IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 20.05.2026
DELIVERED ON: 22.05.2026

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

AP-COM 317 OF 2026
[OLD NO. AP 406 OF 2022]

TIRUPATI FUELS PRIVATE LIMITED

VERSUS

M.S.T.C. LIMITED

Appearance:

Mr. Mainak Bose, Sr. Adv.
Mr. Ramesh Ch. Prusti, Adv.
Ms. Mahuya Ghosh, Adv.
Ms. Sharmistha Sardar, Adv.
Ms. Pallabhavi Sengupta, Adv.

..... for the petitioner

Mr. Samriddha Sen, Adv.
Mr. Sourjya Roy, Adv.

..... for the respondent

JUDGMENT

Gaurang Kanth, J.:-

1. The Petitioner has preferred the present petition under Section 11 (6) of the Arbitration & Conciliation Act, 1996 for the appointment of the arbitrator for adjudication of the disputes that have arisen between the parties arising out of the agreement between 18.06.2010.

2. The facts leading to the present case are as follows:

3. The Petitioner is engaged in the business of sale of LAM Coke and Coking Coal. The Respondent is a Government of India enterprise providing services in various e-commerce sectors, including e-auction, e-procurement, high sea sales, e-sales and retail software.

4. An agreement dated 18.06.2010 was executed between the parties, whereunder the Respondent, in consultation with the Petitioner, was required to procure materials from overseas and open Letters of Credit covering the value of such materials in terms of the purchase orders upon the foreign sellers. Thereafter, the Respondent was required to sell the imported materials to the Petitioner on a High Sea Sale basis. The agreement further provided that the entire quantity of materials as per the Bills of Lading would be pledged by the Petitioner to the Respondent, to be stored with a designated agency in safe custody and delivered against authorisation letters issued by the Respondent. The agreement also conferred upon the Respondent the right to sell the materials on behalf of the Petitioner, at the Petitioner's risk and cost, in the event of the Petitioner's failure to make payment for or take delivery of the imported materials. This right was exercisable upon issuance of fifteen days' notice to the Petitioner, following which the Respondent could exercise its lien over the goods, sell them to any third party of its choice, and adjust the sale proceeds in *pro tanto* satisfaction of its claim. Any loss arising from such sale was required to be indemnified by the Petitioner.

5. In pursuance of the said agreement, the Petitioner imported Coking Coal through the Respondent by way of Letters of Credit. During the period 2008–09, a global recession led to a significant reduction in demand for Coke, on account of which the Petitioner was constrained to defer its plans for conversion of the imported Coking Coal into Coke. The Petitioner claims to have performed its obligations under the agreement and to have maintained a security deposit with the Respondent in excess of Rs. 21 Crores, which was entitled to earn interest at the rate of 14% per annum.

6. By a letter dated 06.06.2012, the Petitioner requested the Respondent to refund the security deposit along with accrued interest for the period from 01.04.2011 to 31.12.2011, amounting to Rs. 9.60 Crores. The Petitioner also offered a permanent settlement of dues as on 31.12.2011 at Rs. 51.61 Crores, subject to the Respondent extending a fresh exposure of Rs. 100 Crores to enable the Petitioner to continue its business operations. No response was received from the Respondent to the said letter.

7. The Respondent did not exercise its contractual right of lien nor did it proceeded to sell the imported goods.

8. In the year 2012, the Petitioner offered storage space at its plant site to facilitate the Respondent in storing and subsequently selling the goods towards mitigation of losses. The materials have since remained lying at the Petitioner's plant site at Nanichiria, Gandhidham, Gujarat, occupying an area in excess of 10 acres. The Petitioner contends that on account of the commercial area so occupied, it has suffered loss and damages in excess of Rs. 10 Crores. It is further the case of the Petitioner that the Respondent, while continuing to stock the said quantity of Coking Coal at the Petitioner's stockyard, has failed to refund the security deposit together with interest accrued thereon.

9. The Respondent subsequently initiated winding up proceedings against the Petitioner, which were later transferred to the National Company Law Tribunal, Kolkata, bearing TP/02/KB/2021.

