

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

**Arbitration Case No. 3 of 2021 (O&M)
Date of decision: 19th January, 2023**

Dushyant Thaman and another

Petitioners

Versus

M/s K. D. Ganesha Hospital Pvt. Ltd. and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. D. S. Gandhi, Advocate for the petitioners.
Mr. Vaibhav Sharma, Advocate for respondents No. 1, 2 and 4.
Mr. Sandeep Arora, Advocate for respondent No. 3.

AVNEESH JHINGAN, J (Oral):

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') for appointment of an arbitrator for adjudication of disputes between the parties.

The parties entered into Memorandum of Understanding (for short, 'MOU') on 25.7.2008 for running a hospital at Amritsar. Clause 21 of the MOU provides for dispute resolution through arbitration.

The petitioners vide notice dated 7.7.2020 raised a dispute with regard to remuneration between the parties as one of the doctor had left the hospital. The bone of controversy was as to whether the remuneration of the doctor are to be kept in common pool or divided amongst the parties to the MOU.

On 24.11.2020, notice for appointing the arbitrator was

issued.

Learned counsel for respondents No. 1, 2 and 4 have filed reply. He opposes the prayer on the ground that the claim is time barred. He submits that distribution of remuneration of the doctor is of the year 2016 as he left the hospital on 1.1.2016. He further submits that it is a second arbitration for the same cause of action and that the dispute is not arbitral.

The scope of interference in the petition under Section 11 of the Act is limited. It is not disputed that there is an arbitration clause in the MOU. It has further not been disputed by learned counsel for the parties that the parties are continuing with the hospital and no fresh MOU has been entered. The question of limitation raised is indeed a question of fact as to whether it is continuing cause of action. The issue of arbitral and non-arbitral dispute can be decided by the arbitrator. Reference in this regard can be made to ***Vidya Drolia and others v. Durga Trading Corporation, (2021) 2 SCC 1.***

The petition is accordingly disposed of by appointing Mr. Justice Rajiv Narain Raina, retired Judge of this court, H. No. E/8-03, DLF- The Valley (near Amravati Enclave), Pinjore-Kalka Urban Complex, Sector 3, Panchkula as the sole arbitrator subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to settle the dispute between the parties.

Needless to say that the respondents would be at liberty to raise the issues raised in this petition before the arbitrator.

The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended. The fee of the arbitrator will be equally

borne by both the parties.

The arbitrator is requested to complete the proceedings as per time limit specified under Section 29A of the Act.

It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement including the condition of pre-deposit.

Since the main case has been disposed of, pending applications, if any, stand disposed of.

Copy of the order be sent to the appointed arbitrator.

[AVNEESH JHINGAN]
JUDGE

19th January, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |