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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010073192026

+ **ARB.P. 366/2026**

FREYSSINET MENARD PVT LTD

.....Petitioner

Through: Mr. Gurinder Pal Singh and Mr.
Sachin Sharma, Advocates.

versus

SUPREME INFRASTRUCTURE INDIA LTD.

.....Respondent

Through: Mr. Ashish Mohan, Senior Advocate
with Mr. Sarthak Pathak and Mr Auritro
Mukherjee, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **23.09.2026**

I.A. 5397/2026 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

I.A. 5398/2026

3. This application is filed on behalf of the Petitioner under Section 5 of the Limitation Act, 1963 read with Section 151 CPC seeking condonation of delay of 16 days in re-filing the petition.
4. For the reasons stated in the application, the same is allowed. Delay of 16 days in re-filing the petition is condoned.
5. Application stands disposed of.

I.A. 22207/2026

6. This application is filed on behalf of the Petitioner under Section 5 of



the Limitation Act, 1963 read with Section 151 CPC seeking condonation of delay of 62 days in filing the rejoinder.

7. For the reasons stated in the application, the same is allowed. Delay of 62 days in filing the rejoinder is condoned. Rejoinder is taken on record.

8. Application stands disposed of.

ARB.P. 366/2026

9. This petition is filed on behalf of the Petitioner under Section 11(5) of the Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of a Sole Arbitrator in respect of the Work Order dated 06.02.2013 issued by the Respondent in favour of the Petitioner.

10. To the extent necessary, the case of the Petitioner is that Petitioner submitted its offer for design, supply and installation of Soil Anchors, which was accepted and Letter of Award was issued in favour of the Petitioner on 11.01.2013 followed by Work Order dated 06.02.2013. Petitioner duly executed the awarded work and raised Running Account Bills duly certified by the concerned officers of the Respondent, from time to time. Due to persistent failure of the Respondent to release certified payments, huge financial loss was suffered by the Petitioner, which impacted timely completion of its obligations.

11. It is stated that in partial discharge of its liability, Respondent issued two cheques on 25.01.2014 and 31.01.2014, however, the same were withdrawn and fresh cheques were issued for a sum of Rs.1 crore but on presentation, the cheques were dishonoured on 03.02.2014. Petitioner issued legal notice under Sections 138 and 142 of Negotiable Instruments Act, 1881 and also raised final claims towards executed works, cost over runs and site related expenses, but the bills were not cleared and Petitioner



invoked the arbitration clause on 16.01.2015 for the appointment of an Arbitrator.

12. It is stated that on failure of the Respondent to appoint or concur in the appointment of the Arbitrator, Petitioner appointed a Sole Arbitrator and the arbitral proceedings culminated in an *ex parte* arbitral award dated 15.03.2016. The *ex parte* award was challenged in this Court and vide judgment dated 05.05.2025 in OMP(COMM.) 395/2024, the award was set aside *inter alia* on the ground that the appointment of the Arbitrator was unilateral as also that there was no valid invocation of arbitration in the absence of a notice under Section 21 of the 1996 Act. Parties were granted liberty to take recourse to legal proceedings for enforcement of their rights in accordance with law. Petitioner thereafter issued notice invoking arbitration on 17.10.2025 raising claims, calling upon the Respondent to suggest names for appointment of a Sole Arbitrator. On failure of the Respondent to act in terms of the notice, this petition has been filed.

13. Mr. Ashish Mohan, learned Senior Counsel appearing for the Respondent takes a preliminary objection to the maintainability of this petition on the ground that the claims sought to be raised in arbitration are *ex facie* time barred and deadwood, apart from denying the claims raised by the Petitioner on merits.

14. Responding to the submissions made on behalf of the Respondent, learned counsel for the Petitioner submits that as soon as the claims were initially raised before the Respondent, notice invoking arbitration was sent and on failure of the Respondent to appoint an Arbitrator, Petitioner had approached this Court for appointment of the Arbitrator. The Arbitrator was appointed in 2015 and arbitral award was rendered on 15.03.2016, which



was set aside on a petition filed by the Respondent under Section 34 of 1996 Act vide judgment dated 05.05.2025 and without any delay, Petitioner sent notice of invocation on 17.10.2025. Hence, Petitioner cannot be blamed for the time that has lapsed between the earlier arbitral proceedings and the present petition.

15. Heard learned Senior counsel for the Respondent and the counsel for the Petitioner.

1. Insofar as the preliminary objection raised on behalf of the Respondent is concerned, the same has no merit. It is now well settled that the scope and ambit of the jurisdiction of a referral Court under Section 11(6) of 1996 Act is limited to examining *prima facie* existence of the arbitration agreement between the parties. In ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, the Supreme Court held that scope of examination under Section 11(6-A) is confined to existence of arbitration agreement basis Section 7 of 1996 Act and this examination is limited to requirement of formal validity such as requirement that the agreement should be in writing and does not include a contested or laborious inquiry, which is to be left for the Arbitral Tribunal to rule on and this approach serves two-fold purpose: firstly, it allows Referral Court to weed out non-existent arbitration agreement and secondly, it protects jurisdictional competence of the Arbitral Tribunal to rule on this aspect, in depth. Significantly, the Supreme Court referred to the judgment in ***Arif Azim Company Limited v. Aptech Limited, (2024) 5 SCC 313***, where two questions were framed for consideration and one of them was whether the Court may decline to make a reference under Section 11 of 1996 Act where the claims are *ex facie* and hopelessly time barred. Deciding this issue, the