10. By a letter dated 18.03.2022, the Petitioner invoked the arbitration clause under Clauses 20 and 21.1 of the agreement dated 18.06.2010 in accordance with Section 21 of the Arbitration and Conciliation Act, 1996, and proposed the name of an Arbitrator. In response, the Respondent, vide its letter dated 26.04.2022, contended that the Petitioner, in various correspondences, had already admitted and acknowledged a crystallised and admitted debt payable to the Respondent, and that in view of such admission, no dispute capable of adjudication by an Arbitral Tribunal subsisted between the parties. The Petitioner, however, contests this position and maintains that by reason of the storage of materials at its site and the non-refund of the security deposit, it has suffered substantial loss and damage, giving rise to disputes requiring adjudication through arbitration.

11. In view of the foregoing, the Petitioner has preferred the present Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator to adjudicate the disputes arising out of the agreement dated 18.06.2010.

Submission on behalf of the Petitioner

12. Mr. Mainak Bose, learned Senior Counsel appearing on behalf of the Petitioner, submitted that the present petition is maintainable in law and that all conditions precedent for invoking the jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 stand duly satisfied. It was submitted that a valid, subsisting and binding arbitration agreement exists between the parties under Clauses 20 and 21.1 of the agreement dated 18.06.2010, and that the Petitioner had duly invoked the said arbitration clause vide letter dated 18.03.2022 strictly in accordance with Section 21 of the Act. It was further submitted that the Respondent, having expressly acknowledged receipt of the said invocation notice and having responded thereto vide its letter dated 26.04.2022, cannot now be permitted to approbate and reprobate by contending that no arbitrable dispute exists between the parties. In this regard, learned Senior Counsel placed reliance upon the judgments of the Hon'ble Supreme Court in ***SBI General Insurance Company Ltd. v. Krish Spinning,*** reported as ***(2024) 12 SCC 1*** *and* ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd.,*** reported as ***(2025) 1 SCC 502***, and submitted that the settled legal position emerging from the said judgments is that once the existence of a valid arbitration agreement is established and a dispute is prima facie shown to exist, the Court at the stage of consideration under Section 11 of the Act, is neither required nor permitted to undertake a deeper or more intrusive examination into the merits, validity, or strength of the claims, and the appointment of an arbitrator ought to follow as a matter of course.

13. On the question of limitation, learned Senior Counsel submitted that Article 113 of the Limitation Act, 1963 would govern the claims of the Petitioner in the present case. It was pointed out that Article 113, which applies to suits for which no period of limitation is provided elsewhere in the Schedule, is distinct from the residuary Article 137, which governs applications. The crucial distinction, it was urged, lies in the fact that Article 113 prescribes that limitation begins to run only *"when the right to sue accrues",* a formulation that has a distinct, precise and well-settled legal connotation in law, and which cannot be mechanically equated with the date of the underlying transaction, the date of an alleged breach, or the date on which a payment first fell due. Placing reliance upon the judgment of the Hon'ble Supreme Court in ***Shakti Bhog Food Industries Ltd. v. Central Bank of India,*** reported as ***(2020) 17 SCC 260****,* learned Senior Counsel submitted that the right to sue accrues only at the point when a demand or claim made by one party is denied, repudiated, or met with a clear and unequivocal refusal by the other, thereby giving rise to a lis between the parties capable of adjudication. It was urged that a mere efflux of time, silence on the part of the opposite party, or the continuation of a contractual relationship between the parties cannot, by itself, be treated as the accrual of the right to sue, and that until a demand is made and met with a refusal or repudiation, the cause of action does not crystallise so as to set the period of limitation in motion.

