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

FAO No.2495 of 2011 (O&M)
Date of decision: 19th May, 2023

The Punjab Agro Foodgrains Corporation Limited and another

Appellants.

Versus

M/s Jai Durga Rice Mills Pvt. Ltd. Talwandi Bhai and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R. S. Kalra, Advocate for the appellants.
Mr. Parvesh Chugh, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. Punjab Agro Foodgrains Corporation Ltd. (for brevity, 'the Corporation') is in appeal aggrieved of acceptance of objections filed by M/s Jai Durga Rice Mills Pvt. Ltd. (hereinafter referred to as 'the miller').

2. The facts shorn off unnecessary details are that on 24.9.2001, the Corporation entered into an agreement with the miller for shelling of paddy for the crop year 2001-02. Miller failed to supply entire milled rice and there was delay in delivery of rice. The arbitration initiated at the instance of corporation culminated in award dated 21.7.2006. The Corporation was held entitled to recovery of Rs. 96,72,729/- along with interest and future interest. The objections filed by the miller were allowed on 13.5.2010 and the award was set aside. The claim was held to be covered under clause 8 of the agreement and the Managing Director of the Corporation was granted liberty to proceed afresh in accordance with law.

3. The relevant clauses of the agreement are reproduced below:

7. "The miller shall ensure that:-

i) The resultant rice after milling of paddy is aerated for 72 hours before bagging.

ii) The degree of polish given to rice shall be 5%.

iii) In case there is a shortfall in the recovery of rice provided in sub-clause (1) above, the miller shall pay to the PAIC the price of rice at custom milled rice rates plus interest at the rate of 21% from the date it becomes payable till the date of actual realisation equivalent to the shortfall.

iv) The by-products viz. Broken rice, rice kani, phuk (rice husk) and rice bran etc. obtained during manufacture of rice shall be the property of the miller and the PAIC shall have no right or responsibility in regard to these.

v) The miller will be paid milling operations are completed and the entire rice is delivered to Central Pool

8. The entire quantity of rice of all varieties delivered by the miller to the PAIC shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order, 1983, as amended from time to time or in any other order or notification 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 be rejected in respect of such quantity of rice which is not found to be within the specifications and the miller shall be liable to pay to the Govt/Agency for the quantity of rice short supplied, as penalty at the custom milling rate fixed by Govt. of India plus 21% interest from the date it becomes payable till the date of actual realization of the converted variety of rice. The decision of the MD, PAIC, Chandigarh (hereinafter referred to as the MANAGING DIRECTOR) in this behalf shall be final.

ii) At the time of delivery, the stocks of rice shall be subject to the inspection as per provisions of the Punjab Rice Procurement (Levy) Order, 1983. Any quality allowance *determined at the time of inspection according to the specifications shall be recovered from the Miller's bills.*

iii) The miller shall be required to manufacture rice as per specifications laid down by the Govternment of India and deliver the same to the Food Corporation of India at its depots by 30.6.2002.

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 realisation towards the left over quantity/stocks of paddy. The decision of the MANAGING DIRECTOR in this behalf shall be final.

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21. All disputes and difference 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 MANAGING DIRECTOR or any person appointed by him in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of PAIC or that he had to deal with the matter to which the contract relates and that in the course of his duties such an employee of the PAIC had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract that in the event of the arbitrator being transferred or vacating his office or being unable to act for any reason, the Managing Director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as Arbitrator. Such a person shall be entitled to proceed with reference from and the stage where his predecessor left it.

Provided further that any demand for arbitration in respect of any claim(s) of the Miller under the contract shall be in writing and made within one year of the date of completion or expiry of the period or contract, if the demand is not made within the period, the claim(s) of the Miller shall be deemed to have been waived off and released of all liabilities under the contract in respect of these claims."

4. Learned counsel for Corporation submits that the claims made by Corporation were not covered under clause 8(i) and (iii) of the agreement (hereinafter referred to as 'excepted clause').

5. The relevant portion is quoted below:

The summary of amount recoverable from M/s Jai Durga Rice Mill Talwani Bhai

Amount recoverable as on 1.10.2004 For 5657-14 qntl of rice	*Rs.58,93,722/-*
Interest @ 21% on late delivery of rice upto 30.9.2023	*Rs.12,98,040/-*
Interest @ 30% w.e.f. 1.10.2003 to	*Rs.17,68,116/-*
Total	*Rs.30,66,156/-*
Cost of 33755 bags after milling @ 29.21/ bag	*Rs. 9,85,984/-*
Total bags deposited with Miller	*54446*
Bags deposited with FCI	*14300*
Paddy transferred	*6391*
Sale Tax @ 4.4%	*Rs. 43,383/-*
Quality Cuts	*Rs. 1,429/-*
TDS 2%	*Rs. 6,713/-*
Total A	*Rs.**99,92,386/-***
Paddy milled 15708 qntl & Milling charges @ 20.35/Qntl B	*Rs.3,19,658/-*
Amount recoverable as on	

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I attest to the accuracy and integrity of this document.