Supreme Court held that the Referral Courts while exercising power under Section 11 are under a duty to *prima facie* examine and reject non-arbitrable or dead claims so as to protect the other parties from being drawn into a time-consuming and costly arbitration process. On this aspect, the Supreme Court in ***Krish Spinning (Supra)***, clarified that the Referral Courts, at the stage of deciding an application for appointment of an Arbitrator must not conduct an intricate evidentiary inquiry into the question whether claims raised by the applicant are time barred and should leave the question for determination by the Arbitrator, as such an approach gives true meaning to the legislative intent underlying Section 11(6-A) of 1996 Act as also to the view taken in ***Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1***. The Supreme Court observed that the earlier observations in ***Arif Azim (Supra)***, were made in light of observations made in earlier decisions of the Supreme Court, more particularly, in ***Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1*** and ***NTPC Limited v. SPML Infra Ltd., (2023) 9 SCC 385***, however, while deciding the case in ***Krish Spinning (Supra)***, the Supreme Court had the benefit of the judgment of the seven-Judge Bench in ***Interplay (Supra)***, wherein certain aspects of these two decisions were reconsidered. Relevant passages from the judgment in ***Krish Spinning (supra)*** are as follows:-

“114. In view of the observations made by this Court in In Re : Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous



disputes would continue to apply despite the subsequent decision in In Re : Interplay (supra).

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127. In Arif Azim (supra), while deciding an application for appointment of arbitrator under Section 11(6) of the Act, 1996, two issues had arisen for our consideration:

i. Whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996? If yes, whether the petition filed by M/s Arif Azim was barred by limitation?

ii. Whether the court may decline to make a reference under Section 11 of Act, 1996 where the claims are ex-facie and hopelessly time-barred?

128. On the first issue, it was observed by us that the Limitation Act, 1963 is applicable to the applications filed under Section 11(6) of the Act, 1996. Further, we also held that it is the duty of the referral court to examine that the application under Section 11(6) of the Act, 1996 is not barred by period of limitation as prescribed under Article 137 of the Limitation Act, 1963, i.e., 3 years from the date when the right to apply accrues in favour of the applicant. To determine as to when the right to apply would accrue, we had observed in paragraph 56 of the said decision that “the limitation period for filing a petition under Section 11(6) of the Act, 1996 can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice.”

129. Insofar as the first issue is concerned, we are of the opinion that the observations made by us in Arif Azim (supra) do not require any clarification and should be construed as explained therein.

130. On the second issue it was observed by us in paragraph 67 that the referral courts, while exercising their powers under Section 11 of the Act, 1996, are under a duty to “prima-facie examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process.”

131. Our findings on both the aforesaid issues have been summarised in paragraph 89 of the said decision thus:—

“89. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-



pronged test - first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an arbitral tribunal.”

132. Insofar as our observations on the second issue are concerned, we clarify that the same were made in light of the observations made by this Court in many of its previous decisions, more particularly in Vidya Drolia (supra) and NTPC v. SPML (supra). However, in the case at hand, as is evident from the discussion in the preceding parts of this judgment, we have had the benefit of reconsidering certain aspects of the two decisions referred to above in the light of the pertinent observations made by a seven-Judge Bench of this Court in In Re : Interplay (supra).

133. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the Act, 1996, the referral court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim (supra). As a natural corollary, it is further clarified that the referral courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in In Re : Interplay (supra).

134. The observations made by us in Arif Azim (supra) are accordingly clarified. We need not mention that the effect of the aforesaid clarification is only to streamline the position of law, so as to bring it in conformity with the evolving principles of modern-day arbitration, and further to avoid the possibility of any conflict between the two decisions that may arise in future. These clarifications shall not be construed as affecting the verdict given by us in the facts of Arif Azim (supra), which shall be given full effect to notwithstanding the observations made herein.”

16. In light of the judgments in ***Interplay (Supra)*** and ***Krish Spinning (Supra)***, as a Referral Court, this Court is only required to determine the existence of a valid arbitration clause, which in the instant case, is not disputed by the Respondent. The objection of the claims raised by the



Petitioner being deadwood or *ex facie* time barred has to be left to be adjudicated by the Arbitrator. Work Order dated 06.02.2013 contains arbitration clause 18 envisaging reference of disputes arising out of or in relation to the terms of the Work Order or the project in question to arbitration in accordance with 1996 Act, for adjudication.

17. Accordingly, this petition is allowed, appointing Mr. Aditya Gupta, Advocate (Mobile No.9958158982) as Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre ('DIAC'). Fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators' Fees) Rules 2018.

18. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

19. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open. The objection of the Respondent that Petitioner's claims are allegedly *ex facie* time barred may be raised before the Arbitrator and if raised, the same shall be decided by the Arbitrator, in accordance with law.

20. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

SEPTEMBER 23, 2026

S.Sharma