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

+ **ARB.P. 399/2025**

**INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED**

.....Petitioner

Through: Mr. Prashant Mehra, Advocate.

versus

**CONNAUGHT PLAZA RESTURANT PVT
LTD**

.....Respondent

Through: Mr. Rahul Sagar Sahay, Mr. Raghav
Rajmalani and Mr. Pratham Arora, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

26.08.2025

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1. This petition is filed on behalf of the Petitioner under Section 11(6) of Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. Disputes between the parties arise out of Licence Agreement and enhanced licence fee. As per the Petitioner, in order to provide hygienic food to its customers, Petitioner decided to set up 'Cell Kitchens' and Indian Railways invited tenders for setting up, operating and managing Cell Kitchens at Delhi Railway Station situated at Rewari-Delhi Section of Delhi Division of Northern Railways. Licence was awarded to the Respondent on 19.12.2006 and an agreement was executed thereafter for a period of 10 years from 03.09.2009 to 02.09.2019.
3. It is averred by the Petitioner that after issuance of Catering Policy, 2017, Petitioner was interested with the responsibility of managing the



catering services and vide letter dated 27.02.2017, it informed the Respondent that based on sales survey conducted by the Railways, it was decided to revise the licence fee w.e.f. 03.08.2016. Respondent protested against the increase in the licence fee. On 16.10.2017, a Tripartite Agreement was entered into between Petitioner, Respondent and Indian Railways with an arbitration clause 8.9. Petitioner sent letters to the Respondent demanding outstanding amounts towards licence fee, but on failure to pay the amount, notice was sent by the Petitioner invoking arbitration clause and proposing 3 names from which one could be chosen by mutual consent as the Sole Arbitrator. However, there was no response from the Respondent and the present petition was filed.

4. Learned counsel for the Respondent takes an objection to the appointment of the Sole Arbitrator on the ground that the claims of the Petitioner are *ex facie* time barred *albeit* existence of the arbitration agreement in the Tripartite Agreement is not disputed. It is also urged that this petition is barred by limitation and deserves to be dismissed on this ground and in this context, reliance is placed on the judgment of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754.***

5. Learned counsel for the Petitioner, on the other hand, submits that there is no merit in the preliminary objections raised by the Respondent. It is argued that insofar as the objection that the claims are *ex facie* time barred is concerned, this issue cannot be determined by a referral Court and has to be left to be decided by the Arbitrator. The objection that this petition is barred by time, is wholly without merit. Petitioner had sent the invocation notice to the Respondent on 21.09.2021 and this petition was filed in February, 2025.



The period between 21.09.2021 and 28.02.2022 is to be excluded for computing the period of limitation on account of COVID-19 in light of the judgment of the Supreme Court in ***Suo Moto W.P. (C) No.3/2020, In Re: Cognizance for Extension of Limitation*** and when excluded, the petition is within 3 years as prescribed in Article 137 of the Limitation Act, 1963.

6. Heard learned counsels for the parties and examined their submissions.

7. Insofar as the first objection of the Respondent is concerned, there is merit in the contention of the Petitioner that the question whether the claims of the Petitioner are *ex facie* time barred is to be left for determination by the learned Arbitrator and in this context, I may refer to the following passages from ***Krish Spinning (supra)***:-

“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.”

8. There is also no merit in the second objection that this petition is barred by limitation. Limitation period for filing a petition under Section 11(6) of the 1996 Act is 3 years from the date when the right to apply accrues as per Article 137 of the Limitation Act. The Supreme Court has held in **Arif Azim Company Limited v. APTECH Limited, (2024) 5 SCC 313**, that right to apply accrues when there is failure or refusal on part of the party to an arbitration agreement to act in terms of notice invoking arbitration sent by the other party. Admittedly, in the present case, notice invoking arbitration was sent by the Petitioner on 21.09.2021 to the Respondent. Excluding the period from this date to 28.02.2022 in terms of the judgment of the Supreme Court in **Suo Moto (supra)**, the petition filed on 17.02.2025 is within the prescribed period of limitation. Hence, both objections are rejected as untenable.



9. Accordingly, Mr. Sharat Sampath, Advocate (Mobile No.9818903313) is appointed as Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of DIAC. Fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators' Fees) Rules 2018.

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 parties are left open. It is left open to the Respondent to raise the issue of claims of the Petitioner being allegedly *ex facie* time barred before the learned Arbitrator, in accordance with law.

12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 26, 2025

S.Sharma