IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 5268 of 2013 (O&M)
Date of decision: 18th April, 2023

The Punjab State Civil Supplies Corporation Ltd.& another
Appellants
Versus
M/s Muktisar Rice Mill and others
Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Deepali Puri and Ms. Brea Sandhu, Advocates for the appellants.
Mr. Arvind Thakur, Advocate for respondent No. 1.
Mr. Ritam Bajaj, Advocate for Mr. SPS Sidhu, Advocate for respondent No. 2.

****

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. (hereinafter referred to as 'PUNSUP').

2. The relevant facts are that PUNSUP on 28.11.2000 entered into an agreement with Muktisar Rice Mill (hereinafter referred to as 'miller') for shelling of paddy for the crop year 2000-01. The period for supply of rice was extended upto 28.9.2002. 66576 bags of paddy weighing 33,288 quintals were issued to the miller and after accounting for the paddy shifted shifting of paddy and driage, the net paddy with the miller was 49282 bags weighing 24593.82 quintals. The miller delivered 6000 bags of rice weighing 7016 quintals and it failed to shell the balance paddy i.e. 35250

bags weighing 17625 quintals. The arbitration proceedings were initiated at the instance of PUNSUP and the statement of claim is reproduced below:

"STATEMENT A/C OF MILLING CHARGES PAYABLE/RECOVERABLE FROM M/S MUKTISAR RICE MILL FOR THE YEAR 2000-2001

Sr. No.		*Debit*	*Credit*
1.	*Milling charges for Malout 4718.50 & 2297.50 of paddy crop 13.20 & 23/87 per qtls.*	*--*	*62284.00* *54841.00*
2.	*Stitching charges payable for 6000 bags @ 1/25 per bags*	*--*	*7500.00*
3.	*Excess rice delivered if any*	*--*	*--*
4.	*Security*	*--*	
5.	*Other*	*--*	*--*
6.	*Amt. Recoverable of paddy 17625.00.000 qtls. Remained with millers @ 676/02 per qutls.*	*1,19,14,852.00*	*--*
7.	*Cost of bags remained with millers @ 35250 bags @ 24/79=873847.00* *8032 bags @ 11/49= 92288.00*	*966135.00*	*--*
8.	*Sales Tax + surcharge on Bardana @ 4.4%*	*42510.00*	*--*
9.	*TDS Recoverable* *2.2%*	*2677.00*	*--*
10.	*Cost of dead stocks articles 370 crates @ 277/45 = 102653.00* *1 sheets @ 2465/-= 2465.00*	*105118.00*	*--*
11.	*Quality cut recoverable*	*900.00*	*--*
12.	*Other recovery if any*	*--*	*--*
13.	*Total*	*13032192.00*	*124625.00*
14.	*Net amount recoverable*	*12907567.00*	

15.	*Interest on amount recoverable @-w.e.f. 1.3.2001 to 28.2.2002@ 21%=2710589.00* *1.3.2002 to 31.3.2004 @* *30%= 8067229.00*	*10777818.00*
16.	*Interest on late delivery of rice (Annexure Attached)*	*899760.00*
	Total amount recoverable	*24585145.00*

Note: Interest on recoverable amount due w.e.f. 1.4.2004 till date of realization"

3. The proceedings culminated in *ex parte* award dated 6.1.2006. PUNSUP was held entitled to recovery of Rs.1,29,07,567/- along with interest at the agreed rate of 21% w.e.f. 1.3.2001 till the date of award and further interest @ 18% on the total amount from the date of award till realization.

4. The objections filed by miller under Section 34 of the Act were allowed on 13.2.2013. The District Judge held that the dispute between the parties fell within the ambit of Clause 9 and the matter should have been referred to the Managing Director of PUNSUP. The award was set aside and the parties were directed to appear before the Managing Director, PUNSUP.

5. Learned counsel for PUNSUP submits that Clause 9 of the agreement covers the instance where the rice supplied by the miller is not in conformity with the specifications laid down. Further the case where the miller failed to complete the delivery within the stipulated period and interest @ 21% for the first year of default and @30% for the subsequent

period is claimed. 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 and these do not fall under Clause 9 of the agreement.

6. Learned counsel for the miller defends the impugned order and contends that Clause 9 of the agreement deals with non-supply of rice and the matter was to be decided by the Managing Director of PUNSUP. 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***.

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

8. 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 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 manufacturing of rice 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 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 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 28th February, 2001 as per the

following schedule:-

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

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 mill 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 appointed is or was an employee of Food & Supplies Department, Punjab/PUNSUP or that he has 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/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 successor.*

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

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

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

10. Clause 9 provides the issues to be decided by the Managing Director, PUNSUP and that his decision on these issues shall be final. Clause 9(i) deals with a situation where the rice supplied by the miller is rejected being not in conformity with the specifications laid down. Under Clause 9(i) the miller shall pay penalty to PUNSUP along with interest @ 21%. 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.

11. Clause 22 of the agreement provides for dispute resolution through arbitration.

12. From the combined reading of Clauses 9 and 22 of the agreement, a clear picture emerges that apart from the disputes covered under Clause 9, rest of the disputes are to be settled through arbitration.

13. The undisputed facts in the present case are that the miller failed to shell 35250 bags of 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 PUNSUP had made a claim for recovery of the cost of un-milled paddy. No recovery was sought for penalty under Clause 9(i) and the claim for interest under Clause 9(iii) for delay in supplying rice was rejected by the arbitrator.

14. In the present case, the issue involved is as to whether failure to shell paddy and to supply rice is covered under Clause 9 of the agreement or not?

15. The contention of learned counsel for the miller that non-supply of rice shall fall within Clause 9 lacks merit. Clause 8 (iii) deals with the case where there is shortfall for recovery of rice. On the other hand Clause 9(i) deals with the case where the rice is not supplied as per the specifications laid down. Under Clause 9(iii), the miller is liable to pay

interest to PUNSUP for failing to supply rice within the stipulated period.

16. There is another aspect to be considered. In case the contention of learned counsel for the miller is accepted, Clause 8(iii) is rendered redundant as it covers cases where price of rice is to be recovered on account of short supply of rice.

17. 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).***

18. It would be apposite to mention that Claims No. 15 and 16 relating to the interest on the amount recoverable and for late delivery of rice was rejected by the arbitrator. The District Judge erred in concluding that failure of the miller to supply rice is covered under Clause 9 and while arriving at this conclusion Clause 8 (iii) was not considered.

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

20. 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 9, the matter is remitted back to the District Judge for deciding the objections under Section 34 of the Act in accordance

with law.

21. 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.

22. The parties are directed to appear before the District Judge concerned on 10.5.2023.

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

[AVNEESH JHINGAN]
JUDGE

18th April, 2023
mk

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No