

Neutral Citation No. **2024:PHHC:030620**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
241
ARB-399-2021
Date of Decision:04.03.2024

M.S. Agro Foods Rice Mill

.... Petitioner

Vs

State of Haryana and others

..... Respondents

(2) **ARB-400-2021**

B.S. Rice Mill

.... Petitioner

Vs

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Mudit Johar, Advocate for
Mr. Virendra Rana, Advocate
for the petitioner in both cases.

Mr. Sharad Aggarwal, DAG, Haryana.

Mr. B.R. Mahajan, Senior Advocate with
Mr. Aman Bahri, Advocate for
respondents No.2 and 3 in both cases.

SUVIR SEHGAL, J. (ORAL)

1. This common order shall dispose of abovementioned two
petitions as the issue involved in these petitions are identical in nature.

However, for the sake of convenience, the facts are being taken from ARB No. 399 of 2021.

2. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), petitioner has approached this Court for appointment of an Arbitrator to adjudicate the dispute between the parties.

3. Counsel for the petitioner has submitted that an agreement dated 03.10.2020, Annexure P-1 was entered into between the petitioner and Haryana State Warehousing Corporation (for short “the Corporation”)-respondents No. 2 and 3 for custom milling of paddy for the year 2020-2021. He submits that some disputes arose between the parties and an FIR was registered against the petitioner on the allegation of cheating as well as misappropriation of paddy. He submits that a notice dated 22.03.2021, Annexure P-2 was served upon the respondents invoking the arbitration clause but no response was received.

4. Upon notice, respondents have filed a reply wherein besides contesting arbitrability of the dispute, it had been submitted that the notice, Annexure P-2 was never served. Averments made in para 6.6 of the petition have been specifically denied. By way of a miscellaneous application, a categorical stand has been taken by the respondents that the notice, Annexure P-2, was never served. It has been further submitted that in the FIR case, charges have been framed against the petitioner, who has caused heavy financial loss to the Corporation and a suit for recovery of more than Rs.5.35 Crores has

also been filed against the petitioner.

5. I have heard counsel for the parties.
6. It is evident from the stand taken by the Corporation, which has not been rebutted, that the petitioner has failed to invoke the arbitration clause. Notice under Section 21 of the Act has not been served upon the respondents. In *M/s Veer Agro Foods Versus State of Haryana and others* (Arbitration Case No. 324 of 2018, decided on 12.01.2024), this Court has held that issuance of a notice invoking arbitration clause is a *sine qua non* and a per-condition for initiating proceedings under Section 11 of the Act and in absence of such a notice, arbitration proceedings cannot commence. As the petitioner has failed to invoke the arbitration clause, the prayer made in the petition cannot be acceded to.
7. Petition is dismissed.
8. Liberty is granted to the petitioner to file a fresh petition after serving a notice under Section 21 of the Act, if permissible, in accordance with law. In case the petitioner does so, respondents shall also be at liberty to take all the pleas available to them under the law.

04.03.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No