14. It was further submitted that the claims of the Petitioner in the present case, namely, the refund of the security deposit together with accrued interest thereon, and the damages arising out of the Respondent's continued and unauthorised stocking of imported materials at the Petitioner's premises occupying an area in excess of 10 acres, do not arise from a single identifiable act of default occurring at a fixed and determinable point in time. On the contrary, the Respondent's failure to refund the security deposit and its continued occupation of the Petitioner's stockyard without authorisation, consent or compensation constitute a continuing wrong, inasmuch as the default is repeated and renewed with each passing day, giving rise to a fresh cause of action and a fresh period of limitation with each successive period of such default. Accordingly, it was urged that the right to sue in respect of the Petitioner's claims cannot be said to have accrued at any single anterior point of time so as to render those claims time-barred, and that the arbitration clause having been duly invoked vide letter dated 18.03.2022 upon crystallisation of the disputes between the parties, the present petition is clearly within limitation. It was therefore submitted that no part of the Petitioner's claims can be said to be barred by the law of limitation, whether under Article 113 or 137 or any other provision of the Limitation Act, 1963, and the Respondent's objection on this ground deserves to be rejected *in limine*.

15. In further support of his submissions on the issue of limitation, learned Senior Counsel placed reliance upon the judgment of the Hon'ble Supreme Court in ***Ramesh B. Desai & Ors. v. Bipin Vadilal Mehta,*** reported as ***(2006) 5 SCC 638***, and submitted that the question of limitation is quintessentially a mixed question of law and fact, the determination of which necessitates an examination of the evidence, conduct of the parties, and the circumstances giving rise to the cause of action. It was accordingly urged that the Arbitral Tribunal, being the competent and appropriate forum for adjudication of all factual and legal disputes between the parties, is the proper authority to decide upon the question of limitation of the substantive claims, and that this Court ought not to foreclose such adjudication at the threshold stage of Section 11, where no detailed evidentiary inquiry is either permissible or warranted.

16. In conclusion, learned Senior Counsel prayed that the present petition be allowed, and that an independent and impartial Arbitrator be appointed by this Court to adjudicate all disputes and differences between the parties arising out of and in connection with the agreement dated 18.06.2010, with all questions of law, fact, limitation and merits being expressly left open for determination by the Arbitral Tribunal.

<u>Submission on behalf of the Respondent</u>

17. Mr. Samriddha Sen, learned counsel appearing on behalf of the Respondent, submitted that under the agreement dated 18.06.2010, the Respondent acted as a facilitator for the Petitioner for procurement of LAM

Coke and Coking Coal for the Petitioner's plants at Kandla Stockyard and Vishakhapatnam Stockyard, and that in pursuance thereof, the Respondent imported the requisite materials at its own cost and expense on behalf of the Petitioner. It was submitted that the Petitioner thereafter failed and neglected to lift the said materials, on account whereof the Respondent has accrued a claim in excess of Rs. 79,65,65,295/- as on 27.12.2013, arrived at after due appropriation of the security deposit of Rs. 10,16,26,475/- standing to the credit of the Petitioner. It was accordingly contended that the said amount constitutes a crystallised, admitted and undisputed debt, leaving no dispute referable to arbitration. It was further submitted that the Petitioner, in various correspondences, has itself acknowledged the debt owed to the Respondent, rendering the present petition a transparent attempt to circumvent the legitimate winding up proceedings pending before the National Company Law Tribunal, Kolkata Bench, being TP/02/KB/2021, which proceedings are directly founded upon the same agreement dated 18.06.2010. It was additionally submitted that the Respondent had, in good faith, endeavoured to conduct an e-auction of the imported materials to mitigate its losses, however the Petitioner failed to confirm the price, causing the e-auction to lapse, thereby further compounding the Respondent's losses.

18. On the question of limitation, learned counsel for the respondent submitted that the Petitioner's reliance upon Article 113 of the Limitation Act, 1963 is wholly misconceived, inasmuch as Article 113 governs suits and has no application to a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, which is an application in its essential character and is therefore governed by the residuary Article 137 of the Limitation

Act, prescribing a period of three years from the date on which the right to apply accrues. It was submitted that the right to invoke arbitration in the present case first accrued to the Petitioner on 27.12.2013, when the Respondent formally communicated the crystallised outstanding dues payable by the Petitioner, categorically appropriated the security deposit towards the said dues, and explicitly warned that in the event of non-payment, winding up proceedings would be initiated. It was urged that this communication of 27.12.2013 constituted a clear, unequivocal and definitive crystallisation of the dispute between the parties, from which date limitation commenced and is liable to be reckoned, and that the invocation of the arbitration clause only in the year 2022, after a gap of nearly nine years, renders both the Section 11 petition and the underlying claims ex facie barred by limitation under Article 137.

