

HIGH COURT OF PUNJAB AND HARYANA

Bench: Justice Jagmohan Bansal

Date of Decision: 31 October 2023

CWP-24558-2023

M/S M.K. INDUSTRIES

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PETITIONER

V/S

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STATE OF PUNJAB AND OTHERS

RESPONDENTS

Sections, Acts, Rules, and Articles:

Article 226 of the Constitution of India

Section 34 of the Arbitration Act

Custom Milling Policy for KMS 2023-24

Subject: Writ petition filed by M/S M.K. Industries seeking the setting aside of a communication dated 26.10.2023, which stopped the storage of paddy in the petitioner's premises until the payment of a certain amount along with interest to the Punjab State Warehousing Corporation.

Headnotes:

Writ Petition – Setting Aside Communication – Petitioner seeks to set aside the communication dated 26.10.2023, stopping the storage of paddy in the petitioner's premises until payment of Rs.7,28,167/- along with interest to respondents No.6-Punjab State Warehousing Corporation. [Para 1]

Custom Milling Policy – Allocation of Paddy – The State formulated a Custom Milling Policy for KMS 2023-24, under which the petitioner applied for the

allocation of paddy. The respondent alleged that the petitioner filed a false affidavit regarding the status of the earlier owner of the land where the rice mill is located. [Para 3]

Land Ownership and Arbitration – The land where the petitioner's rice mill is located was previously owned by M/s Rashi Foods. A dispute regarding the delayed supply of rice was pending between the previous owner and respondent No.6. The Arbitrator rejected the claim of respondent No.6, and the matter is now pending before the Additional District and Sessions Judge, Chandigarh. [Para 4]

Custom Milling Policy – Definition of Defaulter – As per the Custom Milling Policy, a mill is considered a defaulter if there's a pending police case/court case/arbitration case against the miller on account of embezzlement, non-delivery of rice, or non-clearance of any dues of any Procurement Agency. [Para 9]

Arbitration Award – Status of Defaulter – The Arbitrator rejected the claim of the respondent against M/s Rashi Foods. Given the absence of a stay by the Objecting Court, it's not reasonable to conclude that an arbitration case is pending between M/s Rashi Foods and respondent No.6. [Para 9-10]

Decision – The demand raised by the respondent from the petitioner regarding the afore-stated litigation is not sustainable. The writ petition is allowed. Observations made by the Court shall not be construed as an opinion regarding the pending litigation between respondent No.6 and M/s Rashi Foods. [Para 12-13]

Referred Cases: None.

JAGMOHAN BANSAL , J. (Oral)

1. The petitioner through instant petition under Article 226 of Constitution of India is seeking setting aside of communication dated 26.10.2023 (Annexure P-14) whereby District Controller, Food, Civil Supplies and Consumer Affairs, Sangrur has stopped storage of paddy in the premises of petitioner until payment of Rs.7,28,167/- along with interest to respondents No.6-Punjab State Warehousing Corporation.
2. With the consent of both sides, matter is taken up for final disposal.
3. The petitioner is engaged in the business of milling rice. Like other years, the State formulated Custom Milling Policy for KMS 2023-24. The petitioner applied for the allocation of paddy and respondent allotted paddy to the petitioner. The respondent after allotment of paddy formed an opinion that petitioner has filed false affidavit to the extent of status of earlier owner of land where rice mill of the petitioner is located. The respondent vide communication dated 26.10.2023 has directed the petitioner to make payment of Rs.7,28,167/- along with interest and further stopped storage of paddy till the time entire dues are cleared.
4. Learned counsel for the petitioner *inter alia* contends that the land where rice mill of the petitioner is located was owned by M/s Rashi Foods. The said land was taken over by petitioner. The dispute with respect to delayed supply of rice was pending between previous owner of the land and respondent No.6. The respondent No.6 filed a claim petition before an Arbitrator. The Arbitrator vide award dated 30.09.2020 (Annexure P-10) rejected claim of the respondent No.6. The respondent Corporation has preferred petition under Section 34 of Arbitration Act before District Judge, Chandigarh. The matter is pending before the Additional District and Sessions Judge, Chandigarh, however, there is no stay. As Arbitrator has already rejected claim of Corporation and there is no stay by Appellate/Objectioning Court, the petitioner was not supposed to disclose particulars of litigation pending between previous owner and corporation in the affidavit, which was filed at the time of allocation of paddy.
- 1 Learned counsel for respondents No.5 and 6 submits that land where present petitioner is operating was owned by M/s Rashi Foods and as per sub Clauses (vi) and (viii) of Clause 7 of Custom Milling Policy, M/s Rashi Foods was defaulter and petitioner in the affidavit filed at the time of allocation of paddy did not disclose the fact that previous owner of the land was a defaulter.

The petitioner is liable to clear dues of previous owner, thus, by impugned letter the petitioner has rightly been called upon to deposit aforesaid amount. The petitioner was very well aware of the liability of previous owner, thus, the petitioner cannot feign ignorance.

