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

**(1) F.A.O. No.188 of 2013 (O&M)**

M/s Vishnu Rice Trading Company, Kapurthala and others

.......... Appellants

*Versus*

Punjab State Civil Supplies Corporation Limited (PUNSUP) and others

.......... Respondents

**(2) F.A.O. No.4127 of 2013 (O&M)**

Punjab State Civil Supplies Corporation Limited (PUNSUP)

.......... Appellant

*Versus*

M/s Vishnu Rice Trading Company, Kapurthala and others

.......... Respondents

**Date of Decision: 04.09.2017**

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH**

Present: Mr. S.K. Singla, Advocate
for the appellants (in FAO No.188 of 2013) and
for respondent Nos.1 and 3 to 6 (in FAO No.4127 of 2013).

Respondent No.2 reported to have died
(in FAO No.4127 of 2013).

Mr. Deepak Sabherwal, Advocate
for the appellant (in FAO No.4127 of 2013) and
for the respondents (in FAO No.188 of 2013).

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**JASWANT SINGH, J. (ORAL)**

This common order shall dispose of both the aforesaid first appeals emerging out of the common Award dated 25.07.2005, passed by Sh. B.R.Bansal, Sole Arbitrator, PUNSUP, Chandigarh.

FAO No.188 of 2013 has been filed by Rice Miller, whereas FAO No.4127 of 2013 along with an application bearing CM No.16685-CII of 2013 for condonation of 262 days' delay in filing the appeal has been filed by the PUNSUP.

The Rice Miller was awarded a contract on 21.09.1994 for custom milling of paddy for the Crop Year 1994-1995. The entire quantity of rice milled was to be supplied to the F.C.I. in the account of PUNSUP within the stipulated time. The Rice Miller was entitled to shelling charges @ ₹ 9/- per quintal apart from stitching charges of Gunny Bags at the agreed rates. Since there was shortfall of supply of rice, the PUNSUP invoked the arbitration clause by appointing the Arbitrator. Initially, a higher claim was made by PUNSUP, however, concededly, the claim was reduced to ₹ 10,65,673/- with interest calculated at the bank rate. The Rice Miller contested the claim of PUNSUP by asserting that the entire fault was of PUNSUP leading to short supply.

The Arbitrator, vide Award dated 25.07.2005, held that the claimants-PUNSUP are entitled to recover a sum of ₹ 3,46,708.61/- with interest at the bank rate prevalent with effect from 01.07.1995. The relevant Para Nos.11 and 12 of the Award read as under:-

> *“ **11.** The respondent also examined Shri Ashok, RW-2, who deposed that he is working as clerk with the respondent miller and is dealing with the fieldwork with procurement agencies. Crop year 1994-95 was abnormal season for paddy crop as the percentage of broken rice was higher due to excess of moisture. Resultantly, the matter was taken up at the higher level and as a consequence thereof the existing relaxation of 23% broken rice was extended to 28% and thereafter the maximum delivery of rice was made. He further added that there was also space problem with FCI. He further stated that the respondent miller delivered saila rice to Punsup at its own, though with their consent. He further stated that he does not remember if the respondent miller ever delivered excess rice to Punsup in 1994-95. During cross examination he admitted that he cannot produce any letter showing the non-availability of space with FCI at Kapurthala during the relevant period. He further admitted that he cannot produce any letter showing that saila rice was acceptable to Punsup. Similarly, he stated that he does not know the recovery percentage of saila rice and other varieties. He further admitted that he does not know anything about the condition of agreement executed between the parties nor he maintains the accounts of the respondent*

*miller. Thus from the statement of this witness also it can be safely inferred that the respondent miller has failed to produce any cogent, convincing and reliable evidence to prove that there was any shortage of space with Punsup for the delivery of the rice. Similarly, it is also clear from the statement of this witness that the saila rice was delivered by the miller to the FCI at its own without the consent of Punsup. Thus from the entire evidence led by the miller, it can be safely held that the miller has failed to prove that there was any shortage of space with the FCI for the delivery of milled rice. Similarly, the miller has also failed to prove if the saila rice was delivered to the FCI with the consent of Punsup. Similarly, the miller has also failed to prove if any excess rice was delivered to FCI in the account of Punsup as alleged in its reply. Now the question arises as to what is the exact quantity of the rice short-delivered by the respondent to the FCI in the claimant's account. In this respect it may mentioned with advantage that the claimant had repeatedly mentioned in the claim petition, amended claim petition, in all the statements of account proved during the course of evidence that 177.74.000 qntls. of rice was short delivered by the respondent. However, in the revised statement of account the quantity of the balance rice has been shown as 258.05.000 qntls. qua which there is no evidence. In the absence of any evidence to the contrary, it is therefore held that the miller short-delivered 177.74.000 qntls., the cost of which @ Rs.683.80 per qntl. comes to Rs.121538.61 and the same is recoverable from the respondent besides the cost of 50596 bags, sales tax, TDS and the quality cut as detailed in the revised statement of account, the net total of which comes to Rs.10,99,059.61 and after deducting Rs.752351/-, the amount payable to the miller on account of milling charges etc., the net recoverable amount as on 01.07.1995 comes to Rs.346708.61 with interest at the bank rate till realization.*

***12.*** *In view of the forgoing discussion, I make an award to the effect that the claimants are entitled to recover a sum of Rs.3,46,708.61 with interest at the bank rate prevalent from time to time w.e.f. 01.07.1995 jointly and severally from the respondents till realization. Keeping in view, the peculiar circumstances of the case, the parties are left to bear their own costs.* ”

*(emphasis supplied)*

Both the parties, dissatisfied by the Award, filed their objections under Section 34 of the Arbitration and Re-conciliation Act, 1996 (for short “the Act”) before the learned District Judge, Chandigarh, which were dismissed vide a common impugned order dated 24.07.2012. Hence, the present appeals.

The plea raised on behalf of the Rice Miller is that some of the claims set up by the PUNSUP were covered under the accepted Clause of the Agreement and, therefore, the Arbitrator had no jurisdiction to decide upon the same as the jurisdiction of such claims vested with the M.D. of the PUNSUP. The argument is liable to be rejected as no such plea was taken before the Arbitrator. The Rice Miller had fully acquiesced in the proceedings before the Arbitrator, therefore, it cannot now be permitted to be taken up in appeal under Section 37 of the Act. Hence, the same is rejected.

The argument raised on behalf of the PUNSUP is that the awarded amount has not been correctly computed and, therefore, is liable to be set aside. This factual argument has absolutely no basis. A careful examination of the Award reveals that from the actual claim amount of ₹ 10,65,673/-, the conceded amounts payable to the Miller towards milling charges etc. to the tune of ₹ 7,52,351/- as per the agreement have been deducted. The sum thus comes out to be exact amount as determined by the Arbitrator. The interest has been correctly awarded w.e.f. 01.07.1995 i.e. the expiry of the extended date of milling along with the interest at the bank rate.

In view of such findings, no interference is warranted while exercising jurisdiction under Section 37 of the Act.

Accordingly, both the aforesaid appeals are dismissed.

No separate orders are required to be passed in the application for condonation of delay of 262 days in filing the appeal.

**September 04, 2017** **(JASWANT SINGH)**
Gagan **JUDGE**

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