel India Pvt Ltd* v. *Resoursys Telecom & Ors*[14] for this purpose. He further submitted that the action of the Corporation is unexceptionable as it merely followed the directions of the High Court in an earlier round of litigation where the court directed it to issue notice before taking a decision on the contractors' liability. It is E his contention that notices were accordingly issued before recoveries were made. Appearing on behalf of the Corporation in the third appeal, Shri Abhay Kumar, AOR, supported the arguments of the Appellant Corporation on the same grounds.

14. Shri Sanjay Parikh, learned Senior Counsel appearing on behalf F of the Respondents submitted that the Corporation acted arbitrarily. It failed to follow due process of law to determine the liability of the contractors, despite specific instructions in a previous round of litigation. He also submitted that contractors were not responsible for loading and unloading of foodgrains from railway wagons. Hence, the event which leads to the incurrence of demurrages, i.e., delayed unloading of G foodgrains from railway wagons, was not within the scope of contractor's responsibilities. He took us through the contracts that were executed in

[11] (1964) 5 SCR 148.
[12] (1976) 3 SCC 167.
[13] Movement Operations in Food Corporation of India (FCI Handbook 2020).
H [14] (2022) 5 SCC 362.

2010 and 2018 by the Corporation, which delegated the task of loading and unloading the foodgrains to contractors, and therefore the relevant expression "demurrages" was present in the liability clauses in those contracts.

15. Supplementing the above submissions, Shri Shoeb Alam, Advocate, submitted that the Corporation was not entitled to be a judge in their own cause and to unilaterally determine the liability with respect to demurrages. He placed reliance on *State of Karnataka* v. *Shree Rameshwara Rice Mills*[15]*,BSNL and Anr.* v. *Motorola India (P) Ltd*[16] and *J.G. Engineers (P) Ltd* v. *Union of India*[17].

Analysis:

16. The core question arising for our consideration is whether the contractual clause enabling the Corporation to recover "charges" includes the recovery of demurrages. It is pertinent to extract the relevant clauses of the *road transport contract*, i.e., Work Order. The clauses detailing the description of work, liability of the contractors, and the power to recover losses, which are identical in the three appeals before us, read as under:

> *"**(B) Brief description of work**:*
>
> *i) Transportation of foodgrains from Depots/Mandis/Rail Heads of Churaibari to various destinations as per Appendix-I...*
>
> *...*
>
> ***X. Liability of Contractor for losses suffered by Corporation***
>
> *a) The Contractor shall be liable for all costs, damages, registration fees, charges and expenses suffered or incurred by the Corporation due to the Contractor's negligence and unworkmanlike performance of any services under this Contract, or breach of any terms of the Contract, or failure to carry out the work under the Contract, and for all damages or losses occasioned to the Corporation, or in particular to any property or plant belonging to the Corporation, due to any act whether negligent or otherwise, of the Contractor or his employees. ...*

[15] (1987) 2 SCC 160.
[16] (2009) 2 SCC 337.
[17] (2011) 5 SCC 758.

A …

XII. Recovery of losses suffered by the Corporation

(a) The Corporation shall be at liberty to reimburse themselves for any damages, losses, charges, costs or expenses suffered or incurred by them, or any amount payable by the Contractor as Liquidated Damages as provided in Clauses X above. The total sum claimed shall be deducted from any sum then due, or which at any time thereafter may become due, to the Contractors under this, or any other, Contract with the Corporation. In the event of the sum which may be due from the Contractor as aforesaid being insufficient, the balance of the total sum claimed and recoverable from the Contractors as aforesaid shall be deducted from the Security Deposit, furnished by the contractor as specified in Clause IX..."

(emphasis supplied)

17. The Corporation seeks to recover demurrages as a part of "charges" provided under clause XII(a) as extracted hereinabove. The expression "charges", stand alone, is not amenable to a precise meaning. Its dictionary meaning is open textured, defining "charges" as "any consideration that one must pay for goods and services provided". Therefore, the scope of the expression "charges" must be understood as intended by the parties to the contract. The process of interpretation, though the exclusive domain of the Court, inheres the duty to decipher the meaning attributed to contractual terms by the parties to the contract. It is with this purpose that we shall now proceed to understand the meaning of the expression "charges".

