

ORDER

OCD - 14

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/431/2026
RANJANA SIKHWAL AND ORS
VS
PRADEEP KUMAR SIKHWAL AND ANR

BEFORE
HON'BLE JUSTICE GAURANG KANTH
Date: June 22, 2026.

Appearance:-
Mr. D. Saha, Adv.
Mr. S. Pattanayak, Adv.
...for petitioners.
Mr. Surya Prasad Chattopadhyay, Adv.
Ms. T. Mancherji, Adv.
...for respondents.

The Court:- The petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of a sole Arbitrator to adjudicate the disputes and differences which have arisen between the parties in terms of the loan agreement dated 15th November, 2011, subsequently registered on 11th March, 2015.

The petitioner contends that the respondents were the partners in the partnership firm caring on business under the name and style of M.S. Registrar Guest House. According to the petitioner, the difference arose between the parties concerning affairs of the partnership firm including allegation of non-payment of remuneration and profit share, misappropriation of partnership's fund and failure to render account.

It is the case of the petitioners that a notice for dissolution was issued on 1st March, 2023 which was disputed by the respondents. Subsequently, proceedings under Section 9 of the Act was initiated by the petitioners and

the same was dismissed vide order dated 29th March, 2025. Learned counsel for the petitioners also initiated civil proceedings before the City Civil Court, however, the same was dismissed on the ground of an arbitration clause in the agreement between the parties. Learned counsel for the petitioners submits that thereafter the petitioners invoked the arbitration clause as contained in the agreement dated 15th November, 2011 by issuing a notice under Section 21 of the Arbitration and Conciliation Act dated 8th April, 2026.

The respondents by their reply dated 13th April, 2026 did not concur with the appointment of the Arbitrator. Learned counsel for the petitioner further submits that Clause 24 of the said agreement contains a valid arbitration agreement governing the disputes between the parties. Despite invocation of the agreement, the parties have failed to arrive at a consensus regarding appointment of an Arbitrator.

Learned counsel for the respondents states that the present petition is not maintainable. He raises two-fold objection to the maintainability of the petition. First, his present claim is deadwood claim and the same is barred by limitation. He states that the partnership agreement is dated 15th November, 2011 and the petitioner had failed to raise any claim since April, 2023, thus making the present claim as deadwood claim and barred by limitation. Second, learned counsel for the respondents has relied on the judgment of the Hon'ble Supreme Court in **ARIF AZIM COMPANY LIMITED Vs. APTECH LIMITED** reported as **(2024) 5 Supreme Court Cases 313** as well as **HPCL Bio-Fuels Ltd. Vs. Shahaji Bhanudas Bhad** reported as **2024 SCC OnLine SC 3190**. Learned counsel for the respondents states

that the ratio of both the judgments is applicable to the facts of the present case and thus the present claim of the petitioner is deadwood claim and the present petition is not maintainable. The second limb of argument advanced by the learned counsel for the respondents is that the petitioner had withdrawn the earlier AP-COM/509/2025 vide order dated 30th November, 2025 wherein the petitioner had only sought liberty to take appropriate steps in accordance with law and that the order dated 13th November, 2025 does not record the specific liberty granted to the petitioner to file similar proceedings before this Court. He relies on Order XXIII Rule 2 of Code of Civil Procedure, 1908 to substantiate his arguments that since the petitioner had not sought the specific liberty from the Court, the present petition is to be dismissed on the ground of Order XXIII Rule 2 and the present petition is not maintainable.

Having heard learned Counsel for the respective parties and having perused the materials placed on record, this Court is of the opinion that the agreement dated 15th November, 2011 is not in dispute between the parties. Both parties admit to the execution of the said agreement. The agreement contains a valid arbitration clause being Clause 24, and this Court has the requisite jurisdiction to entertain the present petition.

The submission advanced by learned Counsel for the respondents that the present petition is barred by limitation and constitutes a deadwood claim is not accepted by this Court, inasmuch as the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 8th April, 2026, and accordingly, the period of limitation cannot be said to have been attracted at this stage. The question of limitation is a mixed question of

law and fact and is to be appropriately determined by the Arbitral Tribunal. This Court further finds that the reliance placed by learned Counsel for the respondents upon the judgment of the Hon'ble Supreme Court in **Arif Azim Company Limited**(supra) is misplaced. The Hon'ble Supreme Court, in its subsequent judgment in **SBI General Insurance Co. Ltd. v. Krish Spinning**, reported at **(2024) SCC OnLine SC 1754**, has clarified the law laid down in **Arif Azim Company Limited** (supra). In **Krish Spinning** (supra), the Hon'ble Supreme Court has categorically held that at the stage of appointment of an Arbitrator under Section 11(6) of the Act, the Court's jurisdiction is confined to a prima facie examination of the existence of a valid arbitration agreement, and that all other objections, including those pertaining to limitation and the alleged staleness of claims, are to be left for determination by the Arbitral Tribunal. Accordingly, the judgment in **Arif Azim Company Limited** (supra) cannot be read so as to empower this Court to undertake a detailed examination of limitation at the Section 11 stage with a view to rejecting an appointment petition on the ground of a deadwood claim. The parameters laid down by the Hon'ble Supreme Court in its various judgments for the maintainability of a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 are two-fold, first, that there exists a valid arbitration agreement containing a valid and enforceable arbitration clause; and second, that the petition under Section 11 is filed within a period of three years from the date of invocation of the arbitration clause. Both the aforesaid conditions are satisfied in the present case.

The objection that the present petition is barred by Order XXIII Rule 2 of the Code of Civil Procedure, 1908 is equally without merit, inasmuch as

the petitioner was granted liberty by this Court vide order dated 13th November, 2025 in AP-COM/509/2025 to file appropriate proceedings in accordance with law. Since the petitioner issued a fresh notice under Section 21 of the Arbitration and Conciliation Act, 1996 dated 8th April, 2026 and filed the present petition subsequent to the issuance of the said notice, the same does not attract the provisions of Order XXIII Rule 2 of the CPC and is accordingly not barred.

In view of the aforesaid findings, this Court is of the prima facie opinion that the present case is a fit case for the appointment of an Arbitrator.

Accordingly, this Court appoints Mr. Pradyumna Sinha (Mob. No. 9903813146, 9830413146) as the sole Arbitrator to adjudicate the disputes between the parties.

All questions relating to arbitrability of the dispute, admissibility of the claims, limitation and other issues are kept open to be urged before the learned sole Arbitrator.

The appointment of the learned sole Arbitrator shall be subject to compliance with Section 12(5) of the Arbitration and Conciliation Act, 1996.

The learned sole Arbitrator shall be entitled to fix the remuneration in accordance with the Fourth Schedule of the Act.

A copy of this order shall be communicated by the petitioner to the learned sole Arbitrator for necessary action.

With the aforesaid directions, the present petition stands disposed of.

(GAURANG KANTH, J.)