IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(210)

FAO-1776-2013
Date of decision:- 10.01.2024

Punjab State Civil Supplies Corporation Limited ... Appellant

Versus

Aman Rice Mill and another ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Deepali Puri, Advocate
for the appellant.

None for the respondents.

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SUVIR SEHGAL, J. (*ORAL*)

1. By way of present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), Punjab State Civil Supplies Corporation Limited (for short "the PUNSUP") has assailed order dated 11.01.2013 passed by Additional District Judge, Chandigarh, whereby Objection Petition under Section 34 of the Act filed by the respondents, has been accepted.

2. Facts, in brief, are that an agreement dated 03.11.2001, Annexure P-1, was entered into between the appellant and the respondents for custom milling of rice for the year 2000-01. Under the agreement, the respondents were to be supplied 5159.54 Metrics MTs of paddy for shelling, which was to be completed by the respondents by 30.04.2001 and the resultant rice, as per specification, was to be supplied to the Food Corporation of India (FCI)

in PUNSUP account. Clause 8 (iii) of the agreement, Annexure P-1, provided that in case of shortfall in the recovery of rice, the miller is responsible to pay the price of rice at custom mill rates plus interest @ 21% from the date it became due. Clause 9 provided that in case of rice does not confirm to the specification laid down in the agreement, it shall be liable to be rejected and the miller shall be liable to pay PUNSUP for short delivery of rice as penalty at the custom mill rate fixed by the Government of India, besides interest @21%. It was further provided that the decision of the Managing Director in this regard would be final. In Clause 9 (ii), the time period for the delivery of the shell rice was specified and it was clarified that on the failure to deliver the rice within the time frame, interest @21% for the first year of default and @30% for the subsequent period on the economic cost fixed by the Government, would be payable by the miller and the decision of the Managing Director- PUNSUP in this connection shall be final.

3. A dispute arose between the parties and in terms of Clause 22 of the agreement, Annexure P-1, it was referred to an Arbitrator for decision. Both the parties raised claim and counter claim. An award dated 28.10.2005 was passed by the Arbitrator for Rs.18,59,930.74/- in favour of PUNSUP with interest @ 9% per annum on the awarded amount, besides costs. Litigation cost would also awarded in its favour. Respondents filed objections before the learned Additional District Judge against the award. Interpreting Clause 9 (ii) of the agreement, Annexure P-1, the learned Additional District Judge came to the conclusion that the controversy fell within the excepted clause and was to be decided by the Managing

Director. Accordingly, the award was set aside and the matter was sent to M.D., PUNSUP for decision in accordance with law. Aggrieved against the order of the learned Additional District Judge, PUNSUP has approached this Court by way of present appeal.

4. By referring to the counterclaim raised before the Arbitrator, counsel for the appellant has urged that PUNSUP had claimed sales tax, income tax, quality, cut and cost of bags, besides cost for short delivery of rice, which did not fall within the purview of the Clause 9 (ii) of the agreement, Annexure P-1. She contends that the Court has misread the Clause and has erred in referring the matter for adjudication to the M.D., PUNSUP. She has placed reliance upon the judgments of this Court reported in ***FAO-1186-2010*** titled as "***Adarsh Rice Mills Versus Punjab State Civil Supplies Corporation and another***", decided on 17.07.2012; ***FAO-396-2010*** titled as ***"Punjab State Civil Supplies Corporation Ltd. and another Versus M/s Shiv Shankar Rice Mills and another"***, decided on 18.07.2012; ***FAO-3778-2004*** titled as ***"M/s Shiv Shankar Rice Mills Versus PUNSUP and others"***, decided on 01.02.2011; ***FAO-2462-2005*** titled as ***"Punjab State Civil Supplies Corporation Limited and others Versus Sham Rice Mills"***, decided on 25.09.2010; ***FAO-5268-2013*** titled as ***"Punjab State Civil Supplies Corporation Limited and another Versus M/s Muktisar Rice Mills and others"***, decided on 18.04.2023 and ***FAO-5510-2013*** titled as ***"Punjab State Civil Supplies Corporation Limited Versus Mittal Rice Mills and others"***, decided on 18.04.2023.

5. I have heard counsel for the appellant and perused the record with her able assistance.

6. Although, respondents have been served, but there is no appearance on their behalf. Identically worded clauses in the agreement came up for consideration before a Co-ordinate Bench of this Court in ***Muktisar Rice Mill's*** case (supra) and this Court held as under:-

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

7. This Court is of the view that the present matter is squarely covered with the observations of the Co-ordinate Bench of this Court reproduced above. Resultantly, instant appeal is allowed and the impugned order is set aside.

8. Matter is remitted to the District Judge, Chandigarh for re-consideration and fresh decision.

9. Parties are directed to appear before the District Judge, Chandigarh on 15.02.2024, who may decide the matter himself or assign it to any Court of competent jurisdiction.

(SUVIR SEHGAL)
JUDGE

10.01.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No