18. There are certain basic principles evolved by courts of law for deciphering the true and correct meaning of expressions in a contract. In *Bihar State Electricity Board, Patna and Ors.* v. *M/sGreen Rubber Industries and Ors.*[18], this Court observed that, *"Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause.*"

19. In *Union of India* v. *Raman Iron Foundry*[19], this Court held that contractual terms cannot be interpreted in isolation, following strict

[18] (1990) 1 SCC 731, ¶23.

[19] (1974) 2 SCC 231.

etymological rules or be guided by popular connotation of terms, at variance with the contractual context. It observed:

> *"**8.** It is true that the words "any claim for the payment of a sum of money" occurring in the opening part of Clause 18 are words of great amplitude, wide enough to cover even a claim for damages, but it is a well settled rule of interpretation applicable alike to instruments as to statutes that the meaning of ordinary words is to be found not so much in strict etymological propriety of language nor even in popular use as in the subject or occasion on which they are used and the object which is intended to be attained. The context and collocation of a particular expression may show that it was not intended to be used in the sense which it ordinarily bears. Language is at best an imperfect medium of expression and a variety of meanings may often lie in a word or expression. The exact colour and shape of the meaning of any word or expression should not be ascertained by reading it in isolation, but it should be read structurally and in its context, for its meaning may vary with its contractual setting. We must, therefore, read the words 'any claim for the payment of a sum of money' occurring in the opening part of Clause 18 not in isolation but in the context of the whole clause, for the intention of the parties is to be gathered not from one part of the clause or the other but from the clause taken as a whole. It is in the light of this principle of interpretation that we must determine whether the words 'any claim for the payment of a sum of money' refer only to a claim for a sum due and payable which is admitted or in case of dispute, established in a Court of law or by arbitration or they also include a claim for damages which is disputed by the contractor."*
>
> (emphasis supplied)

20. In *Provash Chandra Dalui and Anr.* v. *Biswanath Banerjee and Anr.*[20], noting that the intention of the parties must be discerned from the context of the contract, this Court observed:

> *"**10.** 'Ex praecedentibus et consequentibus optima fit interpretatio.' The best interpretation is made from the context.*

[20] 1989 Supp (1) SCC 487.

A *Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties. It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected 'ex antecedentibus et consequentibus;' every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that is possible.*

B …

In construing a contract the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In the construction of a written instrument it is legitimate in order to ascertain the true meaning of the words used and if that be doubtful it is legitimate to have regard to the circumstances surrounding their creation and the subject matter to which it was designed and intended they should apply."

C

(emphasis supplied)

21. In *BESCOM* v. *E.S. Solar Power Pvt Ltd and Ors*[21], this Court held that in case of two possible interpretations of a contractual term, the court must accord primacy to the one that is consistent with the underlying purpose of the contract. It noted:

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*"**17.** … In seeking to construe a clause in a contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose the former or rather than the latter.."*

F

G

(emphasis supplied)

H [21] (2021) 6 SCC 718.

22. Keeping in mind the above referred principles we have to examine the expression "charges" in the context of its related words in the contract, which are costs, damages, registration fees, and expenses. These expressions indicate the different heads under which losses are recoverable from the contractors for acts of negligence, unworkmanlike performance of any service, breach of terms and failure to carry out the work in the context of the working of the contract. These expressions are equally wide and do not aid us in understanding the meaning of the expression "charges". Under these circumstances, we have to understand the meaning of the expression "charges" in the larger context of the contract.

23. The preamble of the contract, i.e., the Work Order, reads that the contractor is engaged for "*transportation of foodgrains from depots, mandis, rail heads of Churaibari to various destinations as per appendix 1*". Further, clause XIII of the Work Order detailing the responsibilities of the contractor, to the extent relevant for our purposes, reads as under:-

> *XIII.* ***Responsibilities of the Contractor***
>
> *(a) The Contractor shall be responsible to supply adequate and sufficient number of trucks for transportation of food grains and carrying out any other services under the Contract in accordance with the instructions issued by the General Manager or an officer acting on his behalf.*
>
> ...
>
> *(f) The Contractor shall be responsible for the safety of the goods from the time they are loaded on their truck from godowns/mandis/rail heads until they have been unloaded from the trucks at godowns or at other destinations as specified in the Contract or as directed by the General Manager/Area Manager or any other officer acting on his behalf...*"
>
> (emphasis supplied)

