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

(1) FAO No. 4447 of 2007 (O&M)
Date of decision: 30.4.2019

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

M/s Guru Nanak Rice Mills Talwandi Bhai and another
...Respondents

(2) FAO No. 3757 of 2008 (O&M)

The Punjab State Civil Supplies Corporation Ltd.
...Appellant
Versus

M/s Ahjuja Rice Traders and others
...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Deepak Sabharwal, Advocate,
for the appellant.

None for the respondents.

JAISHREE THAKUR, J.

1. This order shall dispose of the above mentioned First Appeals against Orders, as they arise out of the similar set of facts and involving similar question of law. The appeals have been filed under Sections 37 of the Arbitration and Conciliation Act (for short **'the Act')** seeking to set aside the judgments of the District Judge, passed on applications filed by the respondents under Section 34 of the Act to set aside the award of the

Arbitrator.

2. A few facts need to be noticed in the instant appeals, which are being taken from FAO No. 4447 of 2007. A milling agreement was entered into between the appellants and the Miller on 30.10.1994. On account of a dispute that arose between the parties, the matter was referred to the Arbitrator as appointed by the appellants herein to settle and decide all the disputes in terms of Section 17 of the agreement dated 30.10.1994. The respondent—Miller had filed a claim of ₹51,24,298/-, which was contested by the appellants herein by way of filing a counter claim. The Arbitrator while deciding the dispute came to hold that the appellant—Corporation shall be entitled to recover ₹7,17,131/- plus interest at the bank rate, as admissible from time to time w.e.f. 1.7.1995 till payment in favour of the appellant—Corporation. Both the parties were left to bear their own costs. Aggrieved against the said award, both the Miller and the appellants herein filed objections under Section 34 of the Act and the same were dismissed by the District Judge, Ferozepur by his order dated 2.4.2007. Aggrieved against that order, the appellant—Corporation has filed the instant appeal.

3. Learned counsel appearing on behalf of the appellants herein contends that the Arbitrator as well as the District Judge have failed to take into account that interest at the rate of 21% per annum was to be awarded, whereas the award dated 4.12.2002 allowed a sum of ₹7,17,131 to be awarded along with interest at the bank rate, as admissible from time to time w.e.f. 1.7.1995. It is argued that the Arbitrator has failed to allow the interest as specified in the agreement.

4. None appears on behalf of the respondents. Therefore, this

Court is left with no option but to proceed in their absence.

5. I have heard learned counsel for the appellants and do not find any merit in these appeals. Admittedly, an agreement has been entered between the parties which is available on the record. As per Clause 5 (iii) and 6 (iii) of the agreement, it is specified that in case of short fall in the recovery of rice, the Miller shall pay to PUNSUP the costs of paddy equivalent to the shortfall at the rate of 1-1/2 times the economic cost of paddy and in case the stock of rice is not conforming to the specification so laid down, they shall be liable to be rejected in respect of such quantity of rice, which is not found to be within the specification and the decision of the Managing Director, PUNSUP would be final in this regard. Clause 6 (iii) entails the schedule of delivery of rice, while further specifying that in the event of failure to supply of rice within the stipulated period, the Miller shall be liable for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice and the decision of the Managing Director would be final in this regard. Clause 6 (iii) is re-produced as under:-

> *"The Miller shall complete delivery of rice within 10 days of issuance of paddy to him and rice and rice due to the PUNSUP on the total quantity of paddy issued to him or in joint custody released at regular interval shall be delivered not later than the 28th February, 1995. The Miller shall further ensure milling of Punsup paddy and delivery of rice in the following manner:-*

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

> *In the event of his failure to supply rice within the stipulated period he shall be liable to for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of the Managing Director in this behalf shall be final"*

In the case of **Shree Krishna Rice Mills Versus The Punjab State Co-op. Supply & Marketing Federation Ltd. 2003 (3) R.C.R. (Civil) 254**, it has been held by this Court that any dispute regarding economic costs and award of interest, as mentioned in the agreement, is to be decided by the Managing Director himself and there is no need to refer the matter to an Arbitrator. This judgment has been followed subsequently in **District Food and Supplies, Controller, Moga Versus M/s Aggarwal Rice Mills, Baghapurana, Distt. Moga 2010 (1) R.C.R. (Civil) 756** and catena of other judgments. Since it has been held that the questions of short falls of recovery of rice, interest etc. being excepted matters, is to be decided by the Managing Director himself, there is no occasion for the appellants herein to challenge the award of the Arbitrator or the order of the District Judge not awarding interest at the rate of 21%, as claimed by the them.

6. For the aforestated reasons, there is no merit in these appeals. The same are dismissed.

30.4.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No