



ARB-271-2020

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

249/2

ARB-271-2020

Date of Decision: 10.12.2024

Ramesh Kumar

...Applicant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Ishnoor Singh, Advocate for
Mr. Vikram Singh, Advocate the applicant
Ms. Fafia Gupta, Assistant Advocate General, Haryana
Mr. R.K. Doon, Advocate for respondent Nos.2 to 4

JAGMOHAN BANSAL, J. (Oral)

1. Through instant application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act'), the applicant is seeking appointment of an Arbitrator.

2. The applicant is a rice miller. Pursuant to Custom Milling Policy, the applicant entered into an agreement dated 26.09.2019 (Annexure A-1) with respondent-State. As per agreement, the State agencies supplied paddy to the applicant who in turn had to supply rice. There is an arbitration clause in the agreement. As per said clause, dispute between the parties would be referred to the Arbitrator as per 1996 Act. There is exclusion clause in the said agreement. The exclusion clause provides that cases of fraud, theft or misappropriation on the part of miller would not be covered under arbitration agreement. For the ready reference, exclusion clause is

reproduced as below:-



“Subject as aforesaid, the Arbitration and Conciliation, 1996, shall apply to the arbitration provided under the clause. However, the cases of fraud, theft or misappropriation etc. on the part of second party are not covered under this clause and in such cases legal proceedings as deemed fit will be initiated by the first party against the second party as well as against the sureties.”

3. Learned counsel for respondent Nos.2 to 4, on the asking of Court, concedes that till date neither civil nor criminal proceedings have been initiated against the applicant, however, he submits that there was shortage of stock and the applicant deposited differential amount under protest, thus, no action was taken against him.

4. Concededly, neither civil nor criminal proceeding are pending against the applicant. In the absence of pending civil or criminal proceedings especially when a period of more than four years from the relevant date has passed, the applicant cannot be made remediless. The matter needs to be adjudicated by an authority. The exclusion clause is not applicable. It cannot be held that dispute raised by applicant is non-arbitrable.

5. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties.

6. Dr. Sarita Gupta, Retired District and Sessions Judge, residing at Flat No.202, Tower 12-A Suncity Parikrama, Sector 20, Panchkula-134117, Mobile No.9671819333 is hereby appointed as a Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

7. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at her convenience.
8. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.
9. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the 1996 Act.
10. Needless to mention, parties would be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.
11. A request letter along with copy of this order be sent to Dr. Sarita Gupta

(JAGMOHAN BANSAL)
JUDGE

10.12.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No