

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE**

**RESERVED ON: 05.05.2026
DELIVERED ON: 14.05.2026**

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

AP 4 OF 2026

BLUE HORIZON ESTATES PRIVATE LIMITED

VERSUS

ASHISH DHANDHANIA AND ORS.

Appearance: -

**Mr. Shuvasish Sengupta, Adv.
Mr. Lalit Baid, Adv.
Mr. Akash Munshi, Adv.
Mr. Tamoghna Saha, Adv.
Ms. Sanjana Shaw, Adv.
Mr. Kuldeep Das, Adv.**

..... for the Petitioner

**Mr. Aniruddha Chatterjee, Sr. Adv.
Mr. Kushal Chatterjee, Adv.
Ms. Sayanti Nandy, Adv.**

..... for the Respondent

JUDGMENT

Gaurang Kanth, J. :-

- 1.** The Petitioners have preferred the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator for adjudication of the disputes and differences alleged to have arisen between the parties out of and in connection with the Agreement for Sale dated 23.07.2012.
- 2.** The facts leading to the filing of the present petition are as follows.
- 3.** The Petitioners entered into an Agreement for Sale dated 23.07.2012 with Respondent No. 1 as the vendor, Respondent No. 2 as the Developer and Confirming Party, and Respondent No. 3 as the owner, in respect of

purchase of a flat being Unit No. 4B, measuring about 2245.43 sq.ft. super built-up area on the 4th floor of premises No. 12, Shakespeare Sarani, Kolkata – 700071, together with one car parking space on the ground floor of the said premises. The total consideration for the said flat was agreed at Rs. 2,11,00,000/-. According to the Petitioners, the entire sale consideration was paid and possession of the said flat was handed over to them instantly upon execution of the said agreement.

4. It is the case of the Petitioners that under Clause 3(10) of the said Agreement for Sale, the Respondents were required to complete the sale and execute the conveyance in favour of the Petitioners within a period of 20 months from the date of execution of the agreement, or within 30 days of Respondent No. 1 causing to be executed and registered the Deed of Conveyance in respect of the said flat by Respondent Nos. 2 and 3 in favour of Respondent No. 1, whichever is earlier. However, according to the Petitioners, the execution and registration of the conveyance deed were deferred from time to time on various grounds.
5. The Petitioners have stated that Respondent No. 2 forwarded a draft conveyance deed, though certain clauses contained therein were objected to by the Petitioners, resulting in several meetings and exchanges between the parties. According to the Petitioners, the issues remained unresolved. The Petitioners have further alleged that conveyance deeds in respect of several other flats in the said premises were also not executed, as a result whereof the flat owners were unable to constitute a flat owners' association or obtain access to the accounts and records relating to the maintenance of the building. Respondent No. 2 continued to manage and maintain the building premises until it intimated, vide letter dated 17.08.2023, that it

would not be continuing with the maintenance activities beyond 30.08.2023.

- 6.** The Petitioners have further stated that complaints were raised from time to time by the Petitioners and other residents regarding maintenance and upkeep of the building, which were denied by Respondent No. 2. Thereafter, by letter dated 14.09.2023, the Petitioners called upon the Respondents to execute the conveyance deed. Respondent No. 2, by its reply dated 30.09.2023, denied any liability to execute the conveyance deed and stated that such obligation, if any, vested upon Respondent Nos. 1 and 3. The Petitioners replied thereto by letter dated 16.08.2025, to which Respondent No. 2 responded by letter dated 19.08.2025 reiterating its earlier stand.
- 7.** In view of the disputes and differences so arising, the Petitioners invoked the arbitration clause contained in Clause 18 of the Agreement for Sale dated 23.07.2012 by issuing a notice dated 10.09.2025 under Section 21 of the Arbitration and Conciliation Act, 1996, proposing the name of Mr. Saptarshi Banerjee, Advocate, as Sole Arbitrator. The arbitration clause in the Agreement provides for reference of disputes to Mr. Pankaj Shroff, Advocate, of 7B, Kiran Sankar Roy Road, Calcutta – 700001, or such person as may be nominated by him. The Petitioners contended that Mr. Pankaj Shroff had acted on behalf of the Respondents and is therefore ineligible to act as arbitrator. The said notice was received by the Respondents and Respondent No. 2 replied thereto by letter dated 07.10.2025 reiterating its earlier stand. No consensus having been arrived at regarding appointment of an arbitrator, the present petition has been filed.

