

Neutral Citation No. 2024:PHHC:022827

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

258-2

ARB-126-2023 (O&M)
Date of Decision:16.02.2024

M/S HST ENTERPRISES

... Petitioner

VS

CHANDIGARH HOUSING BOARD AND ORS.

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Arun K. Kaundal, Advocate for
Mr. Aditya Sharda, Advocate for the petitioner.

Mr. Parveen Chauhan, Advocate for
Mr. Gagandeep S. Wasu, Senior Standing counsel
for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, (for short ‘the Act’) for appointment of an Arbitrator to adjudicate the dispute/differences between the parties.
2. Upon notice, respondents have filed a written statement wherein the agreement, as well as Arbitration Clause 25 have been admitted. It has also been admitted that the petitioner has exhausted the pre-arbitral dispute resolution process provided in the arbitration

clause. The objection raised by the respondents is that after the receipt of the decision of the Dispute Redressal Committee, the petitioner was required to make a request to the Chief Engineer within 30 days, which it has not done.

3. I have heard counsel for the parties and considered their respective submissions.

4. The sole objection raised by the respondents deserves to be noticed and rejected.

5. The legal issue has been settled by a Division Bench of the Delhi High Court in ***Shanti Prasad Goenka Versus Mahanagar Telephone Nigam Limited***, 2016 SCC OnLine Delhi 5256 and it has been held that any clause in the agreement which restricts the period of limitation for invoking the arbitration clause is hit by amended provision of Section 28 of the Contract Act. A co-ordinate Bench of this court in ***Extra Marks Education India Pvt. Ltd. Versus M/s DIS Chain of Institutions and another***, 2022 (4) R.C.R. (Civil) 991 has held that the period of limitation for referring a dispute to an Arbitrator is three years under the residual Article 137 of the Limitation Act, from the time when the right to apply accrues. It has been further observed that the issue of limitation which concerns the admissibility of the claim must be decided by the Arbitrator/Arbitral Tribunal either as a preliminary issue or at the final stage after the parties have led evidence.

6. In view of the above, this Court is of the view that the prayer made in the petition deserves to be acceded to.

7. Accordingly, petition is allowed.
8. Mr. Justice M.M. Kumar, Former Chief Justice of J & K High Court, House No. 79, Sector 16-A, Chandigarh, Mobile No. 9888824752, is requested to take up the matter as an Arbitrator to adjudicate the dispute between the parties in accordance with the provisions of the Act.
9. Parties are directed to appear before the Arbitrator on the date, time and place to be fixed and communicated by the Arbitrator at his convenience.
10. Needless to mention, parties will be at liberty to raise all the claims/counter claims/pleas/defence before the Arbitrator.
11. Request letter be sent to Mr. Justice M.M. Kumar (Retd.).

16.02.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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