19. Learned counsel further submitted that the Petitioner's plea of a continuing cause of action and continuing wrong is wholly untenable in the facts of the present case. It was urged that the doctrine of continuing wrong applies only where the wrongful act is repeated or renewed on each successive day, and not where, as in the present case, there was a single completed act of default and crystallisation of disputes in the year 2013, of which the Petitioner had full, clear and unambiguous knowledge. It was submitted that the Petitioner remained completely silent for nearly nine years and took no steps whatsoever towards invocation of the arbitration, and that no subsequent communication, including the Respondent's notice of e-auction dated 29.11.2021, could have the effect of resurrecting or extending a right to invoke arbitration that had long since accrued and in respect of which the period of limitation had already expired by efflux of time. It was further urged that the present case involves no intricate or complex question of mixed law and fact warranting reference to the learned Arbitral Tribunal, as much as the crystallisation of the disputes and the commencement as well as expiry of limitation stand demonstrably evident from the record itself and do not require any detailed factual inquiry.

20. Learned counsel placed reliance upon ***Arif Azim Company Ltd. v. Aptech Ltd.,*** reported as ***(2024) 5 SCC 313***, to contend that the Court exercise jurisdiction under Section 11(6) is not a mere post office and is duty-bound to satisfy itself on two distinct aspects: first, whether the Section 11(6) petition has itself been filed within the period of limitation under Article 137 of the Limitation Act, 1963; and second, whether the claims sought to be referred to arbitration are ex facie dead claims hopelessly barred by limitation on the face of the record. Reliance was also placed upon ***B and T AG v. Ministry of Defence,*** reported as ***(2024) 5 SCC 358***, to urge that whether particular facts constitute a cause of action must be determined with reference to the substance of the dispute and the specific facts of each case, and that upon a substantive examination of the present matter, the cause of action had indisputably crystallised in 2013 with no fresh or independent cause of action having arisen thereafter. Learned counsel further sought to distinguish **Krish Spinning** (supra) relied upon by the Petitioner, by placing specific reliance upon paragraph 40 of the said judgment, submitting that the said paragraph expressly carves out and preserves the referral court's jurisdiction to reject petitions where claims sought to be referred are ex facie time-barred, warranting dismissal of the petition at the threshold itself without requiring reference of such disputes to arbitration.

21. In view of the foregoing, learned counsel for the Respondent prayed that the present petition be dismissed both on the ground of absence of any arbitrable dispute, the Petitioner having admitted the debt owed to the Respondent, and on the ground that the petition as well as the underlying claims are ex facie barred by limitation. It was accordingly urged that the appointment of an Arbitrator in the present facts and circumstances would serve no purpose and would result only in unnecessary delay and harassment of the Respondent.

Legal Analysis

22. This Court has heard the arguments advanced by learned counsel for both the parties and has carefully examined the documents placed on record and the Judgments relied upon by the parties.

23. The threshold question that arises for consideration in the present petition concerns the extent of inquiry that this Court is required or permitted to undertake at the stage of appointing an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996. The law on this aspect now stands authoritatively and finally settled by the Hon'ble Supreme Court in ***Krish Spinning*** *(supra)* and ***Aslam Ismail Kan*** *(supra)* wherein a three-Judge Bench, after an elaborate survey of the entire line of precedents on the issue, held that the scope of judicial scrutiny under Section 11(6) is confined solely to the prima facie examination of the existence of an arbitration agreement between the parties. The Hon'ble Supreme Court unequivocally held that the referral court is not required, and indeed is not permitted, to embark upon any deeper or more intrusive examination of the merits of the dispute, the validity of the claims, the conduct of the parties, or the question as to whether a full and final settlement has been arrived at. The Court further held that all such questions, including questions relating to accord and satisfaction, admission of debt, and the validity or enforceability of particular claims, fall exclusively within the domain of the Arbitral Tribunal and are required to be decided by learned Tribunal, either as a preliminary issue or along with the merits.

