

ARB-324-2018

Neutral Citation No. **2024:PHHC:005333**

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

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ARB-324-2018

Date of decision:12.01.2024

M/s Veer Agro Foods

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- None for the petitioner.

Mr. Sharad Aggarwal, DAG, Haryana
for the respondents.

SUVIR SEHGAL J. (ORAL)

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of a sole Arbitrator to adjudicate the dispute between the parties arising out of agreement dated 06.10.2017, Annexure A-1.

2. Upon notice, respondents have filed reply by way of affidavit of District Food Civil Supplies and Consumer Affairs Controller, Kurukshetra.

3. In their response, respondents have not disputed that agreement, Annexure A-1 was entered into between the parties for custom milling of rice. They submit that petitioner was allocated 104838 quintals of paddy for shelling in the year 2017-18 and he was

required to deliver 70241.460 quintals of Custom Milled Rice (CMR) to the Food Corporation of India (FCI) by 31.03.2018 as per the schedule mentioned in the agreement, Annexure A-1 and in the event of failure to deliver the milled rice within the stipulated period, he was liable to pay interest for the delayed delivery. Agreement further provided that in the eventuality of failure to deliver the milled rice, miller was liable to pay cost for shortfall at the rate specified in the agreement. Petitioner delivered 61714.204 quintals of custom milled rice to FCI up to 30.08.2018 and there was a short supply of 8527.256 quintals of rice which it failed to deliver despite repeated requests and notices, Annexure R-2. On inspection of petitioner's premises, it was found that there was no stock. It became clear that the petitioner had hatched a criminal conspiracy and FIR No.893 dated 06.09.2018 was lodged under Sections 406 and 420 of IPC, Annexure P-4, against the petitioner as well as all its partners. The loss caused to the respondents has been calculated as Rs.3,15,67,561/- as on 28.02.2019, Annexure R-5.

4. The respondents have admitted that the agreement, Annexure A-1, contained an arbitration clause No.26, which provided that all minor disputes and differences arising out of interpretation or in any manner touching or concerning the agreement are to be referred to the sole arbitrator who shall be the Director, Food and Supplies, Haryana/Managing Director of the Corporation or any other person appointed on his behalf. Arbitration clause further provided that demand for arbitration is to be made by the miller in writing within a

period of one year from the date of completion or expiry of the period of contract. Respondents have specifically denied that any demand or request for appointment of arbitrator has ever been made by the petitioner. It has been further submitted that the contract has not been completed as the petitioner has failed to deliver the agreed quantity of Custom Milled Rice against the paddy allocated to him and the alleged letter dated 03.09.2018, Annexure A-2 is a fictitious document.

5. Although, there is no appearance on behalf of the petitioner, but I have heard the State counsel and considered his submissions.

6. Section 21 of the Act provides as under:-

"21. Commencement of arbitral proceedings-Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

7. It is clear from the above that the starting point of the arbitration is the service of the notice by the claimant to the respondent intimating his intention to seek arbitration as per the stipulation in the arbitration agreement. Notice is, therefore, a sine qua non and pre-condition for initiating proceeding under Section 11 of the Act. If notice invoking arbitration clause is not served upon the respondents, arbitration proceedings cannot commence.

8. A categoric stand has been taken by the respondents in their

written statement that the notice, Annexure A-2, was never served upon them and no request has been received by them seeking appointment of an arbitrator. A specific averment has been made that alleged letter, Annexure A-2, is a forged one and has been created to take an undue benefit. Petitioner has not controverted this stand. It is therefore evident that no notice was served upon the respondents. In such a situation, the petitioner cannot invoke the jurisdiction of this Court under Section 11(6) of the Act and seek appointment of an arbitrator.

9. Furthermore, petitioner has claimed that at an earlier point of time, it had filed Arbitration Case No.281 of 2018, which was withdrawn. This averment is also factually incorrect. By order dated 22.09.2022, the earlier Arbitration Case filed by the petitioner was dismissed for non-prosecution. Record further shows that the applicant never applied for its restoration.

10. It is therefore evident from above that the petitioner has not approached this Court with clean hands and has twisted and suppressed material facts. Petitioner is therefore, not entitled to the prayer made in the present petition.

11. Petition is dismissed.

12.01.2024

pooja saini

**(SUVIR SEHGAL)
JUDGE**

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No