

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Arb. Case No.595 of 2024
Date of Decision:- 09.01.2026**

Rakesh Utpal **....Petitioner****Versus****Surjeet Singh & another** **....Respondents**

Coram***The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice
Whether approved for reporting?²***For the Petitioner : Mr. Kartik Kumar and Ms. Anjali
Negi, Advocates.For the Respondents : Ms. Nisha, Advocate, for
respondent No.1.: Mr. Meenal Garg, Advocate, for
respondent No.2.

G.S. Sandhawalia, Chief Justice (Oral).

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator on account of the fact that there is a Clause 15 of the Partnership Deed dated 05.12.2008 (**Annexure P-1**), which provides that if the matter could not be decided by the parties mutually, it shall be referred to two Arbitrators under Arbitration Act, which is sought to be opposed by the counsel for the respondents on the ground that under the provisions of Section

² Whether reporters of Local Papers may be allowed to see the judgment?



10(1) of the Arbitration and Conciliation Act, 1966, the number shall not be an even number.

2. As the first notice was served on 27.10.2023 (**Annexure P-2**) upon the respondents that there was a dispute as such and the notice for the dissolution of the partnership agreement and rendition of accounts and the failure of requisition that the disputes have arisen between both the parties and arbitration clause would be invoked and time was given w.e.f. December, 2008 for a period of one month to settle the dues.

3. Apparently, thereafter on the inaction of the respondents and the second notice dated 30.01.2024 (**Annexure P-5**) was served upon the respondents and one name was suggested as such by the petitioner and that this Court would be approached for appointing a disinterested person as an arbitrator that too entirely at the risk and cost of respondent without any further notice.

4. The reply has thus been filed by respondent No.2 saying that the alleged crusher had ceased to operate since 2017 and the application is hit by the provisions of Article 137 of the Limitation Act, 1963 as such and the period of limitation for commencing arbitration runs from the date on which cause of



accrues and ends immediately after three years from the cause of action.

5. Both counsel(s) for the parties, as such has relied upon the judgment of the Apex Court in ***M/s Arif Azim Co. Ltd., Vs. M/s Aptec Ltd., 2024 AIR (SC) 1347***. A perusal of the same would go on to show that the issue of arbitration as such whether the defined timeline was subject matter of consideration also and the limitation period for filing a petition under Section 11(6) of the Act can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party and when there has been a failure or refusal on part of that party in complying with the requirements mentioned in such notice. Accordingly, it has been held that the notice for invocation of arbitration was received by the respondents on 29.11.2022 which was within a period of 30 days and the cause of action had arisen, while deciding issue No.1.

6. Resultantly, it was held that the limitation to start the work and the clock of limitation for filing the present petition would start to tick and it would be within the period of three years under Article 137 of the Limitation Act when the first request for appointment of the Arbitrator was made and after one month time



from the date of receiving the notice when the respondents failed to respond the notice.

7. Keeping in view the above, this Court is of the considered opinion that due to non-response as such of the notice dated 30.01.2024 (**Annexure P-5**), the petition having been filed on 03.05.2024. Thereafter, the claim as such can not be time barred in any manner. The other objection as such there are two Arbitrators suggested by the petitioner as per the clause of arbitration. However, as per Clause 10(2) of the Arbitration and Conciliation Act, 1996, the determination has to be done by the sole Arbitrator.

8. In such circumstances, since the parties are based in District Kangra, Himachal Pradesh, thus this Court is of the considered opinion that for the purpose of resolving the dispute *inter se* the parties, as the parties had agreed as such in the manner to resolve the matter by way of arbitration and it would be appropriate to appoint an Arbitrator from that area.

9. Resultantly, the application is allowed and Mr. Rahul Gupta, Advocate, R/o 460, Depot Bazar, Dharamshala, District Kangra, Himachal Pradesh (Mobile No.9418068113) is appointed as an Arbitrator to adjudicate the dispute between the parties, after his disclosure in writing is obtained in terms of Section 11(8)



of the Act and only after receipt thereof, his appointment, as an Arbitrator, shall come into force.

10. On his giving consent to arbitrate the dispute between the parties as an Arbitrator, Mr. Rahul Gupta, Advocate shall enter into reference, and shall pass an award in accordance with law.

11. Copy of this order be furnished to the learned counsel for the parties and also be furnished to the learned Arbitrator. The learned Arbitrator so appointed shall be entitled to fee as per stipulation contained in 4th Schedule appended to the Arbitration and Conciliation Act, 1996.

12. Accordingly, the application is disposed off alongwith pending miscellaneous application(s), if any.

(G.S. Sandhawalia)
Chief Justice

9th January, 2026
(Munish Thakur)