24. In the present case, the existence of the arbitration agreement contained in Clauses 20 and 21.1 of the agreement dated 18.06.2010 is not in dispute. The Respondent has not challenged the validity or existence of the arbitration agreement. In view of the binding pronouncement of the Hon'ble Supreme Court in ***Krish Spinning*** *(supra)* and ***Aslam Ismail Kan*** *(supra)*, the inquiry of this Court must therefore be limited to verifying the existence of the said agreement, which is clearly established from the materials on the record.

25. The Respondent has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Arif Azim Company Ltd.*** *(supra)* to urge that this Court, while exercising jurisdiction under Section 11 of the Act, is duty-bound to satisfy itself on two counts: first, whether the Section 11(6) petition is itself barred by limitation; and second, whether the claims sought to be referred to arbitration are ex facie dead claims barred by limitation on the date of commencement of arbitration proceedings. While it is correct that the Hon'ble Supreme Court in ***Arif Azim Company Ltd.*** *(supra)* held that Article 137 of the Limitation Act, 1963 applies to petitions under Section 11(6) of the Act, prescribes a period of three years from the date on which the right to apply accrues, and further held that a referral court may, in an appropriate case, decline to refer disputes that are manifestly and ex facie time-barred, it is equally important to appreciate the significant clarification and qualification of the said position as laid down by the subsequent three-Judge Bench of the Hon'ble Supreme Court in ***Krish Spinning*** *(supra)* and ***Aslam Ismail Kan*** *(supra)*. The Hon'ble Supreme Court in ***Krish Spinning*** *(supra)* and ***Aslam Ismail Kan*** *(supra)* expressly clarified that insofar as the question of limitation of the underlying claims is concerned, the referral court must not conduct an intricate or detailed evidentiary inquiry into whether the claims are time-barred. The Court held that the referral court's inquiry on the issue limitation must remain restricted only to determining whether the Section 11(6) petition itself has been filed within the prescribed period of three years, and that the question as to whether the substantive claims to be arbitrated are barred by limitation is ordinarily a matter to be determined by the Arbitral Tribunal and not by the referral court. The power to reject claims as ex facie dead claims, as contemplated in ***Arif Azim Company Ltd.*** *(supra)***,** is therefore an exceptional and narrow jurisdiction to be exercised only in the most glaring and manifest cases where the claims are hopelessly and undeniably time-barred on the face of the record, without any factual inquiry whatsoever.

26. The parties have advanced diametrically opposed contentions on the question of limitation. The Petitioner contends that Article 113 of the Limitation Act, 1963 governs its claims, inasmuch as the right to sue accrues only upon repudiation or unequivocal refusal of a demand, and that the Respondent's continuing occupation of the Petitioner's stockyard and continued non-refund of the security deposit constitute a continuing wrong giving rise to a fresh cause of action during each period of subsistence of the alleged default. The Respondent, on the other hand, contends that Article 137 of the Limitation Act, 1963, being the residuary provision applicable to applications, as distinct from suits, governs a petition under Section 11(6), and that the cause of action had irrevocably crystallised on 27.12.2013 when the Respondent communicated the outstanding dues, appropriated the security deposit, and warned of initiation of winding up proceedings, thereby setting limitation in motion from that date, rendering the present petition filed after nearly nine years hopelessly time-barred. The Respondent further contends that the Petitioner's reliance upon the communication dated 29.11.2021 regarding the proposed e-auction as constituting a fresh accrual of the right to invoke arbitration is wholly untenable, in as much as no subsequent communication can resurrect a right to invoke arbitrate that had long since become time-barred.

