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

ARB No. 254 of 2018 (O&M)
Date of Decision: 22.09.2022

M/s Radhey Krishna Rice Mills

-Petitioner

Versus

Managing Director, CONFED and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. Harish Bansal, Advocate, and
Mr. Dinesh Nagar, Advocate,
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

1. Petitioner has preferred this petition under Section 11 of Arbitration and Conciliation Act, 1996 for appointment of an arbitrator to adjudicate the dispute between the parties.

2. A contract agreement was executed between the petitioner and CONFED on 08.10.2019 in respect of milling of paddy as per Clause 10 of Haryana Rice Procurement (Levy) Order, 1985.

3. Perusal of Clause 19 of the agreement would read the following contents:-

“19. This agreement shall remain in force

upto _____ or clearance of dues whichever is later. Thereafter, it may be extended at the discretion of the Confed/Agency. However, Govt/Agency reserves the following right:-

(a) to terminate the agreement with the Miller/Second Party for shelling of paddy into rice at any time during its period without assigning any reason. In that event, the miller shall render complete accounts of paddy, rice and gunny bags to the confed which is in his custody and also return the stocks as per specifications and as per direction of the Government.

(b) to withdraw from the contract, at any time, any milling work in respect of whole or part of the stocks covered by the contract not yet lifted by miller, if he considers, it is necessary to do so. The decision of the Confed Distt. Office, Haryana/ Managing Director in this regard shall be final and no claim shall be entertained against the Confed for any loss or damage suffered or alleged to have been suffered by the miller on account of such withdrawal of the work.

(c) to terminate the contract at the risk and cost of the rice miller (having one tonne capacity) if a minimum of 5% of paddy allotted to him is not milled per week and also at liberty to initiate action to get the payments stopped against the deliveries of levy rice.”

4. Perusal of the aforesaid clause would show that agreement in question shall remain in force upto indefinite period as there is no fill in the blank. Petitioner has raised a tentative claim of Rs.13,38,792/- on the ground that despite making oral requests, the respondents- CONFED has not adverted to the claim of the petitioner and the petitioner ultimately issued a legal notice on 07.06.2018, raising a demand of Rs.13,38,792/- and the same was to be met by the respondent- CONFED as per Clause 23 of the agreement.

5. In reply to the aforesaid legal notice, the General Manager of the respondent- federation issued intra departmental communication to DFSC-cum-District Magistrate, CONFED District Office, Yamuna Nagar to the effect that since milling account is settled at District Office level, therefore, DFSC-cum-District Magistrate was asked to give reply to the notice to the Advocate at his own level. No such details have been communicated to the petitioner in respect of date of settlement of the claim of the petitioner at any point of time.

6. Perusal of written statement filed in the present petition would reflect the following grounds:-

“PRELIMINARY OBJECTION(S):-

1. That the main petition seeking appointment of Arbitrator under the Agreement in question is belatedly hit by Law of limitation. It is the case of

the applicant-petitioner that first time the cause of action accrued to him in the year 2010 and subsequently when the legal notice (P-2 dated 07-06-2018) was served upon the respondents demanding appointment of arbitrator in the light of Arbitration Clause in the agreement. Since 2010 till serving of legal notice (P-2 dated 07-06-2018), the applicant-petitioner did not raise any issue with regard to settlement of his alleged account, therefore serving of any legal notice would not rescue the applicant-petitioner to extend the limitation period of three years under the provisions of Law of Limitation Act.

ON MERITS:-

- 1. That the contents of para 1 (A) to (E) in tabulated form of the application-petition is not denied being part of the record. However the contents of sub para (F) (III) to (F) (V) are altogether denied being wrong and incorrect. However the contents of sub para (F) (VI) & (VII) are not denied being matter of record.*
- 2. That the contents of para 2 of the petition is wrong and vehemently denied. The respondents have made their position crystal clear in the preliminary objection; the contents of same may kindly be read as part and parcel to the reply to his para.*
- 3. That the contents of para 3 of the petition is wrong and vehemently denied.”*

7. In the written statement also, no date of alleged

settlement has come forth on record.

8. Plea of limitation raised by the respondents, in my *prima facie* view is a mixed question of law and facts and the claim of the petitioner can not be held to be *ex facie* time barred.

9. In view of aforesaid circumstances, the Arbitrator can be called upon to adjudicate the *lis* including the plea of limitation on the basis of material to be adduced by the parties at the relevant time. All pleas would be available to the parties before the Arbitrator including the plea of limitation.

10. In view of aforesaid facts and circumstances of the case, I hereby appoint Sh. Lakshman Sharma, District and Sessions Judge (Retd.), Flat No.C-57 Kendriya Vihar-II, Sector 25, Panchkula, 9463999544 as the sole Arbitrator, 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.

11. The Arbitrator shall complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne

by the petitioner and respondent(s) in equal proportion.

12. The venue of the Arbitration shall be Chandigarh/Panchkula.

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

Sh. Lakshman Sharma, District & Sessions Judge

(Retd.)

Flat No.C-57 Kendriya Vihar-II, Sector 25, Panchkula

9463999544

14. Petition stands disposed of accordingly.

22.09.2022

Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No