24. We have scanned the entire contract, in addition to scrutinising the provisions extracted above, and seen that there is no contractual provision requiring the contractors to undertake the task of loading and unloading of foodgrains from the railway wagons.This is confirmed by the written submissions on behalf of the Corporation, where the imposition

of demurrages is justified only for the reason that the contractor did not provide adequate number of trucks near the railway sidings, to enable the Corporation to promptly hand over the foodgrains to them to commence transportation. The relevant portion is extracted as under:-

> "*10.The reason why demurrage charges get levied during the performance of an RTC contract is on account of the failure of the contractor to supply required number of trucks even after prior intimation about the placing of the railway rakes due to which the Petitioner is unable to empty the wagons as the foodgrains are liable to get spoiled if they are unloaded onto the siding due to rain etc. Even after unloading unless they are removed from the railway premises within the free time available wharfage is charged by the Railways. The failure to prove trucks leads to detention of wagons beyond the free time allowed by the Railways...*"

25. We may note that there is a dispute about the availability of trucks for the transportation of foodgrains by the contractor. While the Corporation asserts that trucks were not made available in numbers as well as in time, the contractor denies the same stating that their trucks were kept waiting at the Corporation's Food Security Depots.

26. Irrespective of the disputed fact, the real question is whether the contractors had any obligation towards loading and unloading of foodgrains from the railway wagons. It is evident from the contractual provisions and also the admissions of the Corporation in written submissions, that the task of loading or unloading of foodgrains from the railway wagons was not a part of the contract. Thus, based on interpretation of the expression "charges" in the contractual context, we are of the opinion that it did not include liability on account of demurrages. Consequently, the Corporation cannot impose and collect demurrages from the contractors.

27. Interpretation of contracts concerns the discernment of the true and correct intention of the parties to it. Words and expressions used in the contract are principal tools to ascertain such intention. While interpreting the words, courts look at the expressions falling for interpretation in the context of other provisions of the contract and also in the context of the contract as a whole. These are intrinsic tools for interpreting a contract. As a principle of interpretation, courts do not resort to materials external to the contract for construing the intention of

the parties. There are, however, certain exceptions to the rule excluding reference or reliance on external sources to interpret a contract. One such exception is in the case of a *latent ambiguity*, which cannot be resolved without reference to extrinsic evidence. Latent ambiguity exists when words in a contract appear to be free from ambiguity; however, when they are sought to be applied to a particular context or question, they are amenable to multiple outcomes.This position is well-explained in the following passage of *Halsbury's*[22]*:*

> "*Latent ambiguity: When the instrument appears on its face to be free from ambiguity but, upon the endeavour being made to apply it to persons or things indicated, it appears that the words are equally applicable to two or more persons, or two or more things, either without any inaccuracy or with a common inaccuracy...*"

Extrinsic evidence, in cases of latent ambiguity, is admissible both to ascertain where necessary, the meaning of the words used, and to identify the objects to which they are to be applied.[23]

28. Applying the above-referred principles to the present case, we will juxtapose the present contracts with similar but not identical contracts entered into by the Corporation, to confirm our interpretation that the word "charges" in the contract is exclusive of liability for demurrages. Pursuantly, we will examine certain contracts entered into by the Corporation with other transporters. For example, we will refer to a contract entered into by the Corporation in 2010, which is prior in time to the present contract. The relevant clauses read as under:-

> "***B. Brief description of work***
>
> I. *Unloading/Loading of foodgrain bags from/into railway wagons, trucks etc. stacking...and transporting of foodgrains from Railway Station to Corporation's Godown or vice-versa...*"
>
> ***XII. Liability of Contractors for losses etc. suffered by Corporation***
>
> *a) The contractor shall be liable for all costs, damages, demurrages, wharfage, forfeiture of wagon, registration fees,*

[22] *Halsbury's Laws of England* (5th edn, 2012) vol 32, para 409.
[23] *Halsbury's Laws of England* (5th edn, 2012) vol 32, para 394.

A *charges and expenses...due to...their failure to carry out the work with a view to avoid incurrence of demurrage etc...*

b) The Corporation shall be at liberty to reimburse themselves of any damages, losses, charges, costs, or expenses suffered or incurred by them due to contractors negligence and un-
B *workmanlike performance of service under the contract or breach of any terms thereof...*"

(emphasis supplied)

29. It is evident from the above that the contracts delegating the responsibility of loading and unloading of foodgrains from railway wagons,
C as an integral part of the contract, include a clear and distinctive clause for the imposition of liability, *inter alia*, on account of demurrages. Evidently, the liability clause in these contracts, termed the Handling and Transport Contracts, is starkly distinct from the present Road Transport Contracts.