Submissions on Behalf of the Petitioners

8. Learned Counsel for the Petitioners submitted that all requirements under Section 11(6) of the Act stand satisfied. A valid and binding arbitration agreement exists in Clause 18 of the Agreement for Sale dated 23.07.2012 and the disputes raised arise directly therefrom. The arbitration was duly invoked by notice dated 10.09.2025 issued under Section 21 of the Act, yet no consensus on the appointment of an arbitrator could be reached. It was further submitted that the named arbitrator Mr. Pankaj Shroff, Advocate, having acted on behalf of the Respondents, is rendered ineligible under Section 12(5) of the Act, and this Court ought therefore to appoint an independent and impartial arbitrator.
9. On the issue of limitation, Learned Counsel submitted that although the Agreement for Sale was executed on 23.07.2012 and possession of the flat was handed over simultaneously upon payment of the entire sale consideration, the Respondents continuously assured the Petitioners that the conveyance deed would be executed and registered. Respondent No. 2 circulated a draft conveyance deed and several meetings and exchanges took place regarding modification of certain clauses therein. The Respondents never unequivocally refused to perform their obligations under the agreement until the reply dated 30.09.2023, following which further correspondence ensued and Respondent No. 2 reiterated its stand by letter dated 19.08.2025. It was accordingly argued that the disputes between the parties crystallised upon the unequivocal refusal communicated through the said correspondence and the invocation of arbitration by notice dated 10.09.2025 was therefore well within the prescribed period of limitation. Reliance was placed upon the decision of

the Hon'ble Supreme Court in ***Ahmadsahab Abdul Mulla (2) v. Bibijan & Ors.*** reported as ***[(2009) 5 SCC 462]***, wherein it was authoritatively held that limitation for specific performance commences from the date on which the plaintiff has notice of refusal to perform, irrespective of whether a date for performance was fixed or not. It was thus contended that the disputes sought to be referred to arbitration cannot be held to be ex facie barred by limitation.

Submissions on Behalf of Respondent No. 2

- 10.** Learned Senior Counsel for Respondent No. 2 opposed the petition and contended that the claims sought to be referred are ex facie barred by limitation and therefore, no reference ought to be made. It was submitted that the Agreement for Sale dated 23.07.2012 was executed between the Petitioners as purchasers, Respondent No. 1 as vendor, and Respondent No. 2 merely as the confirming party. It was contended that under Clause 3(10) of the agreement, the obligation to execute the conveyance deed arose within 20 months of execution of the agreement or within 30 days of the specified event, whichever was earlier, and that the Petitioners having admittedly taken possession of the flat instantly upon execution of the agreement in 2012, the cause of action arose in 2012 itself. The present claims, preferred after more than thirteen years, are hopelessly barred under Article 54 of the Schedule to the Limitation Act, 1963.
- 11.** Learned Senior Counsel further submitted that this Court, while exercising jurisdiction under Section 11 (6) of the Act, is empowered to examine whether claims are ex facie time-barred and ought to refuse reference where such bar is manifest. Strong reliance was placed upon the two-pronged test specifically formulated by the Hon'ble Supreme Court in

paragraph 89 of **Arif Azim Co. Ltd. v. Aptech Ltd.** reported as **[(2024) 5 SCC 313]**, wherein it was held that the referral court is required to satisfy itself both that the Section 11(6) petition is within limitation and that the underlying claims are not ex facie dead claims barred by limitation on the date of commencement of arbitration proceedings. Reliance was also placed upon the decision of the Hon'ble Supreme Court in **Visa International Ltd. v. Continental Resources (USA) Ltd.** reported as **[(2009) 2 SCC 55]** to contend that the Court exercising jurisdiction under Section 11(6) is not denuded of the power to examine whether a live and subsisting dispute exists. It was accordingly prayed that the petition be dismissed.

- 12.** No separate arguments were addressed on behalf of Respondent Nos. 1 and 3, who are respectively the vendor and the owner of the premises in question.

Legal Analysis

- 13.** This Court has heard the learned Counsel for the parties, considered the pleadings and documents placed on record, and applied its mind to the judgments cited at the Bar.
- 14.** The primary objection raised by Respondent No. 2 is that the claims sought to be referred are ex facie barred by limitation and that this Court ought to refuse reference on that ground. This objection is founded upon the two pronged test specifically articulated in **Arif Azim** (supra) wherein the Hon'ble Supreme Court held that the referral court must satisfy itself both that the Section 11(6) petition is within limitation and that the underlying claims are not ex facie dead claims barred by limitation as on the date of

commencement of arbitral proceedings, and that failure on either count would justify refusal of reference.

