IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

RESERVED ON: 21.04.2026
DELIVERED ON: 08.05.2026

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

AP 213 OF 2025

KARTICK CHAKRABORTY AND ANR.
VERSUS
SIKHA KUMAR AND ORS.

Appearance: -

Mr. Shyamal Mukhopadhyay, Adv.
Ms. Priyanka Chatterjee, Adv.
.... for the Petitioners

Mr. Jit Ray, Adv.
.... for the Respondents

JUDGMENT

Gaurang Kanth, J. :-

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("the Act") seeking appointment of a Sole Arbitrator to adjudicate disputes arising between the parties out of a registered Development Agreement dated 04.12.2014.

2. The subject property is a one-storeyed building together with land admeasuring approximately 01 Cottah 10 Chittak, being Premises No. 160, G.T. Road, P.S. & P.O. Bally, Ward No. 9, Bally Municipality, Bally and Late Shri Ashim Kumar, husband of Respondent No. 1 and father of Respondents No. 2 and 3 was the sole and absolute owner of the said property.

3. During his lifetime, Late Shri Ashim Kumar entered into a registered Development Agreement dated 04.12.2014 with M/s Adyama Construction as the Developer, the Petitioners being partners of the said firm, with the Respondents joining as confirming parties. In furtherance of the said Development Agreement, Late Shri Ashim Kumar executed a registered Power of Attorney dated 30.11.2016 in favour of M/s Adyama Construction, authorising it to undertake all acts, deeds, and things necessary for the construction and development of the said premises.

4. Under the terms of the Development Agreement dated 04.12.2014, the Developer was obligated to obtain building sanction from the Bally Municipality for construction of a G+3 storeyed building in the name of the Owner and the owner was to hand over peaceful vacant possession of the premises to the Developer within 30 days from execution of the said Development agreement dated 04.12.2014. The Developer was required to complete the construction within 2 years from the date of the sanctioned plan, entirely at its own cost. Upon completion, the Owner was entitled to 40% of the constructed area and the Developer to the remaining 60%. Additionally, the Developer was obligated to pay an adjustable/refundable sum of Rs. 2,00,000/- to the Owner.

5. In performance of the aforesaid Agreement, the Petitioner paid Rs. 2,00,000/- to Late Shri Ashim Kumar as stipulated. Building sanction was thereafter obtained vide Plan No. B/P 402 dated 27.02.2015 from the Bally Municipality, for which the Petitioner incurred an expenditure of Rs. 16,00,000/-. The Petitioner also paid Rs. 12,00,000/- to Late Shri Ashim Kumar from time to time at his request. However, notwithstanding the foregoing, Late Shri Ashim Kumar failed to deliver vacant possession of the premises to the Petitioner, as the property was occupied by tenants, thereby rendering it impossible for the Petitioner to carry out the development work.

6. Thereafter, through a communication dated 29.03.2023 addressed by his legal counsel to the Petitioner, Late Shri Ashim Kumar sought revocation and cancellation of the Development Agreement dated 04.12.2014. In response, the Petitioner, through its counsel vide letter dated 27.04.2023, indicated its willingness to consider cancellation of the Agreement, subject to payment of Rs. 35,00,000/- by Late Shri Ashim Kumar.

7. Late Shri Ashim Kumar passed away intestate on 31.05.2023, leaving behind the Respondents as his legal heirs and successors-in-interest. Following the demise of Late Shri Ashim Kumar, the Petitioner called upon the Respondents to execute a fresh Power of Attorney in favour of the Petitioner to enable continuation of the development work, as the earlier Power of Attorney had stood automatically revoked upon the death of the grantor. The Respondents, however, failed and neglected to comply with the said request. In the circumstances, the Petitioner, vide notice dated 15.09.2023, invoked the arbitration clause contained in the Development Agreement dated 04.12.2014 in accordance with Section 21 of the Act, and proposed the appointment of Ms. Ranita Mukherjee Bhattacharya, Advocate, as Sole Arbitrator. The said notice was duly received by the Respondents, who nonetheless failed to respond or cooperate thereto.

8. In the interim, the Petitioner had also filed a petition under Section 9 of the Act before the learned District Judge, Howrah, being Misc. Case No. 267/2023. The said petition was dismissed vide order dated 04.12.2024. The Petitioner preferred an appeal therefrom before this Court being

F.M.A.T. (Arb. Award) No. 41/2025. The Hon'ble Division Bench, vide order dated 11.09.2025, disposed of the said appeal with the observation that the Petitioner would not be prevented from seeking recourse under Section 11 of the Act as well as Section 17 of the Act, subsequent to the constitution of the Arbitral Tribunal.

9. It is the submission of the learned Counsel for the Petitioner that the Development Agreement dated 04.12.2014 contains a valid and subsisting arbitration agreement, being Clause 5 of Article XVII thereof. In view of the Respondents' failure to cooperate in the appointment of an arbitrator pursuant to the invocation notice dated 15.09.2023, the Petitioner has preferred the present petition under Section 11 of the Act for appointment of an independent Sole Arbitrator. It is further stated that the Petitioner had initially filed an application under Section 11 of the Act before the Commercial Division of this Court, being A.P. (Com.) No. 818/2025. Vide order dated 18.11.2025, this Court returned the said petition with a direction to file the same before the non-commercial division, whereupon the present petition has been filed.

