IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.7558 of 2015 (O&M)
Date of Decision: November 6th, 2015

Haryana Agro-Industries Corporation Limited, Sector 4 Panchkula

...Appellant

Versus

M/s Zimidara Agro Mills, VPO Sadikpur, Sadhaura, District Yamuna Nagar & another

...Respondents

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.Pankaj Gupta, Advocate,
for the appellant in all the cases.

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AMIT RAWAL, J. (Oral)

By this common order, I shall dispose of ten appeals bearing Nos.7558 of 2015 (Haryana Agro-Industries Corporation Limited Versus M/s Zimidara Agro Mills & another), 7559 of 2015 (Haryana Agro-Industries Corporation Limited Versus M/s Jindal Agro Mills & another), 7560 of 2015 (Haryana Agro-Industries Corporation Limited Versus M/s Shivalik Rice & General Mills & another), 7561 of 2015 (Haryana Agro-Industries Corporation Limited Versus M/s Balaji Rice & General Mills & another), 7562 of 2015 (Haryana Agro-Industries Corporation Limited Versus M/s Aggarwal Rice Mills & another), 7563 of 2015 (Haryana Agro-Industries Corporation Limited Versus M/s Himalaya Agro Industries & another), 7564 of 2015 (Haryana Agro-Industries Corporation Limited Versus M/s Haryana Rice & General Mills & another), 7565 of 2015

(Haryana Agro-Industries Corporation Limited Versus M/s Maha Shakti Rice & General Mills & another), 7566 of 2015 (Haryana Agro-Industries Corporation Limited Versus M/s Jagdamba Rice & General Mills & another) and 7567 of 2015 (Haryana Agro-Industries Corporation Limited Versus M/s Haveli Rice Land & another) as the common questions of law and facts involved in all these appeals are the same.

The challenge in the present appeals is to the impugned order dated 27.5.2015 passed by the Additional District Judge, Panchkula, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") for setting-aside the arbitral award dated 4.3.2013, have been dismissed.

Mr.Pankaj Gupta, learned counsel appearing on behalf of the appellant-Haryana Agro-Industries Corporation Limited submits that the cut off date for delivery of the custom milled rice (for short "CMR") was 31.3.2010, whereas the Millers did not deliver the same on behalf of the Corporation to the FCI on time. Clause 7 (iv) of the Schedule provides that the CMR is be delivered within the period framed. The Arbitrator has not appreciated the aforementioned fact, much less terms and conditions of the Schedule and erroneously pronounced the award in favour of the Millers. Even the Objecting Court did not accept the objections by holding that the same were not within the parameters of Section 34 of 1996 Act. He further submits that the Arbitrator has granted the phenomenal interest @ 15% and, therefore, the award and as well as the order of the Objecting Court are liable to be set-aside.

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

Before adverting to the arguments of the learned counsel for the appellant, it would be apt to reproduce the relevant portion of the award. The same reads thus:-

> "*The evidence/submissions of parties in the form of Affidavits on the points for consideration from the above two categories were heard. The evidence affidavits of claims, counter reply, rejoinder and annexure as exhibited have been considered at length in the following para. The claimant-applicant has established through the evidence as incorporated in the claim and rejoinder that delay in delivery of CMR on schedule was the result of the respondent and its principal FCI failure to provide the space in the warehouse together with frequent shortage of staff and this had become clear from evidence and was proved through their action as evident from the grounds shown in the premise as shown in the rejoinder:-*
>
> *a) The schedule of receipt of CMR was changed by FCI from 1-10-2009-31-3-2010 to 15-11-2009 to 30-6-2010 (see Annexure A-1A) (colly) annexed with claim application;*
>
> *b) Contract No. without which CMR could not commence were allotted by DFSC vide his letter dated 18-11-2009 received by claimant on 29-11-2009 (see Annexure A-1B annexed with the claim application);*
>
> *c) Linkage for delivery of CMR to FCI at HWC wherehouse Sadhuara was made on 2.12.2009;*
>
> *d) Delivery could not be completed on account of shortage of space and staff at the aforesaid warehouse (see Annexure A-1C (colly), Annexure A-1D, A-2) (colly) annexed with the claim application);*
>
> *e) The CMR was always ready for delivery with the claimant which could not be accepted by FCI because there remained always a space shortage in the said godown (see Annexure A-3 (colly) annexed with the claim application).*
>
> *Moreover, no legal opportunity was given by respondent to the claimant-applicant to contest the deduction charges*

imposed before slapping the withholding charges, which was contrary to principles of natural justice. On the other hand, the respondent has not been able to disprove the grounds preferred by the claimant-applicant with any strong proof in rebuttal as is abundantly clear from the appraisal of facts. In fact, sundry copies of record in the exhibits as above fully support the case of claimant-applicant on the issue of refund of with-holding charges.