- 15.** This Court has carefully considered the said submission. The two-pronged test in **Arif Azim** (supra) upon which Respondent No. 2 places reliance no longer represents the correct position of law. The Hon'ble Supreme Court, in **SBI General Insurance Co. Ltd. v. Krish Spinning** reported as **[2024 SCC OnLine SC 1754]**, has expressly reconsidered and authoritatively clarified the second limb of the **Arif Azim** (supra) test in the light of the seven Judge Bench decision in *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 [(2024) 6 SCC 1]*. Since Respondent No. 2 has specifically relied upon **Arif Azim** (supra) that have since been clarified, it is necessary to set out the operative clarification of the Hon'ble Supreme Court in **Krish Spinning** (supra) in extenso:

"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....."

- 16.** The position of law as it stands today is therefore clear and admits of no ambiguity. The jurisdiction of the referral court under Section 11(6) is confined to satisfying itself of the prima facie existence of a valid arbitration agreement and to examining whether the Section 11(6) petition itself has been filed within the three year period prescribed under Article 137 of the Limitation Act, 1963, which period commences upon failure or refusal to comply with the Section 21 notice, as held in Arif Azim (supra). The second limb of the Arif Azim test requiring the referral court to examine whether the underlying claims are ex facie dead and time-barred stands expressly clarified and overruled by Krish Spinning (supra). That question falls exclusively within the domain of the Arbitral Tribunal and any intricate evidentiary enquiry into limitation of the underlying claims at the Section 11(6) stage is now impermissible.
- 17.** This Court accordingly holds that the objection of Respondent No. 2 that the underlying claims are barred by limitation is not available to be urged at this stage and cannot constitute a ground to refuse reference. The question whether the claims of the Petitioners are time barred involves determination of disputed questions of fact including the nature and scope of the obligations under Clause 3(10) of the agreement, the conduct of the parties over the years, the alleged continuing assurances, the circulation and negotiation of the draft conveyance deed, and the precise point at which an unequivocal refusal to perform was first communicated, whether upon the reply dated 30.09.2023 or the subsequent letter dated 19.08.2025. None of these questions can or ought to be resolved in

summary proceedings under Section 11(6). The said question is accordingly left entirely open for decision by the learned Arbitrator in accordance with law.

- 18.** Turning to the requirements for exercise of jurisdiction under Section 11(6), this Court is satisfied on the following:
- 19.** First, there prima facie exists a valid and binding arbitration agreement between the parties contained in Clause 18 of the Agreement for Sale dated 23.07.2012, which covers all disputes and differences arising out of or in relation to the said unit and the said agreement.
- 20.** Second, the named arbitrator under the agreement, Mr. Pankaj Shroff, Advocate, is alleged to have acted on behalf of the Respondents and is therefore prima facie rendered ineligible to act as arbitrator by operation of Section 12(5) of the Act read with the Seventh Schedule thereto. The appointment mechanism under the agreement having thus failed, this Court's jurisdiction under Section 11(6) stands squarely attracted.
- 21.** Third, a notice invoking arbitration was duly issued by the Petitioners under Section 21 of the Act on 10.09.2025, which was received and responded to by the Respondents, yet no consensus on appointment of an arbitrator could be reached.
- 22.** Fourth, the present petition has been filed within three years from the date on which the right to apply for appointment accrued, being the date of failure to comply with the Section 21 notice. The petition is therefore within limitation.
- 23.** All conditions precedent for exercise of jurisdiction under Section 11(6) stand satisfied. This Court accordingly proceeds to appoint an independent arbitrator for adjudication of the disputes between the parties.

- 24.** Accordingly, this Court appoints Sounak Bhattacharya, (Mob. No. 9830420018), as the Sole Arbitrator to adjudicate all disputes and differences between the parties arising out of and in relation to the Agreement for Sale dated 23.07.2012. The appointment shall be subject to compliance with the disclosure requirements under Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be entitled to fix remuneration in accordance with the Fourth Schedule to the Act.
- 25.** The learned Arbitrator shall be at liberty to consider and decide all objections raised by any party, including the question of limitation of individual claims and any question of maintainability, as preliminary issues, after affording full opportunity of hearing to all parties. All questions on merits are expressly left open. The arbitral proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
- 26.** With the aforesaid directions, the present petition stands allowed.

(Gaurang Kanth, J.)