

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

Arbitration Case No. 213 of 2018 (O&M)

Date of decision: 29th March, 2023

M/s Shiv Shakti Rice Mills

Petitioner

Versus

Managing Director HAFED and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Robin Dutt, Advocate for the petitioner.
Mr. S. K. Mahajan, Advocate for the petitioners.

AVNEESH JHINGAN, J (Oral):

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of the arbitrator.

The brief facts are that the parties entered into an agreement on 9.10.2009 for milling of the rice for Kharif season 2009-10. The petitioner was to supply the rice within the stipulated period and the agreement was to remain in force till 31.3.2010 or clearance of dues whichever is later. The petitioner gave a notice on 7.6.2018 claiming that his accounts were not settled.

The respondents have filed reply raising an objection that the claim is time barred. The stand taken is that as per Clause 9, the agreement had to remain in force upto 31.3.2010 or clearance of dues whichever is later. The dues of the petitioner were cleared on 1.3.2011 and he had signed the documents in token of clearance of the dues.

Learned counsel for the petitioner argues that after issuing notice on 7.6.2018, the present petition was filed.

From the perusal of the pleadings and from the averments, it is not disputed that the petitioner remained silent from 2011 till 2018. At a belated stage after a gap of seven years, he served a notice that accounts have not been settled.

The Supreme Court in ***Intercontinental Hotels Group (India) Pvt. Ltd. and another v. Waterline Hotels Pvt. Ltd., 2022(7) SCC 662*** held:

*“8. At the outset, we need to state that this Court’s jurisdiction to adjudicate issues at the preappointment stage has been the subject matter of numerous cases before this Court as well as High Courts. The initial interpretation provided by this Court to examine issues extensively, was recognized as being against the pro arbitration stance envisaged by the 1996 Act. Case by case, Courts restricted themselves in occupying the space provided for the arbitrators, in line with party autonomy that has been reiterated by this Court in ***Vidya Drolia v. Durga Trading Corporation*** , (2021) 2 SCC 1, which clearly expounds that Courts had very limited jurisdiction under [Section 11\(6\)](#) of the Act. Courts are to take a ‘prima facie’ view, as explained therein, on issues relating to existence of the arbitration agreement. Usually, issues of arbitrability/validity are matters to be adjudicated upon by arbitrators. The only narrow exception carved out was that*

Courts could adjudicate to ‘cut the deadwood’. Ultimately the Court held that the watch word for the Courts is ‘when in doubt, do refer’.”

[Emphasis supplied]

By filing the present petition, there is an attempt to revive a time barred claim, the claim raised is hopelessly time barred.

No case is made out for interference under Section 11 of the Act.

The petition is dismissed.

Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

29th March, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |