



\$~18

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

+ **ARB.P. 1060/2025**

M/S R.K. JAIN AND SONS HOSPITALITY SERVICES(P) LTD

.....Petitioner

Through: Mr. Abhinav Sharma and Mr. Shreesh Pathak, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Mr. Sunder Khatri, ASC with Mr. Ravi Krishan Chandna, Asstt. SC, Mr. Naman Khatri, Mr. Puja Chaurasia, Mr. Grover and Mr. Udbhav K. Garg, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

%

25.08.2025

I.A. 17627/2025

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

ARB.P. 1060/2025

3. 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.
4. Case of the Petitioner is that it was awarded the work of '*Other Charges (Sanitation Expenses), SH: Maintenance work at Palika Place Complex*' vide Agreement dated 06.06.2016 by NDMC/Respondent. Work was completed on 04.07.2019 as required under the Agreement, however, Respondent failed to pay the outstanding amounts due to the Petitioner.



Disputes arose between the parties with respect to final bill; escalation on account of clause 10C; wrongly deducted labour cess; bonus; difference of wages; and service tax/GST etc. Petitioner approached the Respondent for constitution of Dispute Resolution Committee vide letters dated 31.08.2023 and 11.12.2023 but there was no response and finally, Petitioner sent invocation notice dated 01.01.2025 under Section 21 of the 1996 Act on account of existence of arbitration Clause 25 in the work order, calling upon the Respondent to give consent for appointment of Arbitrator, but to this also there was no response.

5. Appearing on behalf of the Respondent, Mr. Khatri, learned ASC takes two-fold objections to appointment of Arbitrator. It is urged that the claims put forth by the Petitioner are *ex facie* time barred and secondly, present petition is also barred by limitation under Article 137 of the Limitation Act, 1963. Since the work was allegedly completed by the Petitioner on 04.07.2019 and starting therefrom three years expired on 04.07.2022.

6. Heard learned counsels appearing on behalf of the parties.

7. Insofar as the objection of the claims of the Petitioner being allegedly *ex facie* time barred 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)*.

xxx

xxx

xxx

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. 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 and hence there is no merit in this objection for referring the disputes to arbitration.

9. The second objection that this petition is barred by limitation, is also without merit. As noted in ***Krish Spinning (supra)***, this issue was decided by the Supreme Court in ***Arif Azim Company Limited v. Aptech Limited, (2024) 5 SCC 313*** and the Supreme Court held that it is the duty of referral Court to examine whether the application under Section 11(6) is barred by period of limitation prescribed under Article 137 of the Limitation Act i.e. 3 years from the date when the right to apply accrues in favour of the Petitioner. The Supreme Court also held that the three years period would commence when a valid notice invoking arbitration by one party is received by the other party and there is failure or refusal to act in terms of the notice. Therefore, it cannot be urged by the Respondent that limitation period of three years will commence from the date work was completed by the Petitioner. Indisputably, invocation notice was sent on 01.01.2025 and while the counsels are unable to give the exact date on which it was received by the Respondent, but there is no denial that the same was received. Admittedly, Respondent has not acted on the notice and therefore, this petition filed on 14.07.2025 is within the prescribed period of limitation and not time barred. The second objection is also rejected.

6. Accordingly, Ms. Mannat Tipnis, Advocate (Mobile No. 8130105530) 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.

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

9. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 25, 2025

S.Sharma/shivam