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

\+ ARB.P. 520/2025

SHRI SANDEEP SONI .....Petitioner

Through:

versus

SHRI SANJAY ROY & ORS. .....Respondents

Through: Mr. S. K. Bhaduri, Ms. Neetu Gupta, Ms. Shreyangana Bag, Advs. for R1

Mr. Ashutosh Rana, Adv. for R2-3

**CORAM:**
**HON'BLE MR. JUSTICE JASMEET SINGH**

**O R D E R**

% **24.09.2025**

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of the Arbitrator.

2. The facts are that Mrs. Kalyani Roy was the absolute owner of property No. D-603, Chittranjan Park, New Delhi-110019 as per the Conveyance Deed dated 07.12.2001. She entered into a Collaboration Agreement dated 09.08.2016 for the above said property and received an amount of Rs. 25 lakhs from the petitioner. On 25.09.2016, Mrs. Roy handed over the possession of the entire first, second and terrace floor of the property to the petitioner.

3. Respondent No. 1, who is the son of Mrs. Roy, was not a party to the Collaboration Agreement and was in possession of the ground floor as a licensee and he did not agree to the said Agreement and prevented it from moving forward.

4. On 25.09.2016, a Supplementary Agreement was executed, whereby Rs. 80 lakhs was to be paid by the petitioner to Mrs. Roy on receiving

vacant physical possession of the entire property. However, Respondent No. 1 filed a suit for injunction and obtained interim orders.

5. On 21.10.2016, Mrs. Roy requested the petitioner to extend the time of handing over the possession of the ground floor to 30.04.2017 and on 27.10.2016, another Agreement was entered where the time for handing over the physical possession was extended till 30.04.2017.

6. On 19.01.2017, Mrs. Roy passed away and on 01.05.2017 the petitioner issued notice for appointment of an Arbitrator.

7. An Arbitration Petition No. 413 of 2017 was filed and the Court was pleased to appoint an Arbitrator. On 02.03.2020, the Arbitrator passed an award dismissing the claims of the petitioner. The petitioner filed a petition, OMP (COMM.) No. 36/2021 which was allowed on 01.02.2022.

8. The FAO (OS) (COMM.) No. 92/2022 filed by the respondent No. 1 was dismissed on 20.05.2022 and thereafter, an SLP was filed which was also dismissed on 10.10.2022.

9. On 07.02.2025, the petitioner sent a fresh notice for appointment of an Arbitrator and thereafter filed the present petition.

10. Mr. Rana, learned counsel for the respondent No. 2 and 3 and Mr. Bhaduri, learned counsel for the respondent No. 1, state that the present petition is time barred and the Court is required to adjudicate the same.

11. I have heard the learned counsel for the parties.

12. In the present case, the first notice invoking the arbitration was sent on 01.05.2017 and the Award passed pursuant to the said invocation was set aside on 01.02.2022. In terms of Section 43(3) of the Arbitration and Conciliation Act, 1996 the period between commencement of the arbitration

and the date of the order of the Court shall be excluded in computing the time period under the Limitation Act, 1963.

13. Since, in the present case as per the said Supplementary Agreement dated 27.10.2016, the time for handing over of possession had been extended up to 30.04.2017, I am of the view that there was no cause of action for the petitioner to invoke arbitration prior to the said date.

14. Hence, when the notice invoking arbitration was sent on 01.05.2017 only 1 day of the limitation available to the petitioner had been consumed.

15. The question that is for my consideration is whether the notice issued on 07.12.2025 is within 3 years of 01.02.2022, i.e., when the award was set aside.

16. The Hon'ble Supreme Court in ***Arif Azim vs. Aptech Limited (2024) 5 SCC 313*** has held as under:

> *"**85**. The operative part of the order dated 10-1-2022 [Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117 : (2022) 2 SCC (Civ) 46 : (2022) 1 SCC (Cri) 580 : (2022) 1 SCC (L&S) 501] is extracted hereinbelow : (Cognizance for Extension of Limitation, In re case [Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117 : (2022) 2 SCC (Civ) 46 : (2022) 1 SCC (Cri) 580 : (2022) 1 SCC (L&S) 501] , SCC pp. 119-20, para 5)*
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> *5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:*

*5.1. The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231] and 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250] , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

*5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.*

*5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.*

*5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts*

*Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

***86.** The operation and effect of the aforesaid order was considered and explained by a two-Judge Bench of this Court in Prakash Corporates v. Dee Vee Projects Ltd. [Prakash Corporates v. Dee Vee Projects Ltd., (2022) 5 SCC 112 : (2022) 3 SCC (Civ) 121 : (2022) 2 SCC (Cri) 290 : (2022) 1 SCC (L&S) 771] as follows : (SCC p. 141, para 28)*

*"28. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] , this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250] , this Court specifically provided for exclusion of the period from 15-3-2020 till 2-10-2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof.*

*When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government [Vide Section 15 of the Limitation Act, 1963.]). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed."*

***87***. *The effect of the above referred order of this Court in the facts of the present case is that the balance limitation left on 15-3-2020 would become available w.e.f. 1-3-2022. The balance period of limitation remaining on 15-3-2020 can be calculated by computing the number of days between 15-3-2020 and 27-3-2021, which is the day when the limitation period would have come to an end under ordinary circumstances. The balance period thus comes to 1 year 13 days. This period of 1 year 13 days becomes available to the petitioner from 1-3-2022, thereby meaning that the limitation period available to the petitioner for invoking arbitration proceedings would have come to an end on 13-3-2023."*

17. A perusal of paragraph 85 of ***Arif Azim Co. Ltd. (supra)*** shows that the period from 15.03.2020 till 28.02.2022 is to be excluded from the period of limitation.

18. In the present case, the period of limitation for the petitioner would hence begin to run from 01.03.2022 and the notice dated 07.02.2025 is within a period of 3 years.

19. Mr. Rana, learned counsel for the respondent Nos. 2 and 3, states that since the mother had expired on 19.01.2017 and respondent No. 1 had already initiated a suit seeking injunction, the period of limitation should be counted from 19.01.2017.

20. I am unable to accept this contention as the Agreement dated 27.10.2016 categorically states that possession would be handed over on 30.04.2017.

21. On 19.01.2017, i.e., the date of death of Mrs. Roy, it could not have been within the knowledge of the petitioner whether the LRs of Mrs. Roy would hand over the possession on 30.04.2017 or not.

22. The fact that respondent No. 1 had filed a suit and got an injunction order prior to 19.01.2017 does not help the case of the respondent.

23. For the said reasons, the petition is allowed and the following directions are issued:-

i) Mr. Sanjeev Sagar (Senior Advocate) (Mob. No. 9811016162) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

24. The present petition is disposed of in the aforesaid terms.

**JASMEET SINGH, J**

**SEPTEMBER 24, 2025/AS**