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

**ARB No.302 of 2019 (O&M)
Date of Decision: 10.11.2022**

M/S M M RICE MILL

.....Petitioner

Vs

**HARYANA STATE WAREHOUSING CORPORATION AND
OTHERS**

.....Respondents

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

Present: Mr. Barjinder Singh, Advocate for
Mr. Sumit Gupta, Advocate
for the petitioner.

Mr. Sandeep Jain, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an independent Arbitrator to adjudicate the dispute between the parties arising out of contract agreement dated 13.10.2018.

[2]. Petitioner entered into an agreement with the Haryana State Ware Housing Corporation on 13.10.2018 in respect of custom milling of the paddy into rice. In terms of the agreement,

34752.75 quintals of paddy was given to the petitioner. As per schedule 23284 quintals of rice was to be handed over to the Department.

[3]. The petitioner had staked its claim that while discharging the obligation on its part and as per agreement, 6750 quintals of rice had already been given to the Haryana State Ware Housing Corporation, however remaining 14912.80 quintals of rice could not be handed over due to non-acceptance of the same by the Food Corporation of India (for short 'the FCI'), as no proper space for storage of rice was available with the FCI at the relevant time. Despite several requests, no infrastructure was provided for proper storage of stocks and to pay the rent for the period of storage with the miller. The Corporation had failed to perform reciprocal obligation resulting into damage of the stock due to hostile weather.

[4]. The petitioner has invoked the arbitration clause No.24 of the agreement without specifying the loss suffered by the petitioner in its letter of invocation dated 05.07.2019.

[5]. Notice of motion was issued on 30.01.2020. As per reply filed, an FIR has already been registered against the petitioner for the loss caused to the Corporation to the tune of Rs.5,82,85,296/-. The petitioner in terms of letter dated 01.07.2020 has already approached the District Manager,

Haryana Warehousing Corporation, Ambala in respect of payment arising out of milling of KMS 2018-19 and withdrawal of the present case. The petitioner through its partner Surjeet Singh has submitted before the District Manager, Haryana Warehousing Corporation, Ambala that the petitioner had received 3475.275 MT of paddy from the Haryana Warehousing Corporation, but due to some reasons the petitioner could only deliver 675.00 MT of rice to the FCI and 1653.43 MT of paddy remains outstanding for which the petitioner is ready to make payment in installments. The petitioner also gave the details of its property with reference to its valuation along with the amount lying in fixed deposit. At last, the petitioner showed its willingness to deposit the amount in question within a specified period even by means of installments and is still ready to give conditional recovery to the Department.

[6]. The documents annexed with the reply filed by the respondents have not been countered by the petitioner by way of any rejoinder to the reply. The petitioner has not shown any tentative value of its claim in the petition including the notice of invocation.

[7]. On the other hand, the respondent-Corporation has shown the claim to the tune of Rs.5,82,85,296/- pending towards the petitioner for which the petitioner had already given

undertaking before the Department for which no denial has been made by the petitioner in terms of any rejoinder to the reply. It appears from the record that the issue is not arbitrable.

[8]. Vide order dated 19.05.2022 passed in Special Leave Petition (Civil) No.5306 of 2022, the Hon'ble Apex Court has directed that all pending applications under Section 11(5) and 11(6) of the Arbitration Act and/or any other application either for substitution of Arbitrator and/or change of Arbitrator, which are pending for more than one year from the date of filing, must be decided within six months from that day i.e. 19.05.2022.

[9]. For the reasons recorded hereinabove, I do not find any justification to appoint any Arbitrator in the present case. Since the dispute is not arbitrable in nature, therefore, no indulgence can be granted in favour of the petitioner.

[10]. The petition is dismissed accordingly.

November 10, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No