IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2462 of 2005 (O&M)
Date of decision: 25.9.2019

The Punjab State Civil Supplies Corporation Ltd. and others
...Appellants
Versus

Sham Rice Mills
...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Ms. Deepali Puri, Advocate with
Ms. Brea Sandhu, Advocate,
for the appellant.

None for the respondent.

JAISHREE THAKUR, J. (Oral)

1. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (henceforth called **'the Act'** for short) seeking to challenge the order of the Additional District Judge, Chandigarh, dated 30.7.2004, whereby the objections petition filed under Section 34 of the Act by the respondent herein has been allowed.

2. In brief, the facts are that an agreement dated 10.10.1992 was entered into between the appellant—Punjab State Civil Supplies Corporation Ltd. (hereinafter referred to as '**the PUNSUP'**) and the respondent—Sham Rice Mills, Moga. As per the agreement, it was agreed that the respondent—Miller would mill the paddy and deliver the same as per Schedule mentioned in Clause 7 (iii) of the agreement entered between

the parties. There was further a stipulation in Clause 7 (i) that the entire quantity of rice of all varieties, which was to be delivered by the Miller to the FCI in PUNSUP account shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order 1983, as amended from time to time with the stipulation that in the eventuality of failure to supply the rice within the prescribed specifications, the Miller shall be liable to pay to the PUNSUP for the quantity of the rice short supplied at the economic cost of the converted variety of paddy equivalent to the shortages with interest @ 21% w.e.f.1.3.1993. The decision of the Managing Director in this behalf would be final. On account of a dispute that arose between the parties, the matter was referred to an Arbitrator. As per the claim petition filed, the appellants herein claimed interest on late delivery of rice, income-tax on milling charges, cost of balance empty gunny bags and sale tax on the said bags, besides quality cut etc. The Arbitrator allowed the claim of the appellant and held that PUNSUP would be entitled to recover of ₹1,00,897.45 paise, along with interest at the rate of 21% per annum.

3. On the objections filed by the respondent—Miller, the Additional District Judge, Chandigarh, by relying upon the judgment rendered by this Court **Shree Krishna Rice Mills Versus The Punjab State Co-op Supply & Marketing Federation Ltd. 2003 (3) R.C.R. (Civil) 254,** held that the Arbitrator had exceeded his jurisdiction as all the matters under the claim petition were within the excepted matter. In para 7 of the order dated 30.7.2004, the Additional District Judge has taken note of Clause 7 (iii) as a Clause whereby the Managing Director of the PUNSUP

was to decide and settle the entitlement of the appellant in relation to the interest on account of late delivery of rice.

4. Learned counsel appearing on behalf of the appellants herein would contend that the judgment rendered in **Shree Krishna Rice Mills (Supra)** would not be applicable in its totality to the facts of the instant case, since the claim petition had also been filed qua other matters, namely costs of bags, quality cut etc. and there has been misreading of the agreement. It is submitted that Clause 7 (iii) would not be applicable being silent qua referring any matter to the Managing Director.

5. I have heard learned counsel for the appellants and with her assistance have gone through the impugned order as well as the record of the case.

6. The judgment rendered in **Shree Krishna Rice Mills (Supra)** would not be applicable to the facts of the instant case. As per Clause 7 (iii) of the agreement entered into between the parties, which is re-produced as under:-

> "*iii) The miller shall complete delivery of rice within 10 days of issuance of paddy the him and rice due to the State Govt. on the total quantity of paddy issued to him or in joint custody released of at regular interval shall be delivered not later than the 28th Feb. 1993. The miller shall further ensure milling of PUNSUP paddy and delivery of rice in the following manner:-*

October/November	*20%*
December	*26%*
January	*26%*
February	*28%*

> *An interest will be charges @21% from 1.3.1993 on last*

delivery of rice."

clearly does not talk of any matter to be referred to the Managing Director. Clause 7 (ii) of the agreement too is relevant regarding referring the dispute to the Managing Director in case of quality cuts. Moreover, in the case of **Punjab State Civil Supplies Corporation Ltd. & another Versus M/s Shiv Shankar Rice Mills Pvt. Ltd. And another 2013 (5) RCR (Civil) 83**, this Court, while dealing with the similar situation, held as under:-

> *"In addition to the aforesaid, jurisdiction of the Arbitrator was also not barred in the matters adjudicated upon by him. Clause 7(iii) of the agreement refers to the delivery of the rice within stipulated period and provides for payment of interest @ 21 per cent per annum in case of failure. Decision regarding 21 per cent interest had to be taken by the Managing Director. However, in the instant case, PUNSUP claimed interest at Bank rate and not at 21 per cent per annum and, therefore, decision regarding the same was not to be taken by the Managing Director. The aforesaid clause also does not provide that decision regarding cost of short quantity of rice had to be taken by the Managing Director. On the contrary, Managing Director could take decision regarding cost of paddy qua rice which was not found according to specifications. In the instant case, Arbitrator has awarded cost of short quantity of rice and not cost of paddy or one and half times of economic cost of the paddy as stipulated in the agreement. As regards cost of gunny bags, Clause 14 of the agreement provides that rate of gunny bags was to be fixed by the State Government from time to time. However, the decision regarding short return of empty bags was not to be taken by the State Government. Consequently the said matter was also not excepted from the purview of the Arbitrator."*

7. Resultantly, finding that the ratio of the judgment rendered in **M/s Shiv Shankar Rice Mills Pvt. Ltd. (Supra)** is fully applicable to the present case, the appeal is allowed and the impugned judgment of the Additional District Judge, Chandigarh dated 30.7.2004, allowing the objections, is hereby set aside.

25.9.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	No