D 30. We have every reason to believe that the Corporation, statutorily obligated to procure and distribute foodgrains across the nation, enters into contracts depending on the services it requires. These contracts naturally vary depending on the needs and purposes of the Corporation. With the aid of the provisions in the Handling and Transport
E Contract from 2010, we are able to understand the intention of the parties while entering into the present Road Transport Contracts. As the present contracts do not involve the task of loading and unloading of foodgrains from the railway wagons as a part of the contractors' responsibility, there is no clause enabling the recovery of demurrages from them by the Corporation. Thus, our interpretation of the expression "charges",
F as exclusive of liability for demurrages, stands confirmed.

31. We will proceed to examine yet another Handling and Transport Contract which was executed seven years after the present contract, i.e., in 2018. The relevant clauses of the contract are as under:-

G ***"B. Brief description of work***

I. <u>Unloading/Loading of foodgrain bags from /into railway wagons, trucks etc</u>. stacking the foodgrains in bags, bagging, weighment, standardization, cleaning of foodgrains, etc., and transporting of foodgrains from Railway Good Shed/siding to Corporation Godown or vice-versa or transporting them
H

from any place to any other place in and around Railhead KUMARGHAT/FSD KUMARGHAT...

...

X. Liability of Contractors for losses etc. suffered by Corporation

a) The contractor shall be liable for all costs, damages, demurrages, wharfage, forfeiture of wagon, registration fees, charges and expenses suffered or incurred by the Corporation due to the contractor's negligence and un workmanlike performance of any services under this contract, or breach of any terms thereof or his failure to carry out the work with a view to avoid incurrence of demurrage etc. under this contract or breach of any terms thereof or his failure to carry out the work with a view to avoid incurrence of demmurage; etc. and for all damages or losses occasioned to the Corporation due to any act whether negligent or otherwise of the contractor themselves or his employees. The decision of the General Manager regarding such failure of the contractor and their liability for the losses, etc. suffered by the Corporation, and the quantification of such losses, shall be final and binding on the contractor..."

(emphasis supplied)

32. It is evident from the above that the Handling and Transport Contract from 2018, similarly involved loading and unloading of foodgrains from the railway wagons within the scope of contractors' duties, thereby necessitating the inclusion of demurrages as a penalty for non-performance of contractual duties. Thus, the present Road Transport Contract is distinct from the Handling and Transport Contract from 2018, as the responsibility of loading and unloading of foodgrains from railway wagons is absent in the present contract. For this reason, the Corporation in the present contract has chosen not to include the power to recover demurrages and as such the expression "charges" cannot be interpreted to include demurrages.

33. In light of the foregoing conclusions, we are not inclined to adopt a textual approach for the interpretation of the contractual term "charges", and hence, the decisions of this Court in *Raichand Amulakh*

A *Shah*[24]and *Trustees of the Port of Madras*[25] are of no aid, as they simply describe demurrages as a charge. Demurrage is undoubtedly a charge, however, such a textual understanding would not help us decipher the true and correct intention of the parties to the present contract.

34. For these reasons, Civil Appeals arising out of SLP Nos. 16009-
B 16010 of 2019 and SLP Nos. 16063-16068 of 2019, filed by the Corporation are dismissed. The decisions of the High Court of Tripura in Writ Appeal No. 56 of 2018 dated 07.09.2018 and Review Petition No. 02 of 2019 dated 22.01.2019 are upheld. The decision of the High Court of Tripura in Writ Appeal Nos. 53-58 of 2017 dated 15.05.2019 is also upheld. We may clarify that our decision has no bearing on any other
C remedy available to the Corporation, like the institution of a suit for recovery, if law enables them to do so.

35. In so far as Civil Appeals arising out of SLP Nos. 4045-4046 of 2021 filed by the contractors are concerned, they are allowed for the same reasons as indicated above. The judgments of High Court of Tripura
D in Writ Appeal Nos. 186 of 2020 and 187 of 2020 dated 04.01.2021 and 18.01.2021 respectively are set-aside and the Civil Appeals stand allowed.

36. The parties shall bear their own costs.

Ankit Gyan Appeals disposed of.
(Assisted by : Shevali Monga, LCRA)

[24] Supra note 11.
[25] Supra note 12.