

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

ARB-182-2015 (O&M)
Date of decision:- 22.01.2016

M/s Shiv Enterprises

...Petitioner

Versus

Managing Director, Haryana State Cooperative Supply &
Marketing Federation Limited and another.

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

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

Mr. S.K. Mahajan, Advocate,
for the respondents.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is a petition for the appointment of an arbitrator.

2. The parties entered into a milling contract clause 23 whereof contains an arbitration agreement. The respondent No. 1 – Managing Director or any person appointed by him is to be the arbitrator. The respondents, however, failed to appoint an arbitrator, although requested to do so even after the filing of this petition. They have, therefore, forfeited their right to appoint an arbitrator.

3. The contention that the claim is barred by limitation must to say the least be decided by the arbitrator. The proviso to clause 23 states that if the demand for an arbitrator is not made within one year of the date of the completion or expiry of the period of the contract, the petitioner shall be deemed to have been waived and released his dues. However, clause 19 stipulates that the agreement shall remain in force upto 31.03.2010 or clearance of dues, whichever is later. The dues as claimed have not been cleared. Further, the effect of Section 28 of the Contract Act, 1872 also

requires consideration. These issues must be decided by the arbitrator as they clearly fall within the ambit of the arbitration agreement.

4. In these circumstances, the petition is disposed of by appointing Mr. K.K. Bali, a retired Additional District & Sessions Judge, Haryana, as the sole arbitrator.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

22.01.2016
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