IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.1417 of 2016 (O&M)
Date of Decision:- 19.09.2016

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M/s Maha Lakshmi Food Agro Mills and others
….. Petitioners

Vs.

The State of Punjab and others
….. Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Narinder Singh, Advocate,
for the petitioners.

Mr.Suresh Singla, Addl. A.G. Punjab.

Mr.Nitin Kaushal, Advocate,
for respondent No.3.

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RAKESH KUMAR JAIN, J.

The Government of Punjab procures paddy through its various procurement agencies i.e. PUNGRAIN, MARKFED, PUNSUP, PSWC, PAFC and FCI as per the specifications of the Government of India. The Department of Food, Civil Supplies and Consumer Affairs, Punjab fixes the share of procurement amongst the Government procuring agencies for the procurement of paddy every year before the commencement of Kharif season. The procured paddy is milled by the rice millers of the State after entering into agreement with the concerned procurement agency as per the provisions of the Custom Milling Policy. The Government of India reimburses procurement, storage, handling and milling charges to the State Government as per the costing sheet issued for procurement season. The allotment to the rice mill is considered for the consecutive years, once the concerned agency gives clearance.

The firm M/s Maha Lakshmi Food Agro Mills (petitioner No.1) is engaged in the business of custom milling of paddy. Five partners of petitioner No.1, namely, Raj Kumar s/o Ram Nath, Satish Singla s/o Surender Kumar, Vishal Singla s/o Surinder Kumar, Sudarshan Kumar s/o Sat Pal and Deepak Rai Garg s/o Sudarshan Kumar, entered into a partnership deed dated 20.9.2012. On 9.10.2012, out of the five partners, three partners, namely, Raj Kumar, Satish Singla and Vishal Singla retired. The relevant terms and conditions of the retirement deed are as under: -

> *"2. That the accounts of assets and liabilities of the said partnership as on retirement on 9.10.2012 has been determined.*
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> *3. That the continuing partners have taken over all the determined assets and liabilities of the firm as on 9.10.2012. However, in case of any asset or liability which is not determined as on 9.10.2012 and which may arise in future pertaining to their old partnership period, all the parties to this deed shall be proportionately liable for the same to the extent of their share in the profits and losses in the partnership as constituted by them."*

Thereafter on 10.10.2012, a new partnership deed was executed with the partners, namely, Sudarshan Kumar and Deepak Rai Garg. The relevant part of the said partnership deed reads as under: -

> *"That each party hereof shall discharge his personal commitments, debts and liabilities, if any, and shall keep the firm and other partner indemnified against any loss or damage for any of his personal liability."*

The case of the petitioners is that respondent No.3 and PUNGRAIN allotted paddy for the Kharif Marketing Season [for short 'the KMS'] 2010-11 to petitioner No.1 but on account of some unforeseen circumstances, it could not deliver the entire quantify of rice and was thus not allotted the paddy for the next KMS 2011-12 as there was a shortage of 10,464.08 Qtls of rice towards respondent No.3 and in order to clear the default, the out-coming partners of petitioner No.1 deposited ₹2.10 crores (aprox.) as default amount in lieu of 10,464.08 Qtls of rice @ ₹2004.40 per quintal including VAT. It is alleged that after receiving the default amount, respondent No.3 issued a 'No Objection Certificate' dated 4.10.2012 and thus respondent No.3 has no objection regarding allotment of paddy to petitioner No.1 for KMS 2012-13. It is further alleged that after the retirement of the aforesaid three partners, it was categorically mention in the retirement deed that the continuing partners have taken over all the determined assets and liabilities of the firm as on 9.10.2012 and thus they are not liable for the demand raised by respondent No.3 of ₹96 lacs (approx.), on account of audit observations in respect of KMS 2010-11. The petitioners had allegedly filed a reply to the demand notice (Annexure P-5) dated 31.8.2015 in which they have alleged only that the present petitioner Nos.2 and 3 have joined petitioner No.1 on 20.9.2012 and are not liable for the liabilities determined thereafter.

Learned counsel for the respondents has submitted that the demand has been raised because of an audit observation and if petitioner No.1 did not pay the demand then it would not be recommended for allotment of paddy. He has also referred to the provisions of the policy that no defaulter rice mill can be considered for allotment/provisional registration. He has also submitted that even as per Clause 3 of the retirement deed, petitioner No.2 and 3 are at least proportionally liable to pay the dues raised by respondent No.3.

I have heard learned counsel for the parties and perused the record with their able assistance.

Basically, learned counsel for the petitioner has argued that after the retirement of three other partners from the partnership of petitioner No.1-firm on 9.10.2012, they are liable for any liability of the assets and liabilities of the firm as they have taken over all the determined assets and liabilities of the firm as on 9.10.2012 whereas, the amount in question has been determined in the year 2015 and conveyed to the petitioners vide demand notice dated 31.8.2015 (Annexure P-5).

There is no dispute that the present petitioners No.2 & 3 were partners of the erstwhile firm in terms of the partnership deed dated 20.9.2012 and were continuing partners after the retirement of other three partners as per retirement deed dated 9.10.2012 but in the said retirement deed they had specifically owned the liability of the erstwhile firm which may arise in future to the extent of their share in the profits and losses. In this regard, it may be pointed out that in Clause 3 of the retirement deed, it is specifically mentioned that "*in case of any asset or liability which is not determined as on 9.10.2012 and which may arise in future pertaining to their old partnership period, all the parties to this deed shall be proportionately liable for the same to the extent of their share in the profits and losses in the partnership as constituted by them*".

Thus, petitioners No.2 and 3 cannot absolve themselves of their liability, which has now arisen in the year 2015, in view of the categoric provision made in the retirement deed, which has already been referred to above. The respondents are thus justified in asking for the amount, which is liable to be paid by the petitioners, for the KMS 2010-11, as per the audit observations, the authenticity of which has not been challenged by the petitioners as they have taken the shelter of the provision of retirement deed to contend that they are liable to own the liabilities of the erstwhile firm which was determined as on 9.10.2012 and not beyond that.

Thus, in view of the aforesaid discussion, I do not find any reason to interfere in this petition and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

19.09.2016
Vivek

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*