IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.891 of 2010 (O&M)
Date of Decision: March 26, 2015

M/s Lakshmi Energy and Foods Ltd.
(formerly M/s Lakshmi Overseas Industries Ltd.)

.... Appellant

vs.

Punjab State Civil Supplies Corporation Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sanjiv Bansal, Advocate for the appellant.

Ms. Jaspal Kaur Gurna, Advocate for the respondents.

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Kuldip Singh J.

CM No.20934-CII of 2014

The present application under Section 37 of the Arbitration Act has been filed by the respondents for dismissing the appeal on the ground that it is not maintainable by the present appellant, namely, M/s Laxmi Energy and Foods Limited.

I am of the view that the present application is without any force. Admittedly, the contract was between the PUNSUP-respondents and M/s Luxmi Rice Mills, Khamano, District Fatehgarh Sahib. However, the reply of the application shows that Lakshmi Rice Mills was a partnership firm. On 01.04.1994, the partnership firm was reconstituted, wherein M/s Lakshmi Grains Processors India Limited was inducted as a partner along with the three earlier partners. Later on, the name of the said firm was changed to Lakshmi Overseas Industries Limited on 31.08.1994. The certificate of incorporation is Annexure R-2. The name of Lakshmi Overseas Industries Limited was further changed to Lakshmi Energy and Foods Limited on 03.04.2006 and the certificate of incorporation is Annexure R-3.

In this way, the new company took the assets and liability of the earlier firm/company. Therefore, being the successor in interest of the earlier firm M/s Lakshmi Rice Mills, this appeal can be maintained on behalf M/s Lakshmi Energy and Foods Limited.

Consequently, the present application is dismissed.

FAO-891-2010

This appeal is directed against the judgment dated 13.11.2009 passed by learned Addl. District Judge, Chandigarh, vide which the application filed by the appellant under Section 34 of the Arbitration and Reconciliation Act, 1996 (in short 'the Arbitration Act') for setting aside the arbitration Award dated 07.04.2005 and orders dated 15.05.1999 and 27.10.1999, whereby the application for changing of the case title was rejected.

Brief facts necessary for the disposal of the present appeal are that the parties entered into an agreement dated 07.10.1993 (Annexure P-1) for custom milling of the paddy for the crop year 1993-94. In terms of the agreement, 6001 bags of paddy of fine quality were entrusted to the miller for custom milling. It was alleged that rice was supplied but the delivery was delayed. The PUNSUP claimed interest for late delivery and for dead stock. Therefore, the Managing Director, PUNSUP appointed Mr. M.M. Hurria as a sole Arbitrator. The Arbitrator vide order dated 07.04.2005 passed an Award in favour of the claimant-appellant for recovery of ₹54,47,151.23 (rounded off rupees fifty four lacs forty seven thousand one hundred fifty one only) with interest @ 21% per annum from 01.08.1997 till the date of Award.

The appeal filed against the said Award was dismissed by the learned Addl. District Judge, Chandigarh, vide impugned judgment dated 13.11.2009.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out from the Award that the claim of the PUNSUP was for the interest on the delayed delivery of the rice and costs of dead stock. The photocopy of the agreement dated 01.10.1993 (Annexure P-1) shows that Clause 19 of the agreement was provided for arbitration. The relevant extract of the said clause is reproduced below:

> *"19.ARBITRATION. All the disputes and difference arising out or in any manner touching or concerning this agreement whatsoever* ***(except as to any matter, the decision of which is expressely provided for in the contract)*** *shall be referred to the sole arbitration of the Secretary Food & Supplies any person appointed by him in this behalf.--------"*

It goes to show that the dispute is to be referred to Arbitration except as to any matter, the decision of which is expressly provided for in the contract.

In the present case, the dispute was regarding short supply of the rice and no return of the dead stock, which in this case are gunny bags. Clause 6(iii) and 6 (iv) of the agreement which deals with shortfall in the recovery of rice, are reproduced as under:

> *"iii) In case there is a shortfall in the recovery of rice provided provided in sub-clause (i) above the miller shall pay to the PUNSUP the cost of paddy equivalent to the shortfall at the rate of 1-1/2 times of the economic cost of paddy.*
>
> *iv) The by products viz. Broken rice, rice kani, nakoo, phak and rice bran etc. obtained in the shelling of paddy shall be the property of the Miller and he PUNSUP shall have no responsibility in regard to these. However, the Millers shall be bound to deliver/sell 20% (Twenty percent) of the total production of rice bran out of custom milled paddy belonging to Government State Foodsup, Punsup, MArkfed and PSWC) conforming to ISI specification @ Rs.100/- per qtl. or at any price fixed by the Government from time to time, against permits/authority issued by the Government."*

Clause 7 of the agreement provides as under:

> *"In the event of his failure to supply rice withing the stipulated period, he shall be liable for an interest @ 21% onthe bais of economic cost of left over quantity/stocks of paddy/rice. The decision of Managing Director in this behalf shall be final.*

Clause 14 of the agreement provides ad under:

"14. PACKING: Rice shall be packed in the gunny bags in which the paddy is supplied by the Punsup in case of Punsup choose to supply other gunny bags for the purpose, the miller shall pack the rice in such gunny bags so supplied and return the Punsup the gunny bags originally supplied. The rice shall given proper account of all gunny bags. The rice shall be packed in standard size. Double line machine stitiching is made compulsory to all the millers/dealers irrespective of rice milling capacity. The bags found surplus after the filling of rice shall be retained by the miller and the cost, therefore, shall be paid by the miller to the Punsup at the rate to be fixed by the State Govt. from time to time."

It goes to show that the present dispute falls within the 'Excepted Clause' under Clause 19 of the agreement. Such excepted matters are to be decided by the Managing Director of PUNSUP.

Therefore, the impugned Award passed by the Arbitrator is held to be without any jurisdiction and is set aside. Consequently, the judgment passed by the learned Addl. District Judge, Chandigarh, dismissing the objections is also set aside. The dispute is to be decided by the Managing Director of the PUNSUP in accordance with law. For this purpose, the period consumed in the proceedings before the Arbitrator, learned Addl. District Judge, Chandigarh and before this Court shall be excluded while computing limitation. The Mananging Director shall specifically decide as to whether the PUNSUP is to be allowed interest for the period during which wrong proceedings before the Arbitrator were started till its termination before this Court, keeping in view the fact that there was a specific provision in the contract for decision of excepted matters. Let the matter be accordingly decided by the Managing Director of PUNSUP.

The appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

March 26, 2015
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