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

**FAO No. 5253 of 2013 (O&M)
Date of decision: 31st May, 2023**

Punjab State Civil Supplies Corporation Ltd. and another

Appellants

v.

M/s Arora Rice and General Mill and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Anil Kumar Sharma, Advocate for the appellants.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed by Punjab State Civil Supplies Corporation Ltd. (for short, 'PUNSUP') aggrieved of acceptance of objections filed by the respondents under Section 34 of the Act.

2. The relevant facts are that PUNSUP entered into a custom rice milling agreement with M/s Arora Rice and General Mill-a partnership firm (for short, 'the miller'), village Ibrahimwal (Nadala), District Kapurthala. The agreement was for the crop year 1999-2000. The terms and conditions provided for dispute resolution through arbitration. PUNSUP raised a claim for cost of short supply of rice and interest on late delivery of rice. The arbitration proceedings culminated in award dated 14.12.2004. PUNSUP was held entitled to recover Rs.12,04,373/- along with interest @12% per annum. The amount awarded included interest on late delivery of rice and

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late deposit of cost of undelivered rice. PUNSUP filed objections and the miller filed counter objections. Accepting the objections of miller, it was held that the matter falls within clause 9(i) and (iii) of the terms and conditions and was to be adjudicated by the Managing Director of PUNSUP. Hence the present appeal.

3. On 14.5.2019 the following order was passed :-

> *"As per order dated 5.4.2019, publication has been effected in the newspaper "Punjabi Tribune" dated 07.05.2019, hence service is deemed to be effected upon respondent No.4. However, there is no appearance on behalf of respondent No.4.*
>
> *Service is complete.*
>
> *Put up on 03.10.2019 for arguments."*

4. Respondent No.7 was represented by Sh. Sunil Narang, Advocate but he has not put an appearance today. Considering that the matter is of the year 2013, no further adjournment is granted.

5. Learned counsel for PUNSUP submits that the claim with regard to interest on late delivery of rice falls within the ambit of clause 9(iii) of the terms and conditions. The contention is that cost of short supply of rice, interest on late deposit of the cost of short supply of rice and other heads are not covered under clause 9 (i) and (iii) (herein refered to as 'excepted clause').

6. Heard learned counsel for the appellant and perused the relevant record produced by him.

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7. Before proceeding further, it would be appropriate to reproduce Clauses 8, 9 and 22 of the agreement:

> *"8. 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 (i) above the miller shall pay to the PUNSUP the price of rice fixed by FCI 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, kani, Phuk (rice husk) and rice bran etc. obtained in the shelling of paddy shall be the property of the miller and the 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 PUNSUP after the milling operations are completed and the entire rice is delivered to Central Pool.*
>
> *9. The entire quanity of rice of all varieties delivered by the miller to the PUNSUP 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 PUNSUP for the quantity of rice short supplied, a penalty at the custom milling rate fixed by the Govt. of India plus 21% interest*

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from the date it becomes payable till the date of actual realization of the converted variety of rice. The decision of the Managing Director, PUNSUP (hereinafter referred to as the Managing Director of the PUNSUP) 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. Rice due to the PUNSUP on the total quantity of paddy issued to him or in joint custody, released at regular intervals shall be delivered not later than the 29th February, 20001 or upto the period extended by Govt. of India from time to time.

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, stocks of paddy. The decision of Managing Director, PUNSUP in this behalf shall be final.

xx xx xx

22. 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 PUNSUP or any person appointed by him in this behalf. There will be no objection to any such appointment that the person

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appointed is or was an employee of PUNSUP 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 PUNSUP 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 PUNSUP 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 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 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.

The cost for and in connection with arbitration shall be the discretion of the arbitrator who may make suitable provisions for the same in his award.

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

8. Clause 8 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 PUNSUP, the price of rice as fixed by FCI for the shortfall for recovery of rice along with interest @ 21%; (iv) the by-products obtained during

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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.

9. Excepted clause deals with the instances in which the decision of the Managing Director of the PUNSUP shall be final. Under Clause 9(i), in case of rejection of rice for not conforming to the specifications laid down, the miller shall pay to the PUNSUP 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 9(iii) the miller shall be liable to pay interest @ 21% for the first year of default and 30% for the subsequent period.

10. Clause 22 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.

11. From the combined reading of Clauses 9 and 22 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.

12. From the perusal of the relevant record produced and the pleadings, it is evident that the miller failed to supply the entire quantity of the milled rice and had deposited the part of cost of undelivered rice from December, 2000 to March 2001. The PUNSUP claimed price of short supplied rice and interest on late deposit of cost of short delivered rice. In the present case, 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. PUNSUP had made a claim for recovery

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of interest on late deposit of cost of short supplied rice. No recovery was sought for penalty or interest under Clause 9(i).

13. 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 and interest thereon is covered under excepted clause or not?

14. Clause 8 (iii) deals with price of rice to be paid by miller along with interest in case of short recovery of rice. On the other hand, as per clause 9(i), PUNSUP is entitled to recover penalty for the rice rejected for not being as per the specifications laid down and interest thereon. Under Clause 9(iii) miller is liable to pay interest to PUNSUP on account of failure to supply rice within the stipulated period.

15. If the interpretation given by Additional District Judge to clause 9 is accepted, it would result in rendering clause 8 (iii) redundant as it would cover the cases of recovery of price for short supplied rice and the interest on the delayed deposit of the price claimed.

16. In the case in hand, admittedly one of the claim i.e. interest on late delivery of rice is covered under clause 9(iii) and is to be adjudicated by the Managing Director of PUNSUP. The other claims including the claim for interest on delayed deposit of price of short supplied rice as per clause 8(iii) is an arbitral dispute. The Additional District Judge erred in holding that both the claims are covered under excepted clause,

17. Consequently, the impugned order accepting the objections under Section 34 of the Act is set aside. The award was set aside on the ground that the issue was not arbitrable, other issues raised by the parties were not adjudicated, the matter is remitted back for deciding the objections

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under Section 34 of the Act afresh in accordance with law.

18 The appeal is allowed.

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

[AVNEESH JHINGAN]
JUDGE

31st May, 2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No

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