

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

AP/86/2026

M/S. MAGNETS VYAPAARS PRIVATE LIMITED
VS
M/S. MILESTONE INDUSTRIES AND ORS.

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH

Date : 16th June, 2026.

Appearance:

Mr. Nilay Sengupta, Adv.

Ms. Priyanka Gupta, Adv.

...for the petitioner

Mr. Ritzu Ghoshal, Sr. Adv.

Mr. Gaurab Kr. Das, Adv.

Mr. Sumalya Chakraborty, Adv.

...for the respondents

The Court: The petitioner has preferred the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of a learned sole Arbitrator for adjudication of the disputes alleged to have arisen between the parties out of the registered mortgage deed dated 12.02.2013.

Learned Counsel for the petitioner submits that the petitioner is a private limited company engaged, *inter alia*, in the business of investment in real estate, purchase and sale of properties and providing financial assistance for development of projects. The respondent no.1 is a partnership firm and respondent nos. 2 and 3 are its existing partners who are engaged in the business of development of real estate projects. It is further submitted that the respondents purchased premises No. 34B and 34C, Chetla Road,

Kolkata-700027 for the purpose of construction and development of a residential and commercial unit over the said property. For the said purpose, the respondents requested the petitioner to provide a financial assistance of Rs. 1.50 crores. Learned Counsel for the petitioner submits that in connection with the development projects, the petitioner advanced financial assistance to the respondents and paid a sum of Rs.1,30,00,000/- but the respondents had made a payment of Rs.1,10,00,000/-. In consideration thereof, the parties executed the registered deed of mortgage dated 12.02.2013 whereby the respondents agreed to create registered mortgage in respect of undivided $\frac{1}{2}$ share in the said property in favour of the petitioner. It is further submitted that in terms of the said agreement, the amount advanced by the petitioner was to be repaid within a period of 36 months together with an interest at the rate of 18% per annum. According to the petitioner, the respondents repaid the principal amount and consequently a deed of release dated 19.03.2014 came to be executed by the petitioner in favour of the respondents. Learned Counsel for the petitioner submits that the interest component amounting to Rs.58,55,366.46/- remains outstanding and payable by the respondents. Learned Counsel for the petitioner further submits that in order to secure the alleged outstanding dues, the petitioner approached the Court of the learned District Judge, South 24 Parganas, Alipore by filing a petition under Section 9 of the Arbitration and Conciliation Act, 1996 and obtained an interim order dated 14.10.2020 in Miscellaneous Case No. 32 of 2020. It is the specific case of the petitioner that in terms of Clause 6 of the mortgage deed dated 12.02.2013, the petitioner invoked arbitration by issuing a notice

dated 11.02.2020. Thereafter, the petitioner by a further letter dated 15.05.2024 proposed the name of the Arbitrator. Learned Counsel for the petitioner submits that despite receipt of such communication, the respondents failed to resolve the disputes between the parties and did not pay the outstanding dues, thereby compelling the petitioner to approach this Court by way of the present petition.

Learned Senior Counsel for the respondents states that the present petition is barred by limitation since the petitioner had invoked the arbitration clause by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996 dated 11.02.2020. He further points out that the said notice has not been brought on record. Learned Senior Counsel for the respondents states that the petitioner's subsequent communication dated 15.05.2024 itself acknowledges the fact that the notice invoking arbitration was issued on 11.02.2020 and that the arbitration had been invoked on the said date, therefore, the present petition is barred by limitation. Learned Senior Counsel further states that even assuming that the benefit of the Covid period is extended to the petitioner, the present claim would still remained barred by limitation.

Having heard the learned Counsel for the parties and upon perusal of the materials on record, this Court is of the view that the notice dated 11.02.2020, by which the petitioner claims to have invoked arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, has not been placed on record. However, significantly, the said communication dated 15.05.2024 itself acknowledges that the petitioner had issued the Section 21

notice on 11.02.2020 and had invoked the arbitration on the said date. The said fact is not disputed by the petitioner.

It is well settled that an application under Section 11 of the Arbitration and Conciliation Act, 1996, is governed by the law of limitation and must be filed within three years from the date on which the cause of action to seek appointment of an Arbitrator accrues ,namely, the failure of the opposite party to act pursuant to the invocation of the arbitration agreement. Failure to approach the Court within the prescribed period renders the claim barred by limitation. The Hon'ble Supreme Court, in a landmark judgment in ***M/S Arif Azim Co. Ltd. v. M/S Aptech Ltd.*** reported as **(2024) 5 SCC 313** has held that an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, is governed by the Limitation Act, 1963, while reaffirming the position earlier taken in ***Bharat Sanchar Nigam Ltd. v. Nortel Networks (India) Pvt. Ltd.***, reported as **(2021) 5 SCC 738**. In the absence of any limitation period specifically prescribed under the Arbitration Act for such an application, it is the residuary Article 137 of the Limitation Act that applies, under which the limitation period for filing an application under Section 11(6) is three years from the date on which the right to apply accrues, that is, the date on which a valid notice under Section 21 is issued and the opposite party fails or refuses to act upon it

In the present case, it is evident that the petitioner had invoked the arbitration proceedings by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 11.02.2020. The present petition, having been filed beyond the period of three years from the said date is clearly barred by limitation.

In view of the aforesaid, the present petition is dismissed.

(GAURANG KANTH, J.)

R.Bhar