5. I have heard the arguments of learned counsel for the parties and perused the record.
6. The conceded position emerging from the record is that the petitioner has purchased land from M/s Rashi Foods. The dispute with respect to recovery of Rs.7.28 lakhs is pending between M/s Rashi Foods and respondent No.6 before Additional District Judge, Chandigarh. The Corporation had filed its claim before Arbitrator who rejected claim of the respondent and respondent has filed objection petition under Section 34 of arbitration Act before District Judge, Chandigarh. There is no stay by the Objecting Court against the award passed by the Arbitrator.
7. For the appreciation of the dispute, it is inevitable to look at Sub Clauses (vi), (viii) and (x) of Clause 7 of Custom Milling Policy which are reproduced as below :

7. EVENTS OF DEFAULT _

No mill/miller shall be considered for provisional registration/final registration/allotment to an agency or for allocation of paddy under this policy, if it has been declared as a defaulter in any of the previous years and/or is in breach /violation/ non-compliance of the following:

i to v X X X X

vi. If a mill owned, leased, or operated by a previously declared defaulter miller is transferred. Either through sale/lease or any other mode to any other person/miller, then such other person/miller shall also be considered

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to be defaulter until all the dues of the agency of which such miller was defaulter, are cleared or the default cured and the concerned agency issues an NOC in favor of such defaulter miller and such premises.

X X X X

viii The miller shall be considered as a defaulter if a police case/court case/arbitration case is pending against the miller on account of embezzlement and/or on account of non-delivery of rice and/or an account of non-clearance of any dams of any Procurement Agency including PAFC and/or declared blacklisted by the Department/FCL However, if the miller

clears the default of the concerned agency along with interest at the rates for the relevant year (s), as decided by the Government from time to time and there is no pending recovery towards miller, he may be considered for allotment without prejudice to the outcome of the Criminal Case/FIR/Court Case/Arbitration Case pending against him. Provided that such defaulter mills would also furnish a NOC from all Procurement Agencies and PAFC, before registration and allotment. Further provided that those mills which are under the currency of blacklisting shall not be considered eligible for registration/allotment.

X X X X

x. The Miller against whom an arbitration award has been passed but has failed to deposit the amount awarded against him, shall be treated as defaulter, until he deposits the entire awarded amount with the concerned agency.

4 From the perusal of above-quoted clauses of the policy, it is quite evident that a mill is considered defaulter, if a police case/court case or arbitration case is pending against the miller on account of embezzlement and/or on account of non-delivery of rice and/or on account of non-clearance of any dues of any Procurement Agency. The case of respondent is that there was delay in supply of rice by M/s Rashi Foods, thus, M/s Rashi Foods was liable to pay interest on delayed supply of rice. The respondent filed its claim before Arbitrator and concededly Arbitrator has rejected claim of the respondent. As on day, there is award in favour of M/s Rashi Foods and objection petition of the respondent is pending before Additional District Judge, Chandigarh and there is no stay. As respondent has lost its case before Arbitrator, it cannot be called that an arbitration case is pending against miller on account of non-clearance of dues. The respondent could have a case, had the matter been pending before Arbitrator or there would have been stay by Objecting Court. In the absence of pendency of proceedings before Arbitrator or stay by Objecting Court, it would not be just, fair and reasonable to conclude that an arbitration case is pending between M/s Rashi Foods and respondent No.6, thus, M/s Rashi Foods is a defaulter. If contention of respondent is accepted, M/s Rashi Foods would be defaulter till the final adjudication by Supreme Court. After dismissal of petition under Section 34 of Arbitration Act by Objecting Court, the respondent would have remedy to file appeal under Section 37 of Arbitration Act before High Court and thereafter by way of Special Leave Petition before Hon'ble Supreme Court. It is settled proposition of law that appeal is continuation of the original suit, however, in the peculiar

facts and circumstances as well as terms of policy, it cannot be concluded that arbitration case is pending between M/s Rashi Foods and Corporation and M/s Rashi Foods is a defaulter. The litigation may be treated as pending, however, an order passed by lower Court cannot be ignored. M/s Rashi Foods cannot be extended status which it would get if respondent succeeds in objection petition.

10. Sub clause (x) of the clause 7 of the Policy makes the things more clear. It provides that a miller would be defaulter against whom arbitration award has been passed but has failed to deposit the amount awarded against him.
11. In the case in hand, the Arbitrator has rejected claim of the respondent, thus, miller cannot be treated as defaulter.
12. In the wake of above discussion and findings, this Court is of the considered opinion that demand raised by respondent from petitioner with respect to afore-stated litigation is not sustainable. The present petition deserves to be allowed and accordingly allowed.
13. The observations made by this Court shall not be construed as opinion with respect to pending litigation between respondent No.6 and M/s Rashi Foods.

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