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

1. **CM-12713-CII-2019 in/and FAO-3564-2019 (O&M)**
Date of decision : July 21, 2022

Punjab Agro Food Grains Corporation Limited .....Appellant

Versus

M/s Gill Rice Mills ....Respondent

2. CM-12732-CII-2019 in/and FAO-3567-2019 (O&M)

Punjab Agro Food Grains Corporation Limited .....Appellant

Versus

M/s Gill Rice Mills and another ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Anupam Singla, Advocate for the appellant.

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LISA GILL, J.

This order shall dispose of FAO Nos. 3564 and 3567 of 2019 as both the abovesaid appeals arise out of common order dated 11.04.2018 passed by learned Additional District Judge, Barnala and common award dated 05.05.2016 pronounced by learned Arbitrator.

Brief facts necessary for adjudication of the matter are that agreements dated 23.10.2009 and 11.11.2010 were executed between the parties for the crop year 2009-10, 2010-11 respectively for custom milling of paddy. Pursuant to agreement dated 23.10.2009 for the crop year 2009-10, miller was entrusted with 86781 bags weighing 30,373.35 quintals of paddy against proper receipts/certificate for the crop year 2009-10. Respondent – Miller was required to deliver 20,350.15 quintals and resultant rice to the Food Corporation of India (for short - 'FCI') in the account of agency. It is stated that miller defaulted and delivered only 4,839.50 quintals of rice and failed to supply 15,510.65 quintals of resultant rice to FCI in the account of appellant/agency by the date of performance of the agreement/contract i.e. 31.03.2010, which was further extended up to 15.07.2011. It is further stated that miller despite issuance of repeated letters and notice, failed to complete the milling and shortage of 2,431.10 quintals of paddy was found during physical verification carried out on 19.01.2011 for which criminal case was registered separately against the Proprietor.

In respect to agreement dated 11.11.2010 for the crop year 2010-11, Miller is stated to have been entrusted with 18,890 bags weighing 6,611.50 quintals of Paddy Grade 'A' against proper receipts. Miller in this case was required to deliver 4,429.71 quintals of rice to FCI but again default in milling is claimed to have been committed and during physical verification of stock conducted on 19.01.2011, respondent – Miller was found to have unauthorisedly milled 4,740 bags of paddy. Stocks worth Rs.33,72,350/- were lifted and sold in open auction by the Agency but amount of Rs.81,04,266/- was stated to be due from the Miller for crop year 2010-11 on account of losses suffered by the agency. Stocks worth Rs.4,25,82,164/- were lifted from the premises of the Miller and sold in open auction. Appellant claimed to suffer loss of Rs. 4,09,25,367/- on account of default of Miller including cost of Bardana (gunny bags) VAT etc. on account of which appellant claimed interest pendente lite and future interest as well.

Dispute arose between the parties and in view of clause 26 of the agreement, matter was referred to the Arbitrator who was appointed by the Managing Director of the appellant.

Counter claim of Rs.2,17,70,852.30 on account of loss suffered for the crop year 2009-10 and Rs.7,49,311.20 for the crop year 2010-11 was filed by the Miller. Counter claim was filed by the Miller before the learned Arbitrator separately for both crop years 2009-10 and 2010-11 with the allegations that appellant's claim was not maintainable and in fact the Miller had suffered huge financial loss as well as of its reputation due to illegal activities of the officials of the appellant, who were stated to hold personal grudge against the proprietor of the rice mill. Criminal case was registered against the Proprietor and premises of rice mill were sealed by the appellant. CWP-13141-2011 is stated to have been filed by the Miller before this High Court and pursuant to order dated 13.11.2012 passed in the above said writ petition, premises of the rice mill/Sheller were de-sealed.

