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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4181-2013 (O&M)
Date of decision : 22.09.2016

Punjab State Civil Supplies Corporation Ltd. and another
... Appellants

Versus

M/s Cooperative Rice Mills and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Sabharwal, Advocate
for the appellants.

Mr. Deepak Arora, Advocate
for respondents Nos.1 to 3.

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AMIT RAWAL, J. (ORAL)

The appellant-PUNSUP is aggrieved of the impugned order dated 14.02.2013, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') have been accepted and the Award dated 05.11.2007 allowing the claim of the PUNSUP has been set aside on the ground that it was falling within the excepted clause.

Mr. Deepak Sabherwal, learned counsel appearing on behalf of the appellant-PUNSUP has drawn the attention of this Court to the claim statement (Annexure A-1) to contend that it was not the case of non-delivery or short supply of milled rice thereof, jurisdiction of which lies with the Managing Director, but the claim pertained to the cost of bags and tax which as per Clause 6 (iii) of the agreement, erroneously relied by the Objecting Court, can not be pressed in service. Even, the finding rendered the shortage of supply of rice is neither here nor there, much less, commensurating the claim, thus, urges this Court for setting aside the impugned order under challenge.

Mr. Deepak Arora, learned counsel appearing on behalf of the respondent(s)-Miller submits that claim of the procuring agency was falling within excepted clause and there is a gross mis-interpretation of the terms and conditions of the agreement. The objections were squarely falling within the realm of Section 34 of the 1996 Act as the Award was not as per the terms and conditions of the agreement and rightly so, the objections have been accepted by the Objecting Court, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the submissions of Mr. Deepak Sabherwal. For the sake of brevity, the claim of the claimant before the Arbitrator reads thus:-

Statement of Account of M/s Cooperative Rice Mills

Variety (1)	*Paddy Stored (2)*	*Paddy Sold (3)*	*Net balance of Paddy (4)*	*Driage 2% (5)*	*Net paddy with Millers (6)*	*Rice due (7)*	*Rice delivered to FCI (8)*	*Balance Rice (9)*
	(Bags) 25335 (Qty.) 16467.75		*(Bags) 25335 (Qty.) 16467.75*	*(Qty.) 329.35 (Bags) 25335*	*(Qty.) 16138.40*	*(Qty.) 10812.73 (Bags) 11412*	*(Qty) 10813.15*	*0.42*

	Particulars	*Debit (Amount)*			*Amount Payable Particulars*	*Debit (Amount)*
1	*Cost of Balance Rice at one half time of the final rate fixed by the Govt. of India vide letter No.D/22/CHD/ PSH/St. Agencies/94-95/ Volume-II dated 6.2.1997*	*-*		*1*	*Milling Charges*	*145245.60*

2	*Cost of Bags lying with the Miller as approved by Food and Supply Deptt.*	*186707.43*		*2*	*Double line machine stitching*	*14265.00*
3	*Sales Tax @ 4.4. % on bags lying with Miller*	*8215.00*		*3*	*Conversion benefit against the delivery of Rice*	
4	*T.D.S. @ 2.3%*	*3341.00*		*4*	*Cost of Excess Rice delivered by the Miller*	*266.02*
5	*Quality Cut*	*71747.37*		*5*	*Any other amount deposited*	*37853.17*
6	*Audit Recovery*	*-*		*6*	*Net amount recoverable*	*72381.01*
7	*Other recovery*	*-*			*Total*	*270010.80*
8	*Cost of Wooden Crates*	*-*				
9	*Cost of Polythene Covers*	*-*				
10	*Cost of Polythene Sheets*	*-*				
11	*Cost of Mesh-nets*	*-*				
12	*Others, if any*	*-*				
	Total	*270010.80*				
	Net recoverable	*72381.01*				
	Interest from 1.7.95 to 30.11.97 @ 21% p.a. Compounded quarterly	*46349.92*				
13	*Add interest on the late delivery Rice*	*-*				
	Total amount recoverable as on 30.11.97	*118730.93*				
Note: From 1.12.97 will be charged @ 21% p.a. Till the date of realization						

The aforementioned claims do not fall within excepted clause i.e. Clause 6 (iii) extracted by the Objecting Court. It is only on account of shortage of rice being not provided within time bound period and the adjudication of the same would vest with the Managing Director. In my view, there is gross mis-interpretation of the terms and conditions of the agreement and claim and therefore, the order under challenge is not sustainable as objections were not falling within the realm of Section 34 of the 1996 Act.

For the foregoing reasons, the appeal is allowed and the impugned order dated 14.02.2013 is hereby set aside and the Award dated 05.11.2007 of the Arbitrator is upheld.

(AMIT RAWAL)
JUDGE

22.09.2016
yogesh

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