IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1425 of 2013 (O&M)
Date of decision : 21.08.2015

M.D. Punjab State Civil Supplies Corporation Ltd. and another

...Appellants

Versus

M/s Savitri Rice Mills and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Ms. Deepali Puri, Advocate for appellants.

Mr. Mukand Gupta, Advocate for respondents.

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AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the order dated 29.11.2012, whereby objection filed by the Miller against the award dated 06.11.2007 has been accepted on the premise that claim of the PUNSUP was falling within the Excepted Clause, therefore, Managing Director has jurisdiction to try and entertain the claim.

Ms. Deepali Puri, learned counsel appearing on behalf of PUNSUP submits that Additional District Judge has committed illegality and perversity in accepting objection as it did not fall within the parameters of under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act'), much less, has mis-directed himself in not taken into consideration the claim as it was confined only, which was in accordance with terms and conditions, bearing No.7(iii) and not 8(iii), therefore, the impugned judgment is liable to be set aside.

Mr. Mukand Gupta, learned counsel appearing on behalf of respondent submits that claim vis-a-vis 21% squarely falls within Clause 8 (iii) of the agreement and, therefore, the same was under the domain of the Managing Director, therefore, learned District Judge has rightly relegated the parties to the Managing Director, for, determination of the dispute between the parties to the lis and there is no illegality and perversity in the order and no interference is warranted.

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

It would be apt to extract condition No.7(iii) and entire 8 of the agreement, which read thus:-

> *"7(iii) In case there is a short fall in the recovery of rice provided in sub clause (i) above, the miller shall pay to the PUNSUP the price of rice at custom milled rice rates plus interest at the rate of 21% from the date if becomes payable till the date of actual realization equivalent to the short fall.*
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> *8. The entire quantity of rice all varieties delivered by the miller to FCI in Punsup account 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 stock 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 Punsup 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 Managing Director and Punsup (hereinafter referred to as the Managing Director of the Punsup agency) 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 of Punsup in this behalf shall be final."

On juxta posing of the aforementioned arguments, it is evident that PUNSUP had not claimed the interest at the rate of 21% for the first year of default and 30% for remaining year which fall within the Excepted

Clause, but interest at the rate of 21% w.e.f. 29.09.2002 to 28.02.2003 which is in consonance with the Clause 7(iii) of the agreement, which in my view and as per the language of the Clause does not fall within the Excepted Clause. The Additional District Judge has mis-directed by taking into consideration the Clause 8(iii) of the agreement by forming an opinion that it fall within the Excepted Clause. Such finding in my view is erroneous, and had not taken into consideration the claim submitted by the PUNSUP before Arbitrator.

In view of what has been observed above, impugned order dated 29.11.2012 is not sustainable and is hereby set aside and the award of the Arbitrator is accordingly restored.

Appeal stands allowed.

21.08.2015 **(AMIT RAWAL)**
pawan **JUDGE**