Evidence was led before the Arbitrator, who after appreciation of material on record dismissed the claim of the appellant as well as counter claim set up by the Miller vide award dated 05.05.2016. Aggrieved therefrom, appellant preferred application No.10/2016 under Section 34 of the Arbitration and Conciliation Act (for short – 'the Arbitration Act'). Application No. ARB-3-2015 under Section 9 of the Arbitration Act was filed by the appellant seeking relief of interim injunction for restraining the Miller from alienating or transferring the premises and machinery of rice mill. Miller preferred two separate applications under Section 34 of the Arbitration Act pertaining to the crop years 2009-10 and 2010-11 challenging rejection of his counter claim. All these applications/petitions were dismissed by the learned Additional District Judge, Barnala vide impugned order dated 11.04.2018. Aggrieved therefrom, FAO-3564-2019 in Arbitration Case No. 3 of 2015 and FAO-3567-2019 in Arbitration Case No. 10 of 2016/Computer ID No. Arb/12/2016 have been filed by the appellant.

Learned counsel for the appellant submits that learned Arbitrator has incorrectly rejected the claim set up by the appellant. Loss caused to the appellant – Corporation is apparent from the record. This fact has not been considered by the learned Additional District Judge while dismissing the petition under Section 34 of the Arbitration Act filed by the appellant.

Heard learned counsel for the appellant and have gone through the file with his able assistance.

Execution of agreements dated 23.10.2009 and 11.11.2010 between the parties for the crop years 2009-10, 2010-11 respectively as well as arising of the dispute between the parties is a matter of record. Perusal of the Award reveals that learned Arbitrator has considered the material on record in great detail and thereafter pronounced Award dated 05.05.2016. Learned Arbitrator has specifically observed that there is absolutely no material on record to suggest if any stock was misappropriated or embezzled by the respondent – miller. Learned Arbitrator has taken into account that there was illegal sealing of the mills premises as there is no material on record to suggest that any such permission for sealing of mill premises was actually taken by the then District Manager from higher authorities. It is further observed that it stands proved from the evidence that after premises were illegally sealed, no action was taken to take care of stocks or sheller premises which were virtually left unattended despite the fact that during the intervening period, the walls had fallen on 09.06.2011 as admitted by the appellant – claimant in its letter dated 10/16.06.2011.

Reference is also made to letter dated 17/21.06.2011 issued by the then District Manager for delivering of the entire rice even as mill premises were sealed by the District Manager himself and the matter regarding de-sealing of the mill was pending before the High Court which was ultimately decided on 13.12.2011. Learned Arbitrator has taken note of these aspects and specifically dealt with the same in para 23 and 24 of the Award in detail. It is further noted by the learned Arbitrator that Miller has since been acquitted in the complaint under Section 138 of Negotiable Instructions Act as well. Learned counsel for the appellant is unable to deny that the appellant charge sheeted the then District Manager, Barnala for lapse and irregularities committed by him and that sealing of mill premises was carried out much prior to the due date of performance of agreement i.e. the date for delivery of rice by the Miller. Learned Arbitrator while finding officials of the appellant themselves to be at fault which prevented the Miller from performing his part of contract, thus, rightly dismissed appellant's claim. Application under Section 9 of the Arbitration Act filed by the appellant was correctly dismissed as rendered redundant.

It is a settled position of law that award under Section 34 of the Arbitration Act can be set aside only on the basis of specific grounds contained therein. Clearly, the appellant has failed to make out a case for setting aside impugned order dated 11.04.2018 and Award dated 05.05.2016. This Court is not to sit as a Court of Appeal and in case a plausible and reasonable view has been taken by the Arbitrator on the basis of the evidence on record, the same is not to be interfered with, even if a separate view is possible which in any case is not the scenario in the instant case. It has been held by the Hon'ble Supreme Court in **NTPC Ltd. versus M/s Deconar Services Pvt. Ltd. 2021 AIR (Supreme Court) 2588** that to merely show existence of another reasonable interpretation or view on the basis of material on the record is not sufficient to allow for interference. It is to be noted at this stage that there is no allegation that the Arbitrator has misconducted himself in any manner. Learned counsel for the appellant is unable to point out any ground whatsoever which calls for interference in these appeals.

No other arguments has been addressed.

Applications for condonation of delay in filing of both the appeals have been filed. As the matter has been considered on merits, adjudication on these applications seeking condonation of delay of 209 days in filing of the appeals is rendered academic.

Applications are disposed of accordingly.

Present appeals are, accordingly, dismissed with no order as to costs.

(LISA GILL)
JUDGE

July 21, 2022
rts

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No