214 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-5510-2013 (O&M)
Date of decision: 18th April, 2023

Punjab State Civil Supplies Corporation Ltd
...Appellant

Versus

M/s Mittal Rice Mills and others
...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Deepak Sabherwal, Advocate for the appellant.

Mr. Mukand Gupta, Advocate for respondent No.1.

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AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') is filed aggrieved of acceptance of the objections filed by M/s Mittal Rice Mills (hereinafter referred as 'rice mill').

2. The brief facts are that the appellant-Punjab State Civil Supplies Corporation Ltd (for short 'PUNSUP') on 10th October, 1994 entered into an agreement with the rice mill for shelling of paddy for the crop year 1994-95. The date for delivery of rice was extended upto 30th June, 1995. There was a dispute between the parties. The arbitration was at the instance of PUNSUP and the original claim of Rs. 5,68,71,270/- was filed which was later revised to Rs. 95,01,581/-. The arbitration proceedings culminated in award dated 7th December, 2006 and the revised claim of the PUNSUP was allowed. The objections filed by the rice mill were accepted on 21st May, 2013. The District Judge came to the conclusion that the claim filed by PUNSUP was under Clause 6 and was to

be decided by the Managing Director of PUNSUP.

3. Learned counsel for the appellant submits that revised claim filed by PUNSUP was under clause 5 of the agreement, for short recovery of the rice and the Additional District Judge erred in holding that the claim was to be decided by Managing Director of PUNSUP.

4. Learned counsel for the miller has not disputed the fact that the revised claim was for recovering the equivalent cost of paddy on account of short supply of the rice, sales tax, costs of bags, TDS and quality cut.

5. Clauses 5, 6 and 17 are reproduced below:-

> *"5. i) The miller shall ensure that the resultant rice after milling of paddy is aerated for 72 hours before bagging.*
>
> *ii) the degree of polish given to rice shall be 3 to 5% and shall not contravene the provisions of rice milling industry (Regulation and Licencing) Rules, 1959 as amended from time to time.*
>
> *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 cost of paddy equivalent to the shortfall at the rate of 1 ½ times the economic cost of paddy.*
>
> *iv) The by-products viz. Broken rice kani, nakoo, phak 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 F.C.I.*
>
> *6. i) The entire quantity 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 and in any other Notifications issued by the State Government from time to time. The stocks of rice set conforming to the specifications*

so laid down, shall be liable to rejected to the respect of such quantity of rice which is not found to the within the specifications and the miller shall be liable to offer fresh stocks of rice conforming to the specifications to the PUNSUP in the event of his failure to supply rice within the prescribed specifications, shall be liable to pay to the PUNSUP for the quantity of rice short supplied at the penal rate of one and half times the economic cost of the converted variety of paddy equivalent to the shortages. The decision of the Managing Director, PUNSUP (hereinafter referred to as the Managing Director) in this behalf shall be final.

ii) The stocks of rice shall also be subjected to the inspection of the staff of the PUNSUP at the time of delivery. Any quantity allowance determined at the time of inspection according to the specifications shall be recovered from the millers bills.

iii) The Miller shall complete delivery of rice within 10 days of issuance of paddy to him and rice due to the PUNSUP on the total quantity of paddy issued to him or in joint custody released at regular interval shall be delivered not later than the 28th February, 1995. The miller shall further ensure milling of PUNSUP paddy and delivery of rice in the following manner:

October/November	*20%*
December	*26%*
January	*26%*
February	*28%*

In the event of his failure to supply rice within the stipulated period he shall be liable to for an interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice.

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

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17. 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 the sole arbitration of the Managing Director or any person appointed by him in this behalf. It will be no objection to any such appointment that the person appointed is or was an employee of Food & Supplies Department, Punjab/ Agency/ 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 the Food & Supplies Department, Punjab/ agency/ 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 term of this contract that in the event of the arbitrator being transferred, or vacating his office, dying or being unable to act for any reason 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 that stage where it was left by his Predecessor.*

Provided further that any demand for arbitration in respect of any claim(s) of the millers, under the contract shall be in writing and made with in 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 absolutely barred and the Managing Director shall be discharged and released of all liability 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 suitable provisions for the same in his award.

Subject as aforesaid, the Arbitration Act, 1940 shall apply to the arbitration providing under this clause."

6. Clause 5 of the agreement deals with the obligation and

entitlement of the miller vis-a-vis the supply of rice. As per clause 5(iii), in case of a shortfall in recovery of rice, the miller shall be liable to pay to PUNSUP the 1 ½ times the economic cost of paddy.

7. Clause 6 provides the issues to be decided by the Managing Director, PUNSUP and that his decision on these issues shall be final. Clause 6(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 6(i) the miller shall pay one and half times the economic cost of the converted variety of paddy equivalent to the shortages. As per sub-clause (ii), on inspection of rice at the time of delivery, the quality allowance determined at that time shall be recovered from the miller. Sub-clause (iii) provides the time stipulated for delivery of milled rice. In case of failure to supply rice within the prescribed time, the miller shall be liable to pay interest @ 21% on the basis of economic cost of left over quantity/stocks of paddy/rice.

8. Clause 17 of the agreement provides for dispute resolution through arbitration.

9. From the combined reading of Clauses 6 and 17 of the agreement, a clear picture emerges that apart from the disputes falling under Clause 6, rest of the disputes are to be settled through arbitration.

10. In view of the undisputed fact that the revised claim was neither for the penalty due to rejection of rice for not conforming to the specifications nor for claiming interest for not supplying the rice within the stipulated period, the only possible conclusion is that the revised claim was not within the ambit of Clause 6.

11. The Additional District Judge erred in holding that the dispute

fell within the ambit of Clause 6 and was to be decided by Managing Director PUNSUP. In the impugned order Clause 5 of the agreement was not considered. Consequently, appeal is accepted, impugned order is set aside.

12. Considering that other issues raised by the miller were not decided by the court concerned as the award was set aside relying upon Clause 6, the matter is remitted back to the District Judge for deciding the objections under Section 34 of the Act in accordance with law.

13. 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.

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

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

[AVNEESH JHINGAN]
JUDGE

18th April, 2023
Parveen Sharma

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