IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3868 of 2015 (O&M)
Date of decision: 2nd May, 2023

M/s Sant Sunder Dass Rice and General Mill through its partners

Appellant

Versus

The Punjab State Civil Supplies Corp. Ltd.(PUNSUP) & others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R. S. Rangpuri, Advocate for the appellant.
Mr. Deepak Sabherwal, Advocate for respondents No. 1 & 2.

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AVNEESH JHINGAN, J (Oral):

1. M/s Sant Sunder Dass Rice and General Mill (hereinafter referred to as 'the miller') is in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act').

2. The relevant facts are that Punjab State Civil Supplies Corporation Ltd. (hereinafter referred to as 'PUNSUP') on 30.11.2000 entered into an agreement with the miller for shelling of paddy for the crop year 2000-01. Paddy in 41663 bags weighing 20831.50 quintals was issued and the miller failed to shell the entire paddy. The arbitration proceedings initiated at the instance of PUNSUP culminated in award dated 18.5.2005. PUNSUP was held entitled to recover Rs 64,56,837/- along with interest at the agreed rate of 21% w.e.f. 1.8.2012 till the date of award and further interest @ 18% on the total amount from the date of award till realization.

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3. The objections filed by miller under Section 34 of the Act were dismissed on 20.12.2014.

4. Learned counsel for the miller argues that the claim of PUNSUP was covered under Clause 9 of the agreement and the matter was to be decided by the Managing Director. The contention is that clause 9 (i) deals with 'quantity of rice short supplied'. He further argues that as the interest was awarded to claimant, the matter shall fall under clause 9 (i) of the agreement.

5. Learned counsel for PUNSUP defends the impugned order and contends that the claim was under clause 8 of the agreement.

6. Statement of claim is reproduced below:

Amount recoverable of rice 6064.50 qtls. Remained with miller @ 994.91 per qtl.	*:*	*Rs.60,33,632.00*
Cost of 18660 katta @ 23.36 per bag	*:*	*Rs.4,35,898.00*
& cost of 16605 katta @ 11.49 per bag	*:*	*Rs.1,90,791.00*
Sales Tax + surcharge on bardana	*:*	*Rs.27,574.00*
TDS	*:*	*Rs.4,850.00*
Total	*:*	*Rs.66,92,745.00*

Amount payable to miller

Milling Charges	:	*Rs.1,54,757.00* *Rs.65,714.00*
Stitching Charges	*:*	*Rs.15,437.00*
Total	*:*	*Rs.2,35,908.00*
Net recoverable	*:*	*Rs.64,56,837.00*
Interest on late delivery of rice	*:*	*Rs.13,55,935.00*

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Total amount recoverable	*:*	*Rs.78,12,772.00*

7. Heard learned counsel for the parties and perused the record produced by them.

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*

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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*

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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 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 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 &

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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 shortfall in recovery of rice, the miller shall be liable to pay to PUNSUP the price of rice quantified at custom milled rice rates plus interest @ 21%.

10. Clause 9(i) and (iii) provides the issues to be decided by the Managing Director, PUNSUP and that his decision 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.

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

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

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arbitration.

13. The undisputed facts are that the miller failed to shell entire paddy and supply the milled rice. It was not a case of rejection of rice 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 and there was no claim for penalty under Clause 9(i). Further interest under Clause 9(iii) for delay in supplying rice was not awarded by the arbitrator.

14. In the present case, the issue involved is as to whether recovery of price for 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 is covered under Clause 9 lacks merit. Clause 8 (iii) deals with the case where price of short supply of rice is claimed. 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. The contention of learned counsel for the miller that clause 9 (i) deals with short supply of rice is mis-placed. Clause 9 (i) deals with rejection of the rice for not being in conformity with the specifications laid down. Further that in such case, the miller shall be liable to pay PUNSUP penalty for the rice short supplied and interest @ 21% thereon. Whereas clause 8(iii) comes into operation in case of shortfall in recovery of rice as provided under clause (i) and in that eventuality, the miller shall pay the price of rice plus interest @ 21%. The phrase 'rice short supplied' used in

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clause 9(i) of the agreement is in context with rejection of rice for not conforming to the specifications laid down. In the case in hand, the claim of PUNSUP was for cost of short supply of milled rice and not of penalty.

17. 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.

18. In view of the above, the appeal is dismissed.

19. 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 / No
2. Whether reportable : Yes / No

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