

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

FAO-3190-2011 (O&M)

Date of decision : 20.09.2016

Punjab State Warehousing Corporation and another

... Appellants

Versus

M/s Laxmi Rice Industries and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.D.S. Sukhija, Advocate
for the appellants.

Mr. Atul Goyal, Advocate for
Mr. Parvez Chugh, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The appellants-Punjab Punjab State Warehousing Corporation (for short 'Corporation') are aggrieved of the impugned order dated 04.11.2010, whereby the objections on behalf of the Miller filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') for setting aside the Award dated 23.12.2005, have been allowed on the ground that the claim was falling under excepted clause of the agreement.

Mr. A.D.S. Sukheja, learned counsel appearing on behalf of the appellants-Corporation submits that the Arbitrator rendered the Award on 23.12.2005, whereas the objections have been filed on 07.08.2006. The objections were, thus, not filed within the provisions of Sub-Section 34(3) of the 1996 Act i.e. $90+30 = 120$ days and therefore, were barred by law of

limitation. No doubt, the opportunity to lead evidence was availed, but the fact remains that it was not an *ex parte* award and the Miller was aware of the Award. Feigning ignorance about the Award and by taking of the cause of action in the month of May, 2006 was nothing, but a ploy to cover up the limitation, which is not permissible in law.

Per contra, Mr. Atul Goyal for Mr. Parvez Chugh, learned counsel appearing on behalf of respondent No.1 submits that there is no evidence brought on record as to whether the Award was sent by Registered Post. Nothing prevented the appellants-Corporation to place on record the material i.e. postal receipt etc. to prove that the Award was sent on a particular date and the objections have been brought out of the period of limitation. There is no compliance of the provisions of Section 31 (5) of the 1996 Act, thus, urges this Court for dismissal of the appeal.

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

It would be apt to reproduce the relevant part of the Award which reads thus:-

“But as mentioned above none of the respondent has come to rebut this claim of the claimant, so I am constrained to accept the claim of the claimant-Corporation for want of rebuttal. So accordingly award is given.

In the circumstances, I pass an award amounting to ₹ 68,87,349/- as on 31.3.2003 in favour of the claimant and again the respondent @ 21% interest as per affidavit/revised claim of the claimant. The respondent had agreed to rate of interest @ 21% as per agreement and therefore, the claimant is entitled to the claim amount with interest @ 21% till the filing of the petition. The claimant shall be further entitled to

interest @ 21% upto the date of realization of the arbitral amount from 1.4.2003 till the realization. Copy of the award shall also be sent to respondent miller through registered post or by Courier for compliance.

It may be added here that before passing the award the claimants filed the another revised claim stating that the Government of India has conveyed the final rates (again) for the custom milling rice of crop year 2001-02 copy of which is Ex.A-1 and in statement of accounts, copy Ex.A-2 revised the claim in which the claimant reduced the claim to ₹ 65,39,590/- I have gone through the statement of accounts and letter of Govt. Ex.A-1 and find force in the same. Accordingly, I pass an award of ₹ 65,39,590/- instead of ₹ 66,87,349/- as per revised statement of claim and additional affidavit of the claimant Shri Gurmit Singh, DM, PSWC Ferozepur as on 31.03.2003 in favour of the claimant and against the respondent @ 21% interest as per affidavit revised claim of the claimant. The respondent had agreed to rate of interest @ 21% as per agreement and therefore, the claimant is entitled to the claim amount with interest @ 21% till the filing of the petition. The claimant shall be further entitled to interest @ 21% upto the date of realization of the arbitral amount from 1.4.2003 till the realization”.

There is no compliance of sub-Section 5 of Section 31 of the 1996 Act that the Arbitrator has to supply the signed copy of the award. Since, the Miller after appearance had proceeded *ex parte*, nothing prevented the Arbitrator or the appellants to send it by registered post and place on record the copy in order to support the plea of limitation. Having not brought on record any evidence, I treat the objections to be within limitation as per the cause of action pleaded therein. This view of mine is fortified by the judgment of the Hon'ble Supreme Court in “State of

Maharashtra and others V/s M/s Ark Builders (P) Ltd.” 2011(4) SCC 616.

As regards the case on merits, I am of the view that one of the claims out of many other claims was falling within excepted clause, It would be in the realm/domain of the Managing Director to decide the controversy. If all the wisdom dawned upon the appellants, they had withdrawn the aforementioned claim and continued to press the remaining claims. Having failed to do so, the claims could not be filed and dealt with in pieces, rightly so, the Objecting Court had observed that the claims were falling within excepted clause. Nothing prevented the appellants to seek the remedy strictly as per the terms and conditions of the agreement for the relevant crop year i.e. 2001-02. The re-appreciation of the evidence, even if the different opinion is required to be found, is not permissible in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Navodaya Mass Entertainment Ltd. V/s J.M. Combines” (2015) 5 SCC 698.** Neither the Objecting Court nor this Court can sit in the arm chair of the Arbitrator and re-appreciate the evidence and treat the objections as an appeal.

For the foregoing reasons, no ground is made out for interference and accordingly, the appeal is dismissed.

20.09.2016
yogesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned ☒ Yes/ No

Whether Reportable ☒ Yes/ No