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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-3619-2006 (O&M)
Date of decision : 26.10.2016

Food Corporation of India

... Appellant

Versus

M/s Saraswati Rice Mills and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate
for the appellant.

Mr. Vishal Garg, Advocate
for respondent No.1.

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AMIT RAWAL, J. (ORAL)

The appellant-Food Corporation of India is aggrieved of the impugned order dated 16.02.2006, whereby the objections at the instance of the respondent(s)-Miller filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') seeking setting aside the Award dated 19.04.2004, have been allowed.

Mr. Manav Bajaj, Advocate for Mr. Sumeet Goel, learned counsel appearing on behalf of the appellant-FCI submits that the appellant-FCI had invited the tenders for the sale of Fine Paddy lying in the custody of C.W.C., Sangrur in Osawal Mills Premises for the crop year 1994-95 and in response to that, the respondent(s)-Miller, a partnership firm, submitted its tender on 20.02.1996 by giving the different rates of the paddy. As per the terms and conditions of the tender, the respondent(s)-Miller deposited a sum of ₹ 12,18,400 on 09.04.1996 and ₹ 12,28,750/- on 30.04.1996 against which a clear order dated 09.04.1996 and 30.04.1996 for 400 M.Ts each was issued by the claimant, which was lifted by the respondent(s)-Miller. After lifting the aforementioned quantity, no steps have been taken by the respondent(s)-Miller to deposit the cost of the remaining quantity of the paddy. The claimant sent many notices to the respondent(s)-Miller, having failed to honour, yet forfeited the earnest money and decided to sell the balance quantity/unlifted paddy at the risk and costs of the respondent(s)-Miller. The amount realized against the sale of balance quantity was ₹ 7,50,840/- against the agreed price of ₹ 35,87,200/-, thus, there was a loss of ₹ 28,36,360/- in the sale of the balance paddy. The claimant called upon the respondent(s)-Miller vide notice dated 15.02.1999 to pay a sum of ₹ 51,47,832/- towards the loss suffered which included the interest @ 17.5% and storage charges within a period of 7 days. However, the same was not adhered to and the matter was referred to the Arbitrator. The Arbitrator after examining the terms and conditions of the agreement and as well as the Clause P of the Arbitration Clause, decided the claim in favour of the claimant, but the Objecting Court realizing that the objections were falling within the realm of Section 34 of the 1996 Act, accepted the same and held that the matter was falling within the excepted clause as the dispute/controversy was to be adjudicated by the Senior Regional Manager.

He further submits that for shortage of the aforementioned rice, it was only the paddy which has been sold at a lesser rate, much less, at the risk and cost of the respondent(s)-Miller, is liable to be recovered only in view of the Clause P of the Arbitration Agreement, thus, the Arbitrator had a valid jurisdiction. The aforementioned objection was not taken by the respondent(s)-Miller before the Arbitrator, thus, the objections were not maintainable and urges this Court for setting aside the impugned order under challenge.

Per contra, Mr. Vishal Garg, learned counsel appearing on behalf of the respondent(s)-Miller submits that the order under challenge is perfect, legal and justified and there is no illegality and perversity. The parties are bound by the terms and conditions of the agreement. The remedy for the appellant-FCI was to approach the Senior Regional Manager, but not by way of reference to the independent Arbitrator, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Manav Bajaj, for, the finding arrived at by the Objecting Court, in my view, is perfect, legal and justified as the objection qua jurisdiction of the Arbitrator was specifically taken and therefore, the objections under Section 34 of the 1996 Act cannot be deemed to have been waived in view of the provisions of Section 4 of the Act. Once the Clause P and M of the Agreement provided the resolution of dispute, particularly in view of loss of non-discharge of the obligation by the respondent(s)-Miller, the Senior Regional Manager was competent not the Arbitrator. In my view, the finding arrived by the Objecting Court does not call for any interference.

It is strange that the appellant-FCI has chosen to file the appeal in this Court in the year 2006 which was admitted. Had this matter been taken up by Senior Regional Manager, there would have been adjudication of the *lis*.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Objecting Court, much less, no ground is made out for interference.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

26.10.2016
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**