

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.797 of 2007 (O&M)

Date of Decision.29.09.2016

M/s Jai Bajrang Rice & General Mills

.....Appellant

Vs.

Food Corporation of India and others

.....Respondents

2. C.R. No.5712 of 2009

Shri Nem Chand and others

.....Petitioners

Vs.

Food Corporation of India

.....Respondent

Present: Mr. C.B. Goel, Advocate
for the appellants in FAO No.797 of 2007 and
for the petitioners in C.R. No.5712 of 2009.

None for the respondent(s).

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two cases. FAO bearing No.797 of 2007 is against the dismissal of the objection under Section 34 of the Arbitration and Conciliation Act, 1996 seeking set aside the Award and revision petition bearing No.5712 of 2009 is against the order dated 15.09.2009 passed by the Additional District Judge whereby the application filed by the respondent seeking execution of the Award, has been allowed.

Mr. C.B. Goel, learned counsel for the miller submits that the Arbitrator had not taken into consideration very vital fact that price of the unmilled paddy was ₹200/- and odd but the claim was to the tune of ₹500/-. No doubt the Objecting Court reduced rate of interest at 12% from 18% but still it is too phenomenon. Even the fee charged over and above the arbitration fee is inexplicable. The calculation done by the Arbitrator was/is

not in consonance with the terms and conditions of the contract and the Award is against the public policy, rightly so, the Award was challenged by invoking the provisions of Section 34 of the 1996 Act, thus, urges this Court for setting aside the orders under challenge as well as the Award.

I have heard learned counsel for the appellant and appraised the paper book. In view of the judgments rendered by the 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*, no doubt the scope of public policy has been extended to patent illegality but the fact remains that no patent illegality has been pointed out, as there was a default of supply of the rice and when it was supplied, it was found to be defective. The rate of interest has been charged as per the terms and conditions of the agreement. The Arbitrator being the expert has already examined the evidence. Neither this Court nor the Objecting Court can sit in the arm chair of Arbitrator to re-appreciate the evidence in view of the judgment referred to above in *Navodaya Mass Entertainment Ltd.*

There is no force in the plea of reducing the rate of interest from 12% to 6% as the rate of interest charged is perfectly legal and justified being a commercial transaction. As regards the charging of fee of ₹51,000/- in lump sum cannot be said to be higher side, for, it includes clerical and conveyance allowance also. This argument of Mr. Goel is also rejected.

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 appeal, 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 and Navodaya Mass Entertainment Ltd.** (supra). 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 embark 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 claims 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.

In my view, no error of law arises from the award. The same is perfect and justified.

There is no merit in the appeal and the revision petition. The same are accordingly dismissed.

(AMIT RAWAL)
JUDGE

September 29, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No