IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2497 of 2011 (O&M)
Date of decision: 19th May, 2023

Punjab Agro Food Grains Corporation Ltd.

Appellant

Versus

M/s Laxmi Industries Guruhar Sahai and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

<u>AVNEESH JHINGAN, J (Oral):</u>

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed by Punjab Agro Foodgrains Corporation Ltd. (hereinafter referred to as 'the Corporation').

2. The relevant facts are that the Corporation on 3.10.2001 entered into an agreement with M/s Laxmi Industries Guruhar Sahai (hereinafter referred to as 'miller') for shelling of paddy for the crop year 2001-02. The period for supply of rice was extended upto 30.9.2002. The miller failed to shell the entire paddy. The arbitration proceedings were initiated at the instance of the Corporation. The proceedings culminated in award dated 9.11.2005. The Corporation was held entitled to recover Rs.12,47,8210/- along with interest at the rate of 21% w.e.f. 9.12.2002 till the date of realization.

3. The objections filed by miller under Section 34 of the Act were allowed on 13.5.2010. It was held that the dispute between the parties fell within the ambit of Clause 8 and the matter should have been referred to the Managing Director of the Corporation. The award was set aside and

the parties were directed to appear before the Managing Director of the Corporation.

4. Learned counsel for the Corporation submits that Clause 8 of the agreement covers the instance where the rice supplied by the miller is not in conformity with the specifications laid down. Further the claim of interest @ 21% for the first year of default and @30% for the subsequent period on failure of miller to complete the delivery within the stipulated period is also covered under clause 8. The argument is that the claim with regard to interest on delayed delivery of rice was rejected by the arbitrator and the amount awarded was for non-supply of milled rice, cost of bags, sales tax, TDS recoverable, cost of dead stock and quality cut.

5. Learned counsel for the miller defends the impugned order and contends that Clause 8 of the agreement deals with non-supply of rice and the matter was to be decided 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. Before proceeding further, it would be appropriate to reproduce Clauses 7,8 and 21 of the agreement:

> *"7. The miller shall ensure that:-*
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> *(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 @ 21% from the date it becomes payable till the date of actual realization 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 Government/Agency for the quantity of rice short supplied, as penalty at the custom milling rate fixed by the 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 the rice shall be subjected 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 Government of India and deliver the same to the Food Corporation of India at its depots by 30.06.2002.

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

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21. 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 sole arbitration of the Managing Director or any persons 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 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 an 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 period of 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."*

8. Clause 7 of the agreement deals with the obligation and entitlement of the miller vis-a-vis the supply of rice. As per Clause 7(iii), in case of shortfall in recovery of rice, the miller shall be liable to pay to the Corporation the price of rice at custom milled rice rates plus interest @ 21% from the date it becomes payable till the date of actual realization.

9. Clause 8 (i) and (iii) provides the issues to be decided by the Managing Director of the Corporation and that his decision on these issues shall be final. Clause 8(i) deals with a situation for levy of penalty alongwith interest on rejection of rice supplied by the miller for being not in conformity with the specifications laid down. As per sub-clause (ii), the rice at the time of delivery shall be inspected and any quality allowance determined at the time of inspection according to specifications shall be recovered from the miller. Sub-clause (iii) provides the time stipulated for delivery of milled rice and in case of failure to supply within the said period, the miller shall be liable to pay interest @ 21% for the first year of default and 30% for the subsequent period. The interest shall be payable from the date it becomes payable till actual realization.

10. Clause 21 of the agreement provides for dispute resolution through arbitration, exception being the matters for which decision is expressly provided for in the contract.

11. From the combined reading of Clauses 8 and 21 of the agreement, a picture emerges that apart from the disputes covered under Clause 8(i) and (iii), rest of the disputes are to be settled through arbitration.

12. 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 where the rice was rejected 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 claim was made for penalty under Clause 8(i). The claim for interest under Clause 8(iii) for delay in supplying rice was not awarded.

13. In the present case, the issue involved is as to whether recovery of price of rice on failure to shell entire paddy and to supply rice is covered under Clause 8 of the agreement or not?

14. The contention of learned counsel for the miller that non-supply of rice will fall within Clause 8 lacks merit. Clause 7 (iii) deals with recovery of price of rice in case of short fall. On the other hand Clause 8(i) deals with penalty in 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.

15. 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 the cases for recovery of price of rice on account of short supply of rice would fall under clause 8.

16. 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).***

17. It would be apposite to mention that no interest for delay in delivery of rice was awarded. The District Judge erred in concluding that failure of the miller to supply rice is covered under Clause 8 and while arriving at this conclusion Clause 7 (iii) was not considered.

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

19. 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 Clause 8, the matter is remitted back for deciding the objections under Section 34 of the Act in accordance with law.

20. Considering that the award is of the year 2005, 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.

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

22. 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