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

+ **ARB.P. 1026/2025**

M/S ADLAKHA ASSOCIATES PVT LTDPetitioner

Through: Mr. Avinash Trivedi and Mr. Rahul Aggarwal, Advocates.

versus

M/S DELHI STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. (DSIIDC)

.....Respondent

Through: Mr. Sonal Anand, Mr. Aayush Sai, Ms. Surbhi Singh, Mr. Rishabh and Mr. H. Zaidi, Advocates.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

ORDER
27.08.2025

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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 a Sole Arbitrator to adjudicate the disputes between the parties.
2. As per the case set out by the Petitioner, Respondent awarded consultancy work of '*Construction of low cost housing for urban poor/slum rehabilitation at Pooth Khurd, Delhi*' vide Letter of Acceptance dated 09/12.07.2010. Letter of Commencement was issued on 31.07.2010 on submission of performance guarantee by the Petitioner. Stipulated date of start of work was 03.08.2010 and work was to be completed in three phases as per time schedule mentioned in Clause 13 of the Agreement executed between the parties.



3. Petitioner asserts that it commenced the work as required and submitted 5th Running Bill on 19.05.2019. Respondent released part payments on 16.03.2020 whereafter Petitioner submitted 6th Bill on 10.09.2024. On 14.02.2025, Petitioner received a letter from the Respondent stating that claim under Item No. 1 was a withheld payment while claim with regard to Item No. 3 could not be made as the same was based on actual work done and the scope of work was subsequently reduced. There was no plausible response to claim regarding GST as also claims under Item Nos. 4 to 6. Disputes having arisen, Petitioner sent a notice dated 29.03.2025 invoking arbitration, in reply to which there was no response to the request of the Petitioner to consent to appointment of an Arbitrator.

4. Learned counsel for the Respondent, while not disputing the existence of the arbitration agreement, objects to appointment of the Arbitrator on the ground that claims of the Petitioner are *ex facie* time barred and deadwood.

5. Mr. Trivedi, learned counsel for the Petitioner refutes that the claims are time barred and without prejudice contends that determination of the question whether claims are allegedly *ex facie* time barred is to be left to the Arbitrator in light of the judgment of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***.

6. Having heard learned counsels for the parties, I find merit in the contention of Mr. Trivedi, learned counsel for the Petitioner. The Supreme Court in ***Krish Spinning (supra)*** has held that while determining the issue of limitation in exercise of powers under Section 11(6) of the 1996 Act, the referral Court should limit its inquiry to examining whether the petition has been filed within a period of 3 years or not and date of commencement of limitation period shall have to be construed as per the decision of the



Supreme Court in *Arif Azim Company Limited v. Aptech Limited*, (2024) 5 SCC 313. It was further observed that as a natural corollary, it is clarified that referral Court must not conduct an intricate evidentiary inquiry into the question whether the claims raised by the Petitioner are time barred and should leave that question for determination by the Arbitrator as such an approach gives true meaning to legislative intention underlying Section 11(6-A) of the 1996 Act and also the view taken in *Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re*, (2024) 6 SCC 1. 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.”

7. In light of the aforesaid judgment, determination of the question whether claims of the Petitioner are *ex facie* time barred or deadwood will have to be left to the learned Arbitrator for adjudication. Existence of arbitration agreement is not in dispute nor it is disputed by the Respondent that it had received notice invoking arbitration. Hence, there is no impediment in appointing an Arbitrator.

8. Accordingly, Mr. Saurabh Seth, Advocate (Mobile No. 9811393402) 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.

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

10. 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 Petitioner being allegedly *ex facie* time barred before the learned Arbitrator, in accordance with law.

11. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 27, 2025
S.Sharma/Shivam