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M/s Satguru Flour Mills, Bhikhwind, District Amritsar
Versus
Punjab Agro Industries Corporation Ltd. & another

Present: Mr.Ashish Aggarwal, Senior Advocate with
Mr.Vaneet Soni, Advocate,
for the applicant-appellant.

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By way of present application, review of the order dated 28.1.2016 has been sought.

Mr.Ashish Aggarwal, learned Senior Counsel assisted by Mr.Vaneet Soni, Advocate, appearing on behalf of the applicant-appellant has raised many points, which are summarized herein below:-

There is an error apparent on record, for, this Court has failed to advert to the fact that the Arbitrator did not have the jurisdiction in view of Clause 9 (iii) of the agreement while granting interest @ 21% and 30% on account of short fall, which was falling within the excepted clause and the remedy, if any, was with the Managing Director. In this regard, an objection to Clause 9(iii) was also taken in the reply submitted before the Arbitrator. The Arbitrator has failed to deal with the same. The counter claim filed on behalf of the appellant has been dismissed without assigning any reasons and, thus, there is no compliance of the provisions of sub-section (5) of Section 31 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") and in view of the non-adherence to the terms and conditions of the agreement, award is also liable to be set-aside in view of the provisions of sub-section (3) of Section 28 of 1996 Act. The Arbitrator was on the penal of the Corporation and, therefore, the element of biasness cannot be ruled out.

I have heard the learned counsel for the applicant-appellant and of the view that the Arbitrator did not grant the element of interest @ 21% and 30% on the ground that he did not have the jurisdiction. No specific objection qua the jurisdiction of the Arbitrator was taken. In my view, the appellant-miller has waived right as envisaged under Section 4 of 1996 Act. A reference has been made during the course of the arguments to the testimony of the claimant for claim and counter claim. On going through the documents Ex.A1 to Ex.A8 etc., it is found that the same are not in support of the counter claim, which has been sought on account of the damages, loss of reputation and business and non-payment of the milled rice supplied to the FCI on account of the procurement agency. In cross-examination, the miller had feigned ignorance about the delivery of rice. No transportation receipt or any gate passes or other documents have been shown, vis-a-vis the claim regarding supply of milled rice. Same is the position with regard to the claim qua damages and the loss of business. Once the claimant has failed to discharge the onus by bringing on record the direct or corroborative evidence, the findings rendered by the Arbitrator to the extent that the claimant has failed to lead any evidence in support of the counter claim is perfectly legal and justified. There is no error apparent on record. An attempt has been made to re-open the entire matter.

The Review application is accordingly dismissed.

May 26, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**