27. Considering the rival contention of the parties, this Court is of the considered view that it is neither necessary nor appropriate at this stage, to resolve this contest between applicability Article 113 and Article 137 of the Limitation Act, or to determine whether the cause of action arose in 2013 or 2022. These are precisely the kinds of questions, involving a detailed examination of the facts, the conduct of the parties, the nature of the wrong alleged, and the applicable provision of the Limitation Act, that the Hon'ble Supreme Court in ***Krish Spinning*** *(supra)* and ***Aslam Ismail Kan*** *(supra)* has held to be beyond the jurisdiction of the referral court under Section 11 and within the exclusive domain of the learned Arbitral Tribunal. The determination as to which Article of the Limitation Act applies, when the right to sue or the right to apply accrued, whether the wrong is a continuing one, and whether the claims are within or beyond limitation, are all quintessentially mixed questions of law and fact, as recognised by the Hon'ble Supreme Court in ***Ramesh B. Desai*** *(supra)*, and must be decided by the learned Arbitral Tribunal upon affording full opportunity of hearing to both parties and upon examining the evidence on record.

28. The Respondent has also placed reliance upon ***B and T AG*** *(supra)*, to contend that whether particular facts constitute a cause of action must be determined with reference to the substance of the matter and the specific facts of each case. This Court accepts the said proposition as a correct statement of law. However, the application of this principle to the facts of the present case leads not to the conclusion urged by the Respondent, but rather to the opposite one: precisely because the determination of when the cause of action arose requires a substantive, fact specific inquiry into the communications exchange between the parties, the conduct of the Respondent in continuing occupation of the Petitioner's stockyard, the non refund of the security deposit, and the question of whether the wrong is continuing or completed, such an inquiry cannot be undertaken by this Court while exercising limited jurisdiction under Section 11 of the Act. The principle laid down in ***B and T AG*** *(supra)* reinforces, rather than undermines, the conclusion that all questions of limitation in the present case must be referred to and decided by the learned Arbitral Tribunal.

29. In the present case, the arbitration clause was invoked vide letter dated 18.03.2022, and the present petition has been filed within a period of three years therefrom. Accordingly, the Respondent's contention on limitation must be rejected both on the ground that the Section 11(6) petition has itself been filed within the prescribed period of limitation, and on the ground that the question of limitation of the underlying claims, if at all arising, falls squarely within the jurisdiction of the learned Arbitral Tribunal in view of the settled legal position in ***Krish Spinning*** *(supra)* and ***Aslam Ismail Kan*** *(supra).*

30. Having regard to the foregoing analysis, this Court is of the considered view that: (i) a valid and binding arbitration agreement exists between the parties under Clauses 20 and 21.1 of the agreement dated 18.06.2010; (ii) the arbitration clause has been duly invoked by the Petitioner in accordance with Section 21 of the Act; (iii) the present petition has been filed within the period of limitation prescribed under Article 137 of the Limitation Act, 1963; (iv) the claims of the Petitioner cannot be said to be ex facie dead or hopelessly barred by limitation so as to warrant refusal of reference; and (vi) the Respondent's contention that no arbitrable dispute survives by reason of an alleged admission of debt raises mixed question of law and fact which fall entirely within the adjudicatory domain of the Arbitral Tribunal and cannot be decided by this Court at the referral stage. In view of the above, and in consonance with the settled pro-arbitration mandate of the Act as reinforced by the Hon'ble Supreme Court in ***B and T AG*** *(supra)***,** and the existence only test firmly established in ***Krish Spinning*** *(supra)* and ***Aslam Ismail Kan*** *(supra)*, this Court finds that the present petition deserves to be allowed and that an Arbitrator ought to be appointed to adjudicate the disputes between the parties.

31. Accordingly, this Court appoints Mr. Justice Md. Nizamuddin (Retd.), as the Sole Arbitrator to adjudicate all disputes and differences between the parties arising out of and in relation to the agreement dated 18.06.2010.

32. 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.

33. The learned Arbitrator shall be at liberty to consider and decide all objections raised by the parties, 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 strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

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

. **(GAURANG KANTH, J.)**

SAKIL AMED P.A.