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

+ ARB.P. 842/2025

M/S KHAJAN SINGH THROUGH MR. VIRENDER KUMAR
SAROHA (PARTNER)Petitioner

Through: Ms. Anusuya Salwan and Ms. Alka
Dwivedi, Advocates.

versus

MUNCIPAL CORPORATION OF DELHI (ERSTWHILE EAST
MUNCIPAL CORPORATION OF DELHI THROUGH ITS
COMMISSIONER)Respondent

Through: Mr. Siddhant Nath, SC with Mr.
Bhavishya Makhija and Mr. Amaan Khan,
Advocates with Mr. P.N. Singh Tolia, Ex.
Engineer.

12

+ ARB.P. 843/2025

M/S HIND CONSTRUCTION CO. (THROUGH MR. ANIL
KATYAL)Petitioner

Through: Ms. Anusuya Salwan and Ms. Alka
Dwivedi, Advocates.

versus

MUNCIPAL CORPORATION OF DELHI (ERSTWHILE EAST
MUNCIPAL CORPORATION OF DELHI THROUGH ITS
COMMISSIONER)Respondent

Through: Mr. Siddhant Nath, SC with Mr.
Bhavishya Makhija and Mr. Amaan Khan,
Advocates with Mr. P.N. Singh Tolia, Ex.
Engineer.

13

+ ARB.P. 844/2025

MR. KARAMBIR SINGH KHATRIPetitioner

Through: Ms. Anusuya Salwan and Ms. Alka
Dwivedi, Advocates.

versus



MUNCIPAL CORPORATION OF DELHI (ERSTWHILE EAST
MUNCIPAL CORPORATION OF DELHI HROUGH ITS
COMMISSIONER)Respondent

Through: Mr. Siddhant Nath, SC with Mr.
Bhavishya Makhija and Mr. Amaan Khan,
Advocates with Mr. P.N. Singh Tolia, Ex.
Engineer.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER
25.08.2025

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1. These petitions are filed on behalf of the Petitioners under Section 11 (6) of Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes in these petitions emanate from a Notice Inviting Tender dated 31.08.2017 issued by the Respondent for the work of door-to-door collection and transportation of municipal solid waste in North and South Zone under jurisdiction of EDMC to designated landfill facility under Public Private Partnership mode on design, build, finance, operate and transfer basis. Invocation notices were sent by the Petitioners under arbitration clause 23.2 of East Delhi Municipal Corporation Contract but Respondent failed to consent to the appointment of the Arbitrator.
3. Learned Standing Counsel for the Respondent opposes the petitions on two grounds. It is urged that claims of the Petitioners are *ex facie* time bared and deadwood and in any event, they have waived their right to take recourse to arbitration inasmuch as Petitioners have earlier invoked the writ jurisdiction of this Court by filing W.P.(C) Nos. 7443/2020 and 10845/2020.



4. Insofar as first objection is concerned, it is no longer *res integra* that determination of the question whether claims of a party to an arbitration agreement are *ex facie* time barred is within the domain, ambit and remit of the Arbitral Tribunal and cannot be decided in a petition under Section 11 of the 1996 Act by a referral Court. In this context, I may allude to the following passages from the judgment of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754:-***

“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.”

5. In light of the aforesaid judgment, determination of the question whether claims of the Petitioners are *ex facie* time barred or deadwood will have to be left to the learned Arbitrator for adjudication and hence there is no merit in this objection for referring the disputes to arbitration. The second objection is also without merit. Reading of order dated 08.02.2021 passed by the Division Bench in the aforementioned writ petitions shows that Petitioners had approached the Court as there were certain hindrances in the manner of the execution of the works and during the pendency of the petitions, parties arrived at a settlement with respect to the manner in which the work shall be performed and a Nodal Officer was appointed to supervise the working of two sets of contractors i.e. the Petitioners on one hand and Respondent No. 2 therein on the other hand. Filing of these writ petitions, in my view, cannot amount to a waiver to taking recourse to arbitration, more so, when the existence of the arbitration agreement is undisputed.

6. Accordingly, Mr. Justice Brijesh Sethi, former Judge of this Court (Mobile No. 9910384669) 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. These will be considered as three separate references.

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

8. 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 will be open to the Respondent to raise the issue of the claims of the Petitioners being allegedly *ex facie* time barred before the learned Arbitrator, in accordance with law.

9. Petitions are disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 25, 2025
S.Sharma/shivam