30.09.2004 *(A-B)* *Rs. 96,72,729/-"*

5. Learned counsel for the miller defends the impugned order and submits that clause 8(i) deals with the 'quantity of rice short supplied' and the matter has to be adjudicated by the Managing Director of the Corporation. He relies upon the decisions of this Court in ***District Food and Supplies Controller, Moga v. M/s Aggarwal Rice Mills, Baghapurana, District Moga, 2010(1) RCR (Civil)756*** and ***M/s Dashmesh Rice Mills and others v. Punjab State Civil Supplies Corporation Ltd. (PUNSUP) and others, 2009(10) RCR (Civil) 268.***

6. Heard learned counsel for the parties and perused the record.

7. Clause 7 of the agreement elucidates five conditions: (i) the rice after milling of paddy is to be aerated for 72 hours before bagging; (ii) 5% polish shall be given to the rice; (iii) the miller shall be liable to pay to Corporation the price of rice at custom milled price rate for the shortfall for recovery of rice along with interest @ 21%; (iv) the by-products obained during shelling of paddy would be the property of the miller; and (v) the payment shall be made to the miller on completion of operation and after delivering the entire rice to Central Pool.

8. Excepted clause deals with the instances in which the decision of the Managing Director of the Corporation shall be final. Under Clause 8(i), in case of rejection of rice for not conforming to the specifications laid down, the miller shall pay to the Corporation the penalty for the quantity of rice short supplied along with interest @ 21%. In eventuality of failure to supply the rice as per the specifications laid down within the stipulated

period, as per Clause 8(iii) the miller shall be liable to pay interest @ 21% for the first year of default and 30% for the subsequent period.

9. Clause 21 of the agreement provides for dispute resolution through arbitration except as to any matter the decision of which is specifically provided for in the contract.

10. From the combined reading of Clauses 8 and 21 of the agreement, a picture emerges that apart from the disputes covered under excepted clause, rest of the disputes are to be settled through arbitration.

11. The undisputed facts in the present case are that the miller failed to shell the entire paddy and to supply the milled rice. It was not a case of rejection of rice for not being in conformity with the specifications laid down. The Corporation had made a claim for recovery of the cost of un-milled paddy. No recovery was sought for penalty under Clause 8(i).

12. In the present case, the issue involved is as to whether recovery of price of rice on failure of the miller to shell entire paddy and to supply rice is covered under excepted clause or not?

13. The contention of learned counsel for the miller that non-supply of rice shall fall within Clause 8 lacks merit. Clause 7 (iii) deals with the short recovery of rice. On the other hand Clause 8(i) deals with the case where the rice is not supplied as per the specifications laid down. Under Clause 8(iii), the miller is liable to pay interest to the Corporation for failing to supply rice within the stipulated period.

14. There is another aspect to be considered. In case the contention of learned counsel for the miller is accepted, Clause 7(iii) is rendered redundant as clause 8 would cover cases where price of rice is to

be recovered on account of short supply of rice.

15. Reliance of learned counsel for the miller in the cases of ***M/s Aggarwal Rice Mills*** and ***M/s Dashmesh Rice Mills and others*** (supra) is of no avail. In ***M/s Aggarwal Rice Mills' case (supra)***, the appeal was decided on the basis of the admission of counsel for the State that on the issue of recovery of 1.5 times of economic costs of shortage of paddy and charging of interest for non-supplying the rice within the stipulated time, the decision of the Director, DFSC shall be final. The case of ***M/s Dashmesh Rice Mills and others (supra)*** was decided by relying upon the decision of ***M/s Aggarwal Rice Mills' case (supra).***

16. Apart from the claim for interest on late delivery of rice, the other claims are not covered under excepted clause. The District Judge erred in concluding that failure of the miller to supply rice is covered under excepted clause and while arriving at this conclusion Clause 7 (iii) was not considered.

17. In view of the above, the appeal is accepted. The impugned order is set aside.

18. Considering that other issues raised by the miller under Section 34 of the Act were not decided by the court concerned as the award was set aside relying upon excepted clause, the matter is remitted back to the District Judge for deciding the objections under Section 34 of the Act in accordance with law.

19. Considering that the award is of the year 2006, there is no doubt that the court concerned shall make an endeavour to decide the objections under Section 34 of the Act within four months.

20. The parties are directed to appear before the District Judge concerned on 30.5.2023.

21. The record of the court below be sent back.

[AVNEESH JHINGAN]
JUDGE

19th May, 2023
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1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes