

FAO No.741 of 2014 (O&M)

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

FAO No.741 of 2014 (O&M)

Date of decision:27.10.2016

M/s Mithan Lal Kalra Rice and General Mills

... Appellant

Vs.

Punjab State Civil Supplies Corporation (PUNSUP)
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Nakul Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.2382-C of 2014

For the reasons stated in the application, duly supported by an affidavit, delay of 05 days in filing the appeal is condoned.

C.M. stands disposed of.

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The appellant-Miller is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”) for setting aside of the arbitration Award dated 30.08.2006.

The main thrust of the arguments of Mr. Nakul Sharma, Advocate is that respondents-contractor filed the claim on the basis of the alleged agreement dated 11.08.1997 stated to have entered into between the parties on behalf of the partnership firm. One Surinder Kumar Kalra was the Power of Attorney holder on behalf of other partners. As per the terms and

conditions of the agreement, the appellant was bound to supply the entire quantity of paddy after shelling to the FCI in PUNSUP account within a stipulated time, i.e., 31.08.1997. The constitution of the partnership firm on his demise was changed in the year 1994 and thereafter, other partner in the year 1999 had also died. In this regard, the assistance of the Expert was also taken to examine the signatures on the agreement to sell and as per the report, there was no agreement. Thus, the claim was not sustainable. This point was raised before the Objecting Court but the same has erroneously been rejected. The Arbitrator has relied upon various other letters to conclude that the Miller had supplied the paddy. All these aspects were falling within the realm of Section 34 of 1996 Act, thus, there is illegality and perversity in dismissing the objections.

I have heard learned counsel for the appellant and appraised the paper book and of the view that the provisions of Section 7(3) of 1996 Act do only envisage the agreement in writing but it also envisage the exchange of letters.

It is a matter of record that the appellant – Miller had written a letter dated 7.7.1997 (Ex.1) extracted in the impugned award, and as well as letter dated 08.02.1998 (Ex.II), whereby, the details of the paddy bags and as well as the quantity received, referred to.

It is also a matter of record that PUNSUP had proved on record the copy of the transportation bill claiming the freight for transportation of 15300 bags weighing 9289.65 quintals of paddy from Bhagapurana to Mukatsar in its mills premises during the period from 09.07.1997 to

14.09.1997. It was incumbent upon the Miller to intimate the number/details of partners. Even otherwise, as per the provisions of Section 9 of the Partnership Firm Act, all acts done by a partner bounds all the partners except the exceptions carved out in Section 19(2) of Partnership Act. All these facts have been taken care of by the Objecting Court, and as well as, by the Arbitrator.

As per the ratio decidendi culled out by the Hon'ble Supreme Court in **National Highways Authority of India vs. Cementation India Limited 2015(3) R.A.J.1** and **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698**, it has been found that if the Court after examining the objections found/observed that different opinion is required to be formed, but the same cannot be done until and unless there is a “Patent Illegality”, on re-appreciation of the evidence.

The claim was filed in August 2000 and the letters indicated above are of 1998 showing the acknowledgment, therefore, there is no force and merit in the submission of Mr. Sharma, to urge that claim petition was barred by law of limitation.

No ground is made out for interference in the impugned order.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

October 27, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No