IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.4119 of 2011 (O&M)
Date of Decision: August 13, 2015

Punjab Agro Foodgrains Corporation Limited, Chandigarh

...Appellant

Versus

M/s Shivalik Rice Mills, Guru Har Sahai, District Ferozepur

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.B.R.Bansal, Advocate,
for the appellant.

Mr.Sandeep Khunger, Advocate,
for the respondent.

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AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the order dated 28.7.2010 passed by the District Judge, Ferozepur, whereby the objections filed by the miller against the award dated 1.7.2006, have been accepted by holding that the dispute was not within the domain of the arbitrator, but was of the Managing Director as per the excepted clause of the agreement.

Mr.B.R.Bansal, learned counsel appearing on behalf of the appellant submits that the objections have erroneously, much less, capriciously been accepted, though the claim of the appellant was not within the excepted clause and even from the perusal of the award, the arbitrator has awarded interest only @ 21% per annum and, therefore, the impugned order is liable to be set-aside. He further submits that, in fact, the District Judge failed to notice condition Nos.6 and 7 of the agreement. Had it been noticed, perhaps objections would have been dismissed.

Mr.Sandeep Khunger, learned counsel appearing on behalf of the respondent-miller has drawn the attention of the Court to the award (Annexure A-2) to contend that the claim of the appellant-Corporation, in essence, was as per condition No.8 of the agreement as element of 30% over and above 21% is envisaged, whereas as per condition Nos.6 and 7, the appellant is entitled to only 21% and the arbitrator has also awarded the interest @ 21% for the first year and further interest @ 30% and, therefore, rightly so the District Judge accepted the objections and relegated the parties to the Managing Director.

I have heard the learned counsel for the parties and appraised the paper book.

In order to appreciate the controversy, it would be apt to reproduce condition/clause No.8 of the agreement, which reads thus:-

> *"8. The entire quantity of rice of all varieties delivered by the miller to the Government/Agency shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order, 1983, as amended from time to time or in any other order or notification issued by the State Government from time to time. The stocks of rice not conforming to the specifications so laid down, shall be liable to be rejected in respect of such quantity of rice which is not found to be within the specifications and the miller shall be liable to pay to the*

Government/Agency for the quantity of rice short supplied as penalty at the custom milling rate fixed by Govt.of India plus 21% interest from the date it becomes payable till the date of actual realization of the converted variety of rice. The decision of the MD, PAIC Chandigarh (hereinafter referred to as the Managing Director) in this behalf shall be final.

ii) At the time of delivery, the stocks of rice shall be subjected to the inspection as per provisions of the Punjab Rice Procurement (Levy) Order, 1983. Any quality allowance determined at the time of inspection according to the specifications shall be recovered from the Miller's bills.

iii) The miller shall be required to manufacture rice as per specifications laid down by the Government of India and deliver the same to the Food Corporation of India at its depots by 30.06.2002.

In the event of his failure to supply rice within the stipulated period he shall be liable for an interest @ 21% for the first year of default and @ 30% for the subsequent period on the custom milled price fixed by Govt.of India from the date it becomes payable till the date of actual realization towards the left over quantity/stocks of paddy. The decision of the Managing Director in this behalf shall be final."

The arbitrator, while granting the relief, has awarded interest @21% per annum and further interest @ 30% per annum. The operative part of the order reads thus:-

"That the respondent miller has not attended the Arbitration proceedings as per the agreement despite several notices including through the press. The claimant/PAFC has submitted the claim supported with necessary documents. The claimant has established his claim of Rs.37,05,006.00 including interest @21% per annum and further interest @30% per annum till the date of recovery. That the award has been made and signed

by me today on 01.07.2006 at Chandigarh. One signed copy be sent to the respondent under Regd. Post and the original award be sent to PAFC/Claimant along with arbitration file after completion. As the respondents miller has not attended Arbitration proceedings as per the notices of the Arbitrator the share of fee of the respondents miller is thus ordered to be paid by the claimant and may be recovered from the respondents as a part of the award."

On going through the conditions and the operative part of the order (supra), the order of the District Judge is perfect and there is no illegality, much less, perversity in the same. The District Judge has rightly observed that the claim of the appellant falls within the excepted clause, noticed above, and relegated the parties to the dispute to appear before the Managing Director of the appellant.

Mr.Bansal has relied upon the judgment of this Court rendered in **M/s. Adarsh Rice Mills Versus Punjab State Civil Supplies Corporation and another, 2013(5) R.C.R.(Civil) 51** to contend that the dispute would fall within the excepted clause only when the rice supplied by the miller does not conform to the specifications.

I am afraid, the aforementioned argument is not fallacious only but does not have any substance as the terms and conditions of each agreement have to be read for arriving at a conclusion.

On perusal of the terms and conditions extracted above, the arbitrator has basically decided the reference by awarding interest @ 21% per annum and further interest @ 30% per annum, which is only provided in clause-8 and not clauses/conditions 6 and 7.

In view of what has been observed above, there is no illegality, much less, perversity in the order dated 28.7.2010. The same is accordingly upheld. Resultantly, the appeal is dismissed.

Since the District Judge has already relegated the parties to the Managing Director, they, through their counsel, are directed to appear before the Managing Director of the appellant on 7.9.2015 and shall file their respective claim/counter-claim, if any.

It is expected that the matter shall be decided as expeditiously as possible, preferably within a period of eight months from the date of receipt of certified copy of this order.

August 13, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**