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

**FAO No. 1762 of 2013 (O&M)
Date of decision: 2nd May, 2023**

M/s Anand Cotton Factory

Appellant

Versus

Punjab State Warehousing Corporation Ltd. and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Mukand Gupta, Advocate for the appellant.
Mr. Vikas Singh, Advocate for the respondents.

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AVNEESH JHINGAN, J:

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed aggrieved of dismissal of objections under Section 34 of the Act.

2. The brief facts are that Punjab State Warehousing Corporation Ltd. (for short, ' the Corporation') on 1.1.2001 entered into an agreement with the appellant (hereinafter referred to as 'the miller') for shelling the paddy for the crop year 2000-01. The clause of the agreement provided for dispute resolution through arbitration. The miller failed to deliver the entire quantity of milled rice and arbitration proceedings initiated at the instance of the Corporation culminated in award dated 13.1.2005. The Corporation was held entitled to recover Rs.32,94,890/- along with interest @ 18% per annum from 1.11.2002 till the date of realization.

3. The Corporation had supplied 12672 quintals of paddy. The miller supplied 5333 quintals of rice and failed to deliver 8490 quintals of rice. The Corporation made following claims:

(i) the custom milled rates of short supplied rice and interest thereon;

(ii) cost of 8836 gunny bags plus sales tax;

(iii) cost of 9422 new gunny bags;

(iv) interest on late submission of documents; and

(v) the amount payable to the miller was adjusted.

A revised claim was filed and cost of 3056 quintals of unmilled paddy was claimed instead of 3157 quintals. The interest was worked out for the period of 1.11.2002 to 28.2.2003 and the security amount was shown as payable to the miller instead of being forfeited. Cess of 1% was claimed on the MSP of the paddy.

4. Learned counsel for the miller submits that the matter falls within the ambit of Clauses 8 and 9 of the agreement and was to be adjudicated by the Managing Director of the Corporation. It is further argued that Managing Director of the Corporation was not competent to appoint an arbitrator.

5. Learned counsel for the Corporation submits that the amount claimed was for short supply of rice and was not covered under Clauses 8 and 9 of the agreement. It is further argued that the agreement was entered into by the miller with the Corporation. The agreement was signed by District Manager of the Corporation on behalf of Governor and the arbitration clause provided for arbitration by the Managing Director of the Corporation or by a person appointed by him.

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

7. Before proceeding further, it would be appropriate to

reproduce Clauses 6, 8, 9 and 22 of the agreement:

> *"6. The miller shall ensure that:-*
>
> *(i) The resultant rice after milling of paddy is aerated for 72 hours before its filling in the bags.*
>
> *(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 (i) above the miller shall pay to the Government/Agency 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, nakee phuk and rice bran etc. obtained in the shelling of paddy shall be the property of miller and PUNSUP shall have no right or responsibility in regard to these.*
>
> *(v) The miller will be paid milling and other admissible charges at the convenience of the Government/Agency after the 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 government 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 orders or notifications 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, a 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 Director, Food and Supplies, Punjab*

(hereinafter referred to as the Director/Managing Director of the agency (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 complete delivery of rice within 10(ten) days of the issuance of paddy to him and rice due to the state government on the total quantity of paddy issued to him or in joint custody released at regular intervals shall be delivered not later than the 28th February, 2001, as per the following schedule:-

October/November 2000	*20%*
December 2000	*27%*
January, 2001	*27%*
February, 2001	*26%*

9. 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 it becomes payable till the date of actual realization towards the left over quantity/quality of paddy. The decision of the Director/ Managing Director in this behalf shall be final.

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22. ARBITRATION: 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 Director/ 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 Food & Supplies Department, Punjab/ Agency or that he had to deal with the matters to which the contract relates and that in the course of his duties such an employee of the Food & Supplies Department, Punjab/Agency had expressed views of 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 Arbitration being transferred or vacating his office dying or being unable to act for any reason, the Director/Managing Director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator, such person shall be entitled to proceed with reference from the stage where it was left by his predecessor.*

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 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 and absolutely barred and the Managing Director shall be discharged and released of all liabilities under the contract in respect of these claims.

The costs for an in connection with arbitration shall be the discretion of the arbitrator who may suitably provisions for the same in his award.

Subject as aforesaid, the Arbitration & Conciliation Act, 1996 shall apply to the arbitration provided under this clause."

8. Clause 6 of the agreement deals with the obligation and entitlement of the miller vis-a-vis the supply of rice. As per Clause 6(iii),

the miller shall be liable to pay to the Government/Agency the price of short supplied rice, quantified on custom milled rice rates along with interest @ 21%.

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. Under Clause 8(i) the miller shall pay penalty to the Corporation along with interest @ 21% in a situation where the rice supplied by the miller is rejected for being not in conformity with the specifications laid down.

10. Clause 8(iii) stipulates the time period for supply of milled rice. Under Clause 9, the miller shall pay interest @ 21% per annum for first year of default and @ 30% for subsequent years for the period of delay in supply.

11. Clause 22 of the agreement provides for dispute resolution through arbitration, except as to matter the decision of which is specifically provided for in the contract.

12. From the combined reading of Clauses 6, 8, 9 and 22 of the agreement, it is evident that the disputes covered under Clause 6 are to be settled through arbitration and decision of the Managing Director shall be final on issues falling within the ambit of Clauses 8(i) and 9.

13. The issue which arises is as to whether recovery of price of rice on failure of the miller to supply the milled rice would be covered under Clauses 8 and 9 of the agreement. The answer is in negative.

14. Clauses 6 and 8 operate in a different field. Failure to supply rice is covered under Clause 6, whereas rejection of rice for not being in conformity with the specifications and not adhering to the time line provided is dealt in Clauses 8(i), 8(iii) and 9.

15. The undisputed facts are that the miller failed to supply the milled rice. There was no rejection of rice for not conforming with the specifications laid down. The claim of the Corporation was for recovery of price of short supplied rice and interest thereon. There was no claim made for interest of delayed delivery of rice under Clause 9 or for penalty under Clause 8(i).

16. The contention raised by learned counsel for the appellant challenging the appointment of the arbitrator is noted to be rejected. From a plain reading of Clause 22, it is evident that the parties agreed that the dispute shall be referred for arbitration to the Director/Managing Director or any person appointed by him. It is not disputed that the appellant as per the agreement dealt with the corporation and the agreement was signed by the District Manager of the Corporation. The other aspect of the matter is that the miller participated in arbitration proceedings and never pressed the issue of appointment of arbitrator, at this belated stage it does not lie in the mouth of the miller that the appointment of arbitrator was bad.

17. No case is made out for interference in the impugned order and the appeal is dismissed.

18. Since the main appeal has been dismissed, pending application(s), if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

2nd May, 2023

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1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes