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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 18.10.2016

1. FAO-3132-2013 (O&M)

Punjab Agro Food Grains Corporation Ltd.

... Appellant

Versus

M/s Jyoti Rice and General Mills and others

... Respondents

2. FAO-3133-2013 (O&M)

Punjab Agro Food Grains Corporation Ltd.

... Appellant

Versus

Ajay Bhandari and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anupam Singla, Advocate
for the appellant(s) in both the appeals.

Mr. Sanjiv Gupta, Advocate
for respondent No.5 in FAO-3132-2013 and
for respondent No.1 in FAO-3133-2013.

Mr. Ish Mahajan, Advocate
for respondent Nos.1 and 2 in FAO-3132-2013 and
for respondent Nos.2 to 4 in FAO-3133-2013.

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing ***FAO No.3132 of 2013*** titled as ***"Punjab Agro Food Grains Corporation Ltd. V/s M/s Jyoti Rice and General Mills and others"*** and ***FAO No.3133 of 2013*** titled as ***"Punjab Agro Food Grains Corporation Ltd. V/s Ajay Bhandari and others"***, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') at the instance of the Miller for setting aside the award dated 08.01.2008 have been allowed on the premise that the Arbitrator did not have the jurisdiction owing to the excepted clause.

Mr. Anupam Singla, learned counsel appearing on behalf of the appellant(s)-Punjab Agro Food Grains Corporation Ltd. (for short 'Corporation') submits that the Objecting Court has misconstrued and misread the terms and conditions of the Clause Nos.11, 23 and 24 as none of the clauses envisages the resolution of dispute/adjudicatory forum by the Managing Director, in case of shortage of rice as it was only in respect of dues of the Miller. Even otherwise, the objections were not falling within the realm of Section 34 of the 1996 Act.

Mr. Sanjiv Gupta, Advocate for respondent No.5 in FAO-3132-2013 and for respondent No.1 in FAO-3133-2013 and Mr. Ish Mahajan, Advocate for respondent Nos.1 and 2 in FAO-3132-2013 and for respondent Nos.2 to 4 in FAO-3133-2013, submit that the objections were squarely falling within the realm of Section 34 of the 1996 Act as the Arbitrator did not have the jurisdiction to adjudicate the dispute as the claim is falling within excepted clause. The language of the provisions in clause 23 is sacrosanct which provides the adjudicatory forum by the Director Food and Supplies/Managing Director.

Mr. Sanjiv Gupta, learned counsel further submits that Ajay Bhandari-respondent No.5 has never been a guarantor as claimed by the appellants-Corporation, thus, urges this Court for affirming the findings under challenge.

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

For the sake of brevity, Clause No.11, 23 and 24 of the agreement reads thus:-

"11. The miller shall deliver rice on the total quantity of paddy stored with him, at regular intervals, not later that 31-3-2006. The miller shall ensure milling of paddy and delivery of rice as per the following schedule:-

October, 2005	*10%*
November/December, 2005	*20%+20%*
January/February, 2006	*20%+20%*
March, 2006	*10%*

In case the miller fails to adhere to the above monthly schedule either the paddy will be lifted from his premises at his risk and cost to toher mill(s) for milling and the miller will be charged 12% interest for the late delivery of rice/late submission of documents to the concerned agency.

23. The miller must submit "fortnightly" bills in the prescribed performa to the agency within seven days of the close of the fortnight or which the bill pertains and such bill shall be supported by the following documents.

A balance sheet in triplicate prepared by the millers to show the balance of paddy and rice brought forward from the previous fortnight or the quantity of paddy received during the fortnight the quantity of paddy milled and products obtained there from during the fortnight and the balance of paddy and rice in stocks on the last day of fortnight for which the bills are prepared. The payment of all such bills be made by the agency concerned after the completion of all milling operations.

In case of any dispute between the rice miller and the procuring agency, the Director Food and Supplies/Managing Director of the State Agencies will afford an opportunity to the miller(s) to present his case in respect of dues, the decision of DFS/MD shall be final.

24. All the disputes and difference arising out of or in any manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for the contract) shall be referred to the sole *arbitrator of the Director/Managing Director or any person appointed by him in this behalf. There will be no objections to any such appointment that the person appointed is or was an employee of Food and Supplies Department, Punjab/Agency or that he had to deal with the matter to which the contract relates and that in the court of his duties such an employee of the Food and Supplies Department, Punjab/Agency had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract t hat in the event of the arbitrator being transferred or vacating his office or being unable to act for any reason, the Director/Managing Director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with reference from and the stage where it was left by his predecessor.*

Provided further that any demand for arbitration in respect of any claim(s) of the miller, under the contract shall be in writing and made within one year of the date of completion or expiry of the period of contract, if the demand is not made within the period, the claim(s) of the miller shall be deemed to have been waived off and released of all liabilities under the contract in respect of these claims.

The cost for and in connection with the arbitration shall be discretion of the arbitrator who may make suitable provisions for the same in his award."

On perusal of Clause 23, it is evident that in case there is a dispute with regard to the rice miller or the procuring agency qua dues, the Director, Food and Supply/Managing Director of the State/Agencies will afford an opportunity to the Miller(s), whereas the agreement entered into between the agencies and the Miller, envisages the clause of adjudication by the concerned Managing Director i.e. in case of shortage of rice mills. In my view, the Objecting Court has misconstrued the aforementioned provisions by imagining parameters with the other agreements. The aforementioned clause only deals with the dues of the Miller and not with regard to the “Shortage Of Supply”, thus, there cannot be said to be within the excepted clause. In my view, the Objecting Court has misinterpreted the terms and conditions of the agreement, thus, the matter is required to be reexamined.

At this stage, Mr. Sanjiv Gupta, learned counsel submits that his client i.e. respondent No.5-Ajay Bhandari may also be given a chance to represent his case before the Executing Court to consider the plea of fraud.

For the foregoing reasons, the impugned order is hereby set aside and the matter is remitted back to the Objecting Court to decide the objections afresh.

Liberty is also granted to the respondent No.5-Ajay Bhandari to represent his case which shall be considered by the Executing Court in accordance with law.

Learned counsel for the parties and as well as the parties are directed to appear before the Objecting Court on 01.12.2016.

With the aforesaid observations, the appeals stand disposed of.

(AMIT RAWAL)
JUDGE

18.10.2016
Yogesh Sharma

Whether speaking/reasoned	**Yes/** ✓	**No**
Whether Reportable	**Yes/**	**No** ✓