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

**FAO-6452-2010 (O&M)
Date of decision : 09.02.2016**

Punjab State Warehousing Corporation, Chandigarh

...Appellant

Versus

M/s Awla Rice Mills Guru Har Sahai and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Anjali Khosla, Advocate
for the appellant.

Mr. Sandeep Khunger, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant is aggrieved of the order dated 11.03.2010 dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act'), whereby, the Award dated 05.08.2005 passed by the Arbitrator declining the claim on the premise that the Agreement in question was not signed, was sought to be set aside.

Ms. Anjali Khosla, learned counsel appearing on behalf of the appellant submits that even if the agreement is not signed by one of the party, the act and conduct, much less, other documents exchanged between the parties, would lead to an irresistible conclusion that the parties intended to enter into an agreement, containing the arbitration clause, and therefore, rightly so, the dispute viz-a-viz the non supply of the custom milled rice had arisen and the matter was referred to Arbitration. The provisions of Section 7 of the 1996 Act shall not apply. In support of her contentions, he relies upon the two judgments of Hon'ble Supreme Court in **"Trimex International FZE Ltd., Dubai V/s Vedanta Aluminium Ltd. India" 2010 (1) JT 474** and in **"M/s Unissi (India) Pvt. Ltd. V/s P.G. Institute of Medical Education and Research" 2008 (4) RCR (Civil) 678.**

Mr. Sandeep Khunger, learned counsel appearing on behalf of the respondents, submits that this Court in **FAO No.2173 of 2011**, titled as **"Punjab State Warehousing Corporation, Chandigarh V/s M/s Vohra Agro Pvt. Ltd., Guru Har Sahai, District Ferozpur and another"**, decided on 24.09.2015, has already held that in such type of cases, where there is no agreement, appeals filed by the Punjab Warehousing Corporation had already been dismissed. He further submits that Mr. Gurmeet Singh, District Manager appeared as witness and admitted that agreement, alleged to have been entered into between the parties,

which was not signed and rightly so, the Arbitrator declined the claim. The objections were not falling within the parameters of the Section 34 of the 1996 Act.

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

I am of the view that this Court in **FAO No.3072 of 2010** titled as **"The Punjab State Civil Supplies Corporation Ltd. and another V/s M/s Jai Shiv Bhole Rice Mills and others"** and in **FAO No.2173 of 2011**, titled as **"Punjab State Warehousing Corporation, Chandigarh V/s M/s Vohra Agro Pvt. Ltd. Guru Har Sahai, District Ferozpur and another"** while dealing with the identical situation dismissed the both the appeals filed by the PUNSUP and Punjab State Warehousing Corporation by referring to the provisions of Section 7(4)(c) of the 1996 Act, which reads thus:-

"7. Arbitration agreement-

xxx

xxx

xxx

(4) An arbitration agreement is in writing if it is contained in-

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(C) an exchange of statements of claim and decree in which the existence of the agreement is alleged by one

party and not denied by the other”.

The aforementioned judgments also relate to a correspondence having been entered into between the parties prior to entering into the actual agreement. However, the correspondence placed on record do not indicate that there was actual supply of the material to the Miller which would show the party had intended to enter into an agreement. Even otherwise, no receipt of the Miller showing receipt of the paddy for custom milling, has been placed on record.

Keeping in view the aforementioned facts, no ground is made out for interference in the order, accordingly, the appeal is dismissed.

09.02.2016
yogesh

(AMIT RAWAL)
JUDGE