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

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**FAO No.3149 of 2010 (O&M)
Date of Decision : 21.05.2018**

Shri Naresh Kumar Jain

...... Appellant

Versus

The Punjab Civil Supplies Corporation and others

...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. S.S.Salar, Advocate
for the appellant.

Ms. Deepali Puri, Advocate
for respondents No.1 & 2

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AJAY TEWARI, J. (Oral)

This appeal has been filed against the award of the arbitrator and the order of the District Judge, Sangrur dated 19.11.2009 under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') dismissing the objections filed by the appellant against the said award.

The brief facts are that the appellant had entered into a milling agreement for the crop year 1994-1995 with respondents No.1 and 2 to mill 21286.85 qtls. of paddy. This should have yielded 13976.94 qtls. of rice. However, the miller delivered only 3783.07 qtls. of rice upto the due date which resulted in a short fall of 10193.87 qtls. of rice which when converted comes to 15214.74 qtls. of paddy. The appellant also failed to deliver the balance gunny bags. The respondents No.1 & 2 filed a claim praying that it be awarded payment at the rate of Rs.743.80 p.qtl. of rice as per clause 13 (B) (ii) of the contract agreement. The arbitrator upheld the contention of respondents No.1 & 2 and awarded Rs.6771906.20 with interest at bank rate. An application under Section 34 of the Act having been rejected the appellant is before this Court.

The sole contention raised by the learned counsel for the appellant is that the dispute in the present case fell within clause 6 (i) of the contract and was thus an excepted item and could not have been referred to arbitration. This fact has been considered by the arbitrator who has held that the present dispute fell within clause 5 (iii) and not clause 6 (i) of the contract. Clause 5 (iii) and 6 (i) of the contract are reproduced herein below :-

> "*5 (iii) In case there is shortfall in the recovery of rice provided in sub-clause (i) above the miller shall pay to the Punsup the cost of paddy equivalent to the shortfall at the rate of 1-1/2 times the economic cost of paddy.*
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> *6 (i) The entire quantity of rice of all varieties delivered by the Miller to the Punsup shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order, 1983, as amended from time to time and in shy or NOTIFICATIONS issued by the State Government from time to time. The stocks of rice not conforming to the specifications so laid down, shall be liable to rejected to the respect of such quantity of rice which is not found to be within the specifications and the Miller shall be liable to offer fresh stocks of rice conforming to the specifications to the PUNSUP in the event of his failure to supply rice within the prescribed specifications, shall be liable to pay to the PUNSUP for the quantity of rice short supplied at the penal rate of one and half times the economic cost of the converted variety of paddy equivalent to the shortages. The*

decision of the Managing Director, PUNSUP (hereinafter referred to as the Managing Director) in this behalf shall be final."

As per the arbitrator the distinction between clause 5 (iii) and 6 (i) was that clause 5 (iii) operated where no rice was delivered to the respondents No.1 & 2 but clause 6 (i) would operate where there was a shortfall of rice on account of supply of damaged/dis-coloured rice. As per the arbitrator, it was only in that scenario that clause 6 (i) would operate.

In my opinion, the conclusion arrived at by the arbitrator can not be termed to be perverse in any manner.

In the circumstances, I find no ground to interfere.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

21.05.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No