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

% *Date of decision: 20th May, 2025*

+ ARB.P. 388/2025

INDIAN COFFEE HOUSE WORKERS COOPERATIVE SOCIETY
LTDPetitioner

Through: Mr. Ashok Kumar Goyal and Ms.
Perna Goyal, Advocates.

versus

NTPC LIMITEDRespondent

Through: Mr. Adarsh Tripathi, Mr. Vikram
Singh Baid and Mr. Ajitesh Garg, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This is petition filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of an Arbitrator to adjudicate the disputes between the parties.
2. It is the case of the Petitioner that between 19.02.2015 to 20.11.2019, Contracts for management of plant canteen Badarpur and Pachwati Field Hostel, Badarpur were awarded to the Petitioner society by the Respondent, on account of which, some payments were to be received by the Petitioner but remained outstanding. Petitioner did not collect service tax from the Respondent for the services rendered since it had never provided outdoor catering service. However, Service Tax Department demanded the service tax for the years 2006-07 to 2011-12 against the amounts reimbursed by the



Respondent during the said period. Show cause notice dated 21.10.2011 was issued by the Tax Department and while the Petitioner paid 50% of the tax demanded, it challenged the demand before the Supreme Court. During the pendency of the matter, Petitioner settled the disputes under the SVLDRS Scheme announced by the Government of India and deposited the settled amount. Petitioner avers that despite repeated demands, Respondent did not reimburse the service tax borne by the Petitioner, leading to the Petitioner invoking the Arbitration Clause 35 incorporated in the Contract dated 14.03.2008. However, there was failure on the part of the Respondent to respond to the notice for reference of disputes to the Arbitrator.

3. Reply has been filed on behalf of the Respondent refuting the contents of the petition on merit and taking a preliminary objection to the maintainability of this petition on the ground that the claims raised by the Petitioner towards service tax for the years 2006 to 2012 vide letter dated 25.08.2020 for the first time, are time barred and *ex facie* dead claims. Learned counsel for the Respondent urges that Petitioner cannot be permitted to wake up after eight years and agitate the dead claims, more particularly, when Respondent vide its letter dated 28.10.2020 had categorically informed the Petitioner that two Purchase Orders for the period 2011 onwards for Running and Maintenance of Plant Canteen and Housekeeping and Catering Services at Field Hostel, had provisions of service tax and payments for these periods were duly made by the Respondent and hence, no claims survive for reference to arbitration. Reliance is placed on the judgment of the Supreme Court in **Arif Azim Company Limited v. Aptech Limited**, 2024 SCC OnLine SC 215, wherein the Supreme Court held that referral Court must assess whether the claims



sought to be referred to arbitration are manifestly time barred or non-arbitrable and the present case is squarely covered by the said judgment.

4. Heard learned counsels for the parties.

5. Respondent has raised two-fold objections to the maintainability of this petition: (a) claims sought to be raised by the Petitioner pertaining to service tax for the periods 2006 to 2012 are *ex facie* time barred and deadwood; and (b) Respondent has made complete payments of the claims as raised and no claims survive for adjudication. Petitioner strenuously refutes that the claims are time barred and/or the payments have been received.

6. Insofar as the first objection is concerned, it is no longer *res integra* that the referral Court under Section 11(6) of the 1996 Act will not conduct an enquiry into the question whether the claims raised by the Applicant are time barred and this issue would be left for determination by the Arbitrator. In *Arif Azim (supra)*, the Supreme Court had framed two questions for consideration, one being whether Limitation Act, 1963 is applicable to an application for appointment of an Arbitrator under Section 11(6) of the 1996 Act and second whether Court may decline to make a reference where the claims are *ex facie* and hopelessly time barred. On the first question, it was held that Limitation Act will be applicable and it is duty of the referral Court to examine whether the application is barred by period of limitation prescribed under Article 137 i.e., three years from the date when the right to apply accrues in favour of the Applicant. On the second question, it was observed that the referral Court is 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.



7. However, in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, the Supreme Court while reiterating the observations in ***Arif Azim (supra)*** on the first issue, clarified the second issue and held that the question of the claims being time barred or dead will be left for determination by the Arbitrator as such an approach gives true meaning to the legislative intent underlying Section 11(6-A) of 1996 Act. Relevant paragraphs from the judgment are as follows:-

“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.”*

8. In light of the aforesaid judgment, the question whether the claims sought to be referred to arbitration by the Petitioner are *ex facie* time barred or dead will have to be left for adjudication before the learned Arbitrator. The scope of examination by a referral Court is limited to examining the existence of an Arbitration Agreement and/or whether the petition under Section 11(6) of the 1996 Act is barred by limitation prescribed under



Article 137 of the Limitation Act, 1963. Accordingly, the stand of the Respondent that full and final payment was made to the Petitioner against the claims raised, cannot be adjudicated upon by this Court as this is a seriously disputed fact and will have to be adjudicated by the Arbitrator. Significantly, Respondent does not dispute the existence of the Arbitration Agreement and/or delivery of the invocation notice dated 17.10.2023 and therefore, this Court does not find any impediment in appointing the Sole Arbitrator.

9. Accordingly, Ms. Farena Ahmed Khan, Advocate (Mobile No. 9810644877), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Fee of the Arbitrator shall be fixed as per Fourth Schedule of 1996 Act.

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

11. 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, including the aforesaid two objections raised by the Respondent.

12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

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