7. Furthermore, the claimant-applicant enumerated the grounds of his claims on the pleas to the effect that the claimant had raised these issues through their Association in the meeting of the Distt.Milling Committee headed by Deputy Commissioner, Yamuna Nagar vide minutes dated 16.3.2010, 29.4.2010. D.C., Yamuna Nagar also sent a D.O. to R.M. FCI on 23-3-2010 highlighting the difficulties of millers in acceptance of CMR at FCI warehouses. The claimant also raised the issues before the respondent through their association vide letters dated 19-11-2009, 25-11-2009, 16.3.2010, 21-5-2010 and 3-6-2010. Respondent took up Miller's case and wrote to FCI in this regard vide letters dated 4.2.2010, 20.2.2010 and 19.3.2010, copies of communications have been exhibited. The shortage of space in warehouse was acknowledged by Manager, FCI, Sadhuara to claimant vide Certificate issued on 31-5-2010 and 31.7.2010 (copy A-3). The claimant applicant denied any delay on their part in the delivery schedule of CMR. The claimant seeks refund of Rs.10,50,600 as holding charges deducted from milling charges of stated quantity of paddy KMS 2009-2010. Schedule of acceptance of CMR 1-10-2009 to 31-3-2010 was amended to 15-11-2009 to 30-6-2010. Linkage for delivery of CMR to FCI was made on 2.12.2009. The claimant could effect delivery only after allotment of contract number and linkage. Although contention of claimant about ignorance of terms of any of the agreement is not tenable, but the facts in the pleadings show without doubt that the respondent had not provided

> *warehousing space and linkage according to terms and FCI had also changed schedule of acceptance of CMR. There is sufficient evidence on record towards to show bottlenecks created at the delivery end of CMR.*
>
> *8. Therefore, as to points Sr.No.1 to Sr.No.4, it is established from the evidence led by parties that delay in the delivery of CMR on schedule was not on account of any deficiency on part of claimant. Therefore, the with-holding charges deducted are liable to be reimbursed.*
>
> *9. On the conclusion of claims of issues under Sr.No.5-8, it has been found that the claims are made on perfunctory grounds and are not supported by any legal grounds nor these are based upon any strong evidence led by the claimant-applicant. The respondent has fully disproved the logic and justification of these claimants by their arguments that the claims preferred find no confirmation from the terms of agreement. The respondent has argued well to establish that there is no legal ground to consider any of the claims over and above the milling charges.*
>
> *10. For the above reasons and grounds shown by the applicant-claimant, it is awarded Rs.10,50,600/- (Rupees Ten Lacs Fifty Thousand Six Hundred only). A token interest @6% p.a. will be payable by the respondent from the date of withholding till the award, and interest @ 15% p.a. from the date of award till the actual payment of the awarded sum."*

The Objecting Court has found that the FCI did not supply the adequate space and staff for the delivery of the custom milled rice and the Arbitrator considered the entire agreement, which included clause 7(iv) and correctly held that the withholding of the milling charges in the guise of recovering holding charges was absolutely illegal and unjustified when the millers were not responsible for delivering the custom milled rice as per the schedule, inasmuch, as that the FCI failed to timely make arrangement of adequate storage capacity and staff for receiving delivery as per the schedule.

With regard to awarding of interest @ 15% per annum, the agreement did not envisage the grant of particular interest. As per the provisions of Section 31(7) of 1996 Act, the Arbitrator has power to award interest @ 18%. The interest in the present case has been only to the extent of 15% per annum.

It is now a settled law that in what circumstances the award has to be interfered with. The question, which is now raised in the aforementioned appeals, has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 34 of the Act, the same cannot be interfered with. In this context, I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgments, the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances, it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. In my view, the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator, who is expert, has dealt with the matter and decided the claim of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

The appeals are accordingly dismissed.

November 6th, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**