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

**CWP No.23885 of 2015**
**Date of decision:30.11.2016**

M/s Punjab Rice Mills ...Petitioner

Versus

State of Punjab and others ...Respondents

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Deepak Gupta, Advocate,
for the petitioner.

Mr. Anant Kataria, DAG, Punjab.

Mr. Sumit Jain, Advocate,
for respondents No.3 & 4.

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**Rakesh Kumar Jain, J.**

The petitioner-firm has challenged the order dated 31.10.2014 passed by the District Manager, Markfed, Sangrur and dated 03.11.2014 by the Chief Manager, Markfed, Chandigarh and has prayed for issuance of a direction to issue No Dues Certificate to the petitioner and to allot paddy for the year 2015-2016.

In brief, in the year 1994-95, the petitioner-firm leased out its premises to M/s. Sardar Rice Mills for a period of one year, which was allotted to the Markfed and the petitioner-firm stood as guarantor for the lessee to make good the losses. M/s. Sardar Rice Mills failed to mill the paddy in terms of the milling agreement and the Markfed referred the matter to the Arbitrator, who awarded ₹28,58,089/- on 24.08.2007 in favour of

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Markfed. The Markfed filed execution for recovery of ₹82,04,979/- including interest upto 30.11.2007 and as per Clause 11H(d) of the Custom Milling Policy for the Kharif Marketing Season 2015-16, if a rice miller stood as a guarantor for any other miller against whom the arbitration proceedings are initiated on account of non-delivery of rice relating to the custom milling or levy rice pertaining to any crop year, then the said miller shall not be considered for allotment until such miller for whom guarantee was furnished, clears the default of the concerned agency along with penal interest.

The allotment of paddy to the petitioner-firm was, thus, declined vide orders dated 31.10.2014 and 03.11.2014, which are under challenge on the ground that the miller is not a defaulter.

Counsel for the petitioner has submitted that the petitioner-firm was allotted paddy for the purpose of milling for the years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 but this year, i.e. for the season 2015-2016, the respondent-Markfed has not given No Dues Certificate on the ground that the dues of the year 1994-1995 of M/s. Sardar Rice Mills have not been paid despite the award passed by the Arbitrator and the execution filed by the Markfed in which property of the petitioner-firm to the extent of 78 Kanal 07 Marlas has also been attached in favour of the Markfed.

Counsel for the petitioner has submitted that the petitioner-firm itself was never a defaulter and should not be penalized for the default of the lessee-firm for whom it stood as a guarantor especially when it has been allotted paddy in the past years.

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On the other hand, counsel for the respondents has submitted that the allotment of paddy to the petitioner-firm in the past would not condone the liability of the petitioner to make good the losses suffered by the Markfed at the hands of the lessee for whom the petitioner-firm stood as a guarantor and so far, the amount awarded by the Arbitrator has not been paid either by the lessee or the guarantor. In this regard, he has referred to Clause 3(xv) of the policy defining "defaulter" and Clause 11-H(d) of the policy, which read as under:-

> "3. **DEFINITIONS:-**
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> (i) to (xiv) xxx xxx xxx xxx
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> (xv) **"Defaulter"** means a mill/miller who is yet to clear the entire dues of rice and/or settle the accounts, of any procuring agency/agencies of the previous year(s) and as detailed in Clause 11(l)."
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> "11. **ALLOTMENT OF RICE MILLS:-**
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> A. to G xxx xxx xxx xxx
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> H. No defaulter rice mill shall be considered for allotment/provisional registration. The default may be on the following counts:-
>
> a. to c. xxx xxx xxx xxx
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> d. The rice miller(s) who stood guarantor(s) for any other miller against whom a police/court case is registered or arbitration proceedings are initiated on account of embezzlement and/or on account of non-delivery of rice relating to custom milling or levy rice pertaining to any crop year, shall not be considered for allotment until such miller for whom guarantee was furnished, clears the default of the concerned agency along with penal interest at the rates for the relevant year(s) as decided by the Government from time to time."

I have heard learned counsel for the parties and perused the available record, from which it transpires that there is no denial on the part of the petitioner-firm that it had leased out the rice mill to M/s. Sardar Rice

Mills in the year 1994-95 and took guarantee to pay on its behalf any amount due to the Markfed. It is also not denied that by virtue of an award of the Arbitrator, the said lessee was required to pay the dues to the Markfed but despite execution, neither the lessee nor the guarantor paid the said amount, though the petitioner was assigned the job of milling in the past years but in view of Clause 11H(d), reproduced here-in-above, the petitioner is not entitled to the allotment of paddy until and unless the default is cleared either by the lessee or the petitioner-guarantor.

Learned counsel for the petitioner has failed to cite any law to the effect that in case the respondent-Markfed had allotted paddy in the previous years despite the default, Clause 11H(d) cannot be invoked against it.

Thus, in view of the aforesaid facts and circumstances, I do not find any merit in the present case and hence, the same is hereby dismissed.

**November 30, 2016** **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No
Whether Reportable: Yes/No