

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

FAO No.4457 of 2013 (O&M)

Date of Decision: February 01, 2019

The Punjab Agro Foodgrains Corporation Ltd.

...Appellant

Versus

M/s Satguru Rice & General Mills Ltd.

...Respondent

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. B.R. Bansal, Advocate  
for the appellant-PAFC.

Mr. Mukund Gupta, Advocate  
for the respondent.

\*\*\*\*\*

**JAISHREE THAKUR, J. (Oral)**

1. The appellant herein seeks to challenge the order dated 01.12.2012 passed by the Addl. District Judge, Chandigarh whereby the objections filed by the respondent-Miller under Section 34 of Arbitration and Conciliation Act, 1996 have been allowed.

2. In brief, the facts as stated are that respondent and the appellant herein entered into an agreement dated 20.10.2001 for shelling of the paddy pertaining to the year 2001-2002. The appellant-PAFC supplied 71102 bags weighing 35551-00 quintals of 'A' Grade paddy to the respondent-Miller and the respondent-Miller was required to deliver 22534-95 quintals rice on 30.06.2002 after milling to the Food Corporation of India in the

account of the appellant-PAFC, which was subsequently extended till 30.09.2002. The matter was referred to the Arbitrator, who passed the award dated 06.06.2004 in favour of the appellant, by holding that an amount of ₹ 2,48,44,316/- including interest upto 31.03.2003 @ 21% per annum for the year and 30% per annum from 01.04.2003 to 30.11.2004 and also @ 30% till final payment. The respondent-Miller filed objections under Section 34 of the Arbitration and Conciliation Act, 1996, which came to be allowed by the impugned order dated 01.12.2012.

3. Learned counsel for the appellant-PAFC argues that the award of the Arbitrator is in consonance with the agreement entered into between the parties and the objections of the respondent-Miller have been wrongly allowed by the Addl. District Judge, Chandigarh, while praying that the instant appeal is liable to be allowed.

4. Mr. Mukund Gupta, learned counsel appearing on behalf of the respondent-Miller submits that the order passed by the Addl. District Judge, Chandigarh is well reasoned and no ground is made out to interfere with the same. It is contended that as per the clause 21 of the agreement, which pertains to referring disputes and differences to the Arbitrator, it has been clearly stipulated that *“All the disputes and differences arising out of or in any manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sole arbitration of the Director/Managing Director or any person appointed by him in this behalf”*. It is further argued that in the agreement, it has clearly been mentioned that in case of shortfall in the recovery of rice, the miller would be responsible to pay the penalty at

the rate of custom milled price plus interest @ 21% from the date it become payable till the date of realization towards the short fall. Further, if the rice miller failed to supply the rice within time, appellant-PAFC would be entitled to interest @ 21% per annum for the first default and @ 30% for the subsequent period on the custom miller price, from the date it become due till realization and the decision of the Managing Director would be final. It is submitted that the relevant portion of clause 7 and 8 of the agreement have to be read together with the arbitration clause 21. It is argued that a similar issue came up before this High Court in ***CR No.1780 of 2001*** titled as ***Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. 2003(3) RCR (Civil) 254*** wherein clauses 5 and 6 of the agreement thereunder are pari materia with the clauses in the present agreement, came for judicial scrutiny and it was held as under:-

*“12. Therefore, the combined reading of Clauses 18, 5 & 6 of the aforesaid agreement, clearly show that all disputes between the Markfed and the miller were liable to be referred to the arbitration concerning the agreement except disputes regarding the matters, the decision of which is expressly provided for in the contract. Under Clauses 5 & 6 of the aforesaid agreement, the decision with regard to 1.5 times economic costs and interest @ 21% is clearly provided in the agreement itself and as such, the aforesaid matters were not liable to be referred to the Arbitrator and reference in this regard was beyond the scope of arbitration clauses and the proceedings before the Arbitrator were clearly liable to be terminated on the short ground alone. In such circumstances, neither the Managing Director had any authority to refer*

*aforesaid dispute to the Arbitrator, nor the Arbitrator had any jurisdiction to continue with the proceedings under any circumstances. The observation of the learned Additional District Judge at page 13 of the Judgment that the claim with regard to the economic cost and interest was liable to be decided by the Arbitrator and the dispute is not frivolous, is not based on the appreciation of Clause 18 read with Clauses 5 and 6 of the agreement but he has misinterpreted these clauses and had failed to appreciate the same properly and as such, has misdirected himself. Consequently, the findings of the Additional District Judge on this score cannot be sustained.”*

5. I have heard learned counsel for the parties, apart from perusing the record.
6. For ready reference, relevant portion of clauses 7 and 8 of the agreement entered into in the instant case are reproduced as under:

*“Clause 7*

*(i & ii) xxx xxx xxx*

*iii) In case there is shortfall in the recovery of rice provided in sub-clause (i) above the Miller shall pay to the Government/PAIC the price of rice at custom miller rice rates plus interest at the rate of 21% from the date it becomes payable till the date of actual realization equivalent to short fall.*

*Clause 8*

*ii) In the event of his failure to supply rice within the stipulated period, he shall be liable for an interest @ 21% for the first year of default and @ 30% for the subsequent period on the custom milled price fixed by Govt. of India*

*from the date it becomes payable till the date of actual realization towards the left over quantity/stocks of paddy. The decision of the Managing Director in his behalf shall be final.*

7.           Clauses 5 & 6 of the agreement entered into in ***Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. (supra)*** are reproduced as under:-

*“Clause 5:*

*I & II xxx xxx xxx III) In case there is a shortfall in the recovery of rice provided in Sub-clause (1) above the miller shall pay to the Markfed the cost of paddy equivalent to the shortfall at the rate of 1.5 times the economic cost of paddy.*

*Clause 6:*

*I, II & III. xxx xxx xxx In the event of his failure to supply within the stipulated period, he shall be liable for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice. The decision of the Markfed Director in this behalf shall be final.”*

8.           It would also be worthwhile to mention that Special Leave to Appeal (Civil) No.3826 of 2006 filed in the aforesaid judgment in ***Shree Krishna Rice Mills vs. The Punjab State Co-op. Supply & Marketing Federation Ltd. (supra)*** was dismissed.

9.           Thus, a reading of the aforesaid clauses clearly reflects that dispute/claim of shortage of rice or delayed supply of rice, are matters which fall in the excepted category, are to be taken up by the Managing Director-PAFC, whose decision would be final.

10.          In view of the above, this court finds nothing wrong in the

impugned order so passed by the Addl. District Judge, Chandigarh.  
Accordingly, the appeal in hand is hereby dismissed.

**February 01, 2019**  
*vijay saini*

**(JAISHREE THAKUR)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No