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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**1. ARB No.200 of 2017 (O&M)
Date of Decision: 05.09.2022**

M/s Shiv EnterprisesPetitioner

Vs

**Managing Director, The Haryana State Co-operative Supply
and Marketing Federation Ltd. (HAFED) and another
.....Respondents**

2. ARB No.201 of 2017 (O&M)

M/s Shiv EnterprisesPetitioner

Vs

**Managing Director, The Haryana State Co-operative Supply
and Marketing Federation Ltd. (HAFED) and another
.....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Robin Dutt, Advocate
for the petitioner.

Mr. Sudeep Mahajan, Advocate and
Mr. Saachi Mahajan, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Vide this common order, ARB No.200 and 201 of 2017 (O&M) are being decided as the issue involved in both the cases is same. For brevity, the facts are being culled out from ARB No.200 of 2017 (O&M).

[2]. Petitioner(s) has preferred these petitions under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for the appointment of an independent sole Arbitrator.

[3]. Learned counsel for the petitioner submits that the petitioner is a proprietor firm and dealing with shelling/milling of the paddy. A contract agreement was entered into between the parties on 03.10.2012 for the purposes of milling of paddy as per clause 10 of Haryana Rice Procurement (Levy) Order 1985.

[4]. Learned counsel further submits that the contract agreement has an arbitration clause No.23. Proviso to the aforesaid clause provides 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 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 released of all liabilities 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 make suitable orders in his award. Clause 19 of the agreement does not prescribe any period for which the contract agreement shall remain in force, rather it prescribes that agreement shall remain in force (column blank) or clearance of dues whichever is later.

[5]. Learned counsel for the respondents however places reliance upon clause 7(iv) of the agreement to submit that miller shall complete delivery of rice due to Govt./Agency on the total quantity of paddy issued to him within 10 days of the issuance of paddy by way of Release Order. Rice against entire stock kept in his mill shall be delivered not later than the 31st March, 2013 as per schedule given therein.

[6]. Perusal of the aforesaid clause does not show the period for which the agreement shall remain in force, rather the proviso to arbitration clause prescribes that the demand for arbitration shall be made in writing within one year from the date of completion or expiry of the period of contract.

[7]. Admittedly, the petitioner has already invoked the clause for which no expiry date has been given in the agreement. In view of **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377,** the authority of Managing Director to nominate the Arbitrator, who may be otherwise eligible and respectable person is negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the amended Act of 2015. The Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the aforesaid

judgments. Existence of arbitral clause in the agreement is not in dispute. In view of aforesaid arbitration dispute arisen between the parties, an independent Arbitrator can be appointed.

[8]. Keeping in view the facts and circumstances of the case, I deem it appropriate to appoint Sh. Kunal Vinayak, Advocate H.No.538, Phase-1, Mohali, Mob. No.9569884926, 9876511277, email id: advkunalvinayak@gmail.com as the sole Arbitrator in both the cases, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[9]. The Arbitrator shall complete the proceedings within specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the 4th Schedule of the Act as amended from time to time. The fee shall be borne by parties in equal proportion.

[10]. A copy of this order be dispatched to the Arbitrator at the following address:-

Sh. Kunal Vinayak, Advocate
H.No.538, Phase-1, Mohali,
Mob. No.9569884926, 9876511277,
email id: advkunalvinayak@gmail.com

[11]. Both the petitions stand disposed of accordingly.

September 05, 2022

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)

JUDGE

Yes/No

Yes/No