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

+ **ARB.P. 1788/2024**

SCHOLAR ALLEY PRIVATE LIMITEDPetitioner

Through: Mr. Saharsh Jauhari, Advocate.

versus

MS. SWEETY SAHNI AND ORS.Respondents

Through: Mr. Punit Jain, Advocate for R-1 to R-4.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **22.08.2025**

1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of the Arbitrator, disputes having emanated from a Lease Deed dated 16.03.2012 containing arbitration clause 16.

2. Petitioner invoked the arbitration clause and sent an invocation notice dated 13.08.2024 to the Respondents, to which Respondents sent a reply dated 27.08.2024 denying the allegations and alleging that Petitioner hatched a criminal conspiracy and caused wrongful gain to itself. As there was failure to consent for appointment of a sole Arbitrator, Petitioner filed the present petition.

3. Learned counsel for Respondents No. 1 to 4 opposes the petition on two-fold grounds: (a) petition is barred by limitation under Article 137 of the Limitation Act, 1963; and (b) claims of the Petitioner are *ex facie* time barred. During the course of hearing, learned counsel fairly concedes that determination of the claims being *ex facie* time barred is the domain of 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***,



however, as a referral Court this Court will determine whether the petition under Section 11(6) is barred by limitation.

4. Counsel for the Petitioner, on the other hand, submits that this petition is filed within the prescribed period of limitation i.e. three years under Article 137 of the Limitation Act. To substantiate this plea, it is urged that despite continued assurances from the Respondents, Petitioner did not receive possession of the demised premises under the Lease Deed dated 16.03.2012 till March, 2020 whereafter there was onset of Pandemic COVID-19. Petitioner resumed its efforts to seek possession and it was only in May, 2024, when it was discovered that possession had been given to a third party namely, M/s. Curated Living Solutions Private Limited, without even notifying the Petitioner and in violation of the Lease Deed. On 13.08.2024, Petitioner issued the invocation notice proposing appointment of a sole Arbitrator to adjudicate the disputes, to which a reply was sent by the Respondents on 27.08.2024 and this petition was filed in October, 2024.

5. Having heard learned counsels for the parties, I am of the view that present petition is not barred by limitation. In ***Arif Azim Company Limited v. Aptech Limited, (2024) 5 SCC 313***, the Supreme Court framed two questions for consideration of which the first question was whether Limitation Act is applicable to petitions under Section 11(6) of the 1996 Act. The question was answered by holding that the said Act will apply and it is the duty of the referral Court to examine whether the petition under Section 11(6) is barred by period of limitation prescribed under Article 137 of Limitation Act i.e. three years from the date when the right to apply accrues in favour of the Petitioner. To determine as to when the right to apply would accrue, commencement of the limitation period would be once



a valid notice invoking arbitration is sent by one party to the arbitration agreement to the other party and there is failure or refusal by the other party in complying with the requirements in the notice. In the present case, the invocation notice was sent by the Petitioner on 13.08.2024 and reply was sent by the Respondent on 27.08.2024 refuting the allegations made as also the merits of the claim and declining to appoint an Arbitrator. Counted from this date, the present petition filed in October, 2024 is not barred by limitation under Article 137 of the Limitation Act. This objection is accordingly rejected.

6. Accordingly, this petition is allowed and Mr. Sanjay Garg, former Principal District & Sessions Judge, (Mobile No. 9910384695) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre (DIAC) and as per its Rules. Fee of the Arbitrator shall be as per fee schedule of 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 respective parties are left open. It is left open to the Respondents to raise the issue of the claims of the Petitioner being allegedly *ex facie* time barred before the Arbitrator, in accordance with law.

9. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 22, 2025/shivam