

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-907-2019 (O&M)

Date of decision: 19.03.2019

M/s Sanjay Enterprises and others

...Appellants

Versus

M/s HMT Ltd., Pinjore and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Dinesh Trehan, Advocate
for the appellants.

JAISHREE THAKUR, J.

CM-2854-CII-2019

This is an application that has been filed under Section 151
C.P.C. seeking condonation of delay of 220 days in re-filing the appeal.

For the reasons recorded in the application, the same is allowed.

Delay of 220 days in re-filing the appeal stands condoned.

FAO-907-2019

1. The instant appeal has been filed seeking to challenge the order
of District Judge, Panchkula dated 19.01.2018 dismissing the objections
filed under Section 34 of the Arbitration and Conciliation Act, 1996 against

the award dated 08.01.2014.

2. In brief a few facts that need to be noticed are, that the appellants herein were appointed as an authorized Dealers by the respondent M/s HMT Limited, Pinjore. On account of a dispute that arose between the parties, the respondents invoked the Arbitration clause and an Arbitrator was appointed to decide the dispute. The Arbitrator, issued notice of reference and notices were issued to the appellants to put an appearance through registered A.D. dated 29.02.2011. The appellants put in an appearance through their partner on 30.04.2011 and filed their reply. Thereafter, the matter was listed for evidence of the claimants through affidavit. The claimants examined Sh. S.K. Khullar, DGM as PW-1, who tendered his affidavit PW1/1 and other documents in evidence as Ex.C-1 to C-49. Apart from CW-1, Mr. R.L. Verma, DGM (Finance) was also examined as CW-2 who tendered his affidavit CW2/A along with statement of accounts Ex. C-31 Ex. C-48. Thereafter, the matter was adjourned for evidence of the appellants and they were given several opportunities to produce their evidence. Despite the said opportunities given, the appellants failed to appear as their own witnesses which resulted in the Arbitrator closing their evidence by an order dated 16.02.2013. On perusal of the evidence, the Arbitrator came to the conclusion that an amount of Rs. 30,77,320.46 was due in favour of the claimant HMT Limited as on 30.06.2010. The Arbitrator took into account letter dated 31.10.2006 Ex. C-26 wherein the respondents had admitted to an outstanding balance of Rs. 19,41,000/- as on 01.11.2004 and further found that cheques issued by the appellants herein had bounced

several times.

3. Aggrieved against the said award, objections under Section 34 of the Arbitration and Conciliation Act were filed on the ground that the appointment of the Arbitrator was bad in law and that the agreement had been executed in MP, therefore, the Arbitrator had no jurisdiction to entertain the claim filed by respondent No.1 at Panchkula. It was also argued that the Arbitrator had been appointed without the consent of the parties and, therefore, his appointment was illegal, apart from contending that the Arbitrator could not have awarded interested.

4. The District Judge dismissed the objections on the ground that none of the objections fell within Section 34(2) of the Arbitration and Conciliation Act, 1996. Reliance in this regard was placed upon the decision rendered in *ONGC Ltd. vs. Saw Pipes Ltd.*, 2003(2) RCR (Civil) 554, *Associate Builders vs. DDA*, 2015(3) SCC 49 and *Navodaya Mass Entertainment vs. JM Combines* 2015(5) SCC 698 while doing so.

5. I have heard learned counsel for the appellants and found that all arguments as raised are devoid of any merit and that there is no infirmity in the order of the District Judge dismissing the objections. The law is well settled in regard to the interference of a Court in the award of an Arbitrator as has been laid down in the judgment rendered in *ONGC Ltd.* case (supra) and *Navodaya Mass Entertainment* case (supra). Even otherwise, this Court can not lose sight of the fact that the appellants herein after having been served with a copy of the notice of the reference, put in an appearance and filed their written statement and thereafter did not lead any evidence to

counter the claim of the claimants. If they had any grouse against the appointment of the Arbitrator, it was at that stage that the objections ought to have been taken. Even otherwise, this Court finds no infirmity in the appointment of the Arbitrator at Panchkula since Clause 21 of the MOU between the parties, clearly stipulates that all disputes arising under the Agreement would be subject to exclusive jurisdiction of Panchkula Courts as has been done in the instant case. Merely because, the agreement was signed in MP, it would not confer any jurisdiction to the Courts there in view of the exclusive Clause in MOU.

6. Finding no merit, the appeal is dismissed in limine.

19.03.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.