

**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 40 OF 2026

RANI KAUR MATHAROO ALIAS RANI KAUR MATHARU AND ANR

VERSUS

SWASTIK PROJECT PRIVATE LIMITED COMPANY AND ANR.

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 22.09.2009.
- 2.** The facts leading to the filing of the present petition are as follows.

- 3.** Petitioner No. 1, Rani Kaur Matharoo, along with her late husband Bhagwan Singh Matharoo, entered into an Agreement for Sale dated 22.09.2009 with Respondent No. 1, Swastik Project Private Limited, as the Developer and transferor, and Respondent No. 2, Chitrita Dey, in respect of purchase of a flat being Unit No. 3C, having a super built-up area of 2227.14 sq.ft. more or less on the 3rd floor of premises No. 12, Shakespeare Sarani, Kolkata – 700071, together with two covered car parking spaces on the ground floor of the said premises. The total consideration for the said flat was agreed at Rs. 34,40,710/-. According to the Petitioners, the entire sale consideration was paid and possession of the said flat was thereafter handed over to them. It is further stated that Bhagwan Singh Matharoo died on 24.12.2018, leaving behind his wife and daughter as his only heirs, and accordingly the share of the said Bhagwan Singh Matharoo passed in equal proportions to Petitioner Nos. 1 and 2 respectively.
- 4.** It is the case of the Petitioners that under Clauses 2.3 and 2.5 of the said Agreement for Sale, Respondent No. 1 was duty bound to complete the sale and transfer of the said flat in favour of the Petitioners within 18 months from the date of execution of the Agreement for Sale dated 22.09.2009. 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. 1 forwarded a draft Deed of Conveyance, though certain clauses contained therein were objected to by the Petitioners, including the absence of any provision for clear access to the entire ultimate roof of the said building, which had been encroached upon by Respondent No. 1, 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. 1 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 31.08.2023.

- 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. Thereafter, by letter dated 14.09.2023, the residents of the building including the Petitioners called upon Respondent No. 1 with regard to discrepancies in the handling of the maintenance fund and its breach of obligation to execute the Deed of Conveyance. Respondent No. 1, by its reply dated 30th September, 2023, denied the contents of the said letter without providing any justifiable explanation in respect of the grievances raised therein. The Petitioners along with other residents replied thereto by joint letter dated 06.08.2025, to which Respondent No. 1 responded by its advocate's letter dated 19.08.2025, expressly waiving any obligation to execute the Deed of Conveyance in favour of the Petitioners and stating that the claims of the Petitioners were barred by limitation.
- 7.** In view of the disputes and differences so arising, the Petitioners invoked the arbitration clause contained in Clause 11.1 of the Agreement for Sale dated 22.09.2009 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 all disputes and differences relating to or connected with the said unit and/or the agreement to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as modified or re-enacted from time to time. The said notice was received by the Respondents and Respondent No. 1 replied thereto by its advocate's letter dated 07.10.2025 again refuting any obligation to perform its duties under the agreement and dissenting from referring the matter to the proposed arbitrator. 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 11.1 of the Agreement for Sale dated 22.09.2009 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 disputes between the parties are arbitrable in nature 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 22.09.2009 and possession of the flat was handed over upon payment of the entire sale consideration, Respondent No. 1 continuously assured the Petitioners that the

conveyance deed would be executed and registered, and had indeed forwarded a draft Deed of Conveyance. Several meetings and exchange of correspondences took place regarding discrepancies in the draft deed, including the issue of access to the roof of the building, yet no resolution was reached. The Respondents never unequivocally refused to perform their obligations under the agreement until the advocate's letter dated 19.08.2025, wherein Respondent No. 1 for the first time expressly stated that the claims of the Petitioners were barred by limitation and gave a clear waiver of any obligation to execute the Deed of Conveyance. It was accordingly argued that the disputes between the parties crystallised only upon such unequivocal refusal, 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 **Ahmadshah 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. 1

- 10.** Learned Senior Counsel for Respondent No. 1 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 under Clauses 2.3 and 2.5 of the Agreement for Sale dated 22.09.2009, Respondent No. 1 was obligated to complete the sale and transfer within 18 months from the date of execution of the agreement,

meaning thereby that the obligation fell due by March 2011 at the latest. The Petitioners having been put in possession of the flat upon payment of the full consideration, the cause of action to seek execution of the conveyance deed arose no later than March 2011 and the present claims, preferred after more than fourteen 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 **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 preliminary issues, including whether a live and subsisting dispute exists between the parties. It was accordingly prayed that the petition be dismissed.
- 12.** No separate arguments were addressed on behalf of Respondent No. 2.

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. 1 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. 1 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** reported as [(2024) 6 SCC 1]. Since Respondent No. 1 has specifically relied upon the precise paragraphs of **Arif Azim** (*supra*) which 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 the 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. 1 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 Clauses 2.3 and 2.5 of the agreement, the conduct of the parties over the years, the alleged continuing assurances, the circulation and negotiation of the draft Deed of Conveyance, the ongoing disputes with respect to access to the roof and other discrepancies in the draft 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 express waiver communicated by 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: First, there prima facie exists a valid and binding arbitration agreement between the parties contained in Clause 11.1 of the Agreement for Sale dated 22.09.2009, which covers all disputes and differences relating to or connected with the said unit and/or the said agreement. Second, the said arbitration clause does not name a specific arbitrator and provides for reference to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. No consensus having been reached between the parties on the appointment of an arbitrator despite invocation of the arbitration clause, this Court's

jurisdiction under Section 11(6) stands squarely attracted. 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 Respondent No. 1 through advocate's letter dated 07.10.2025, whereby Respondent No. 1 declined to refer the matter to the proposed arbitrator. No consensus regarding the appointment of an arbitrator could therefore be reached. 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 or refusal to comply with the Section 21 notice. The petition is therefore within limitation.

- 19.** 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.
- 20.** 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 22.09.2009. 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.
- 21.** 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.

22. With the aforesaid directions, the present petition stands allowed.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)