Submission on Behalf of the Petitioner

10. Learned Counsel for the Petitioner submitted that the Development Agreement dated 04.12.2014, duly registered and executed between the parties, contains a valid and binding arbitration agreement in terms of Clause 5 of Article XVII thereof. It was contended that the Petitioner has duly performed its obligations under the said Agreement, having paid a sum of Rs. 2,00,000/- as stipulated, obtained the requisite building sanction vide Plan No. B/P 402 dated 27.02.2015 at an expenditure of Rs. 16,00,000/-, and further paid Rs. 12,00,000/- to the Owner from time to time. It was urged that it is the Owner, and now his legal heirs, who have committed a clear breach of the Agreement by failing to deliver vacant possession of the subject premises, thereby frustrating the entire purpose of the Development Agreement and causing substantial prejudice to the Petitioner. It was further submitted that upon the demise of Late Shri Ashim Kumar on 31.05.2023, the Development Agreement continued to be binding upon the Respondents as his legal heirs and successors-in-interest, and more particularly, as they were confirming parties to the very same Agreement. It was contended that the arbitration clause, being separable and independent, equally survives and binds the Respondents.

11. It was accordingly urged that this Court ought to exercise its jurisdiction under Section 11 of the Act and appoint an independent Sole Arbitrator to adjudicate the disputes arising out of the Development Agreement dated 04.12.2014, particularly as the Petitioner had duly invoked the arbitration clause vide notice dated 15.09.2023 under Section 21 of the Act, which was received by the Respondents, who have neither responded nor cooperated thereto. Reliance was placed on the order of the Hon'ble Division Bench of this Court dated 11.09.2025 in F.M.A.T. (Arb. Award) No. 41/2025, whereby it was expressly observed that the Petitioner would not be prevented from seeking recourse under Section 11 of the Act. It was submitted that all conditions precedent for invoking the jurisdiction of this Court stand duly satisfied and the disputes are plainly arbitrable.

Submission on behalf of the Respondent

12. Learned Counsel for the Respondents raised a preliminary objection as to the maintainability of the present petition on the ground of limitation. It was submitted that the disputes sought to be referred to arbitration are hopelessly time-barred. In this regard, it was contended that under the Development Agreement dated 04.12.2014, the Owner was obligated to hand over vacant possession of the premises within 30 days, which the Petitioner alleges was not complied with, and the Developer was required to complete construction within 24 months from the date of the sanctioned building plan, which was obtained in the year 2015. Accordingly, it was urged that the cause of action, at the very latest, accrued to the Petitioner in the year 2018. The Petitioner, however, invoked the arbitration clause only on 15.09.2023, more than five years thereafter, and the present petition is therefore manifestly barred by limitation under the Limitation Act, 1963. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***BSNL v. Nortel Networks India Pvt. Ltd.,*** reported ***as (2021) 5 SCC 738***, wherein it was held that a petition under Section 11 of the Act is subject to the law of limitation and that the court must prima facie examine whether the claims sought to be arbitrated are alive and not stale. Reliance was also placed on the judgment of the Hon'ble Bombay High Court in ***Ivory Properties & Hotels Pvt. Ltd. v. Bhanumati Jaisukhbhai Bhuta, Commercial Appeal No. 90/2020,*** reported as **MANU/MH/3783/2024**, wherein it was held that where the cause of action in respect of the underlying dispute is demonstrably by limitation barred, the court ought not to exercise its jurisdiction under Section 11 of the Act to refer such dead claims to arbitration.

13. Learned Counsel for the Respondents further submitted that the Petitioner has approached this Court with unclean hands by suppressing material facts. It was pointed out that the Petitioner had earlier instituted T.S. No. 77/2028 before the learned 2nd Civil Judge (Senior Division), Howrah, seeking specific performance of the selfsame Development Agreement dated 04.12.2014, and that in the plaint filed in the said suit, the Petitioner had expressly averred that the cause of action arose on 01.02.2018 and 12.02.2018. This, according to the Respondents, is a clear and unequivocal admission by the Petitioner itself that its cause of action crystallised in the year 2018, rendering the invocation of arbitration in 2023 thoroughly belated and time-barred. It was further submitted that the Petitioner had obtained an order of stay in the said suit proceedings and thereafter preferred the present petition without disclosing the pendency of those proceedings before this Court, such conduct amounts to suppression of material facts disentitling the Petitioner from obtaining any relief. Learned Counsel for the Respondents also denied that Late Shri Ashim Kumar had received any payments from the Petitioner as alleged, and further denied that the Owner had ever failed to hand over vacant possession of the subject premises, contending that these are disputed questions of fact which themselves demonstrate that the Petitioner's claims lack merit and bonafides.

Legal Analysis

14. This Court has heard the arguments advanced by learned Counsel for both the parties and has examined the judgments and documents placed on record.

15. Perusal of the record reveals that Clause 5 of Article XVII of the Development Agreement dated 04.12.2014 contains a clear and unambiguous arbitration clause, binding upon all parties thereto. The Respondents are bound by the said arbitration clause on a twofold basis: first, they were themselves confirming parties to the Development

Agreement dated 04.12.2014 and are therefore independently and directly bound by its terms; and second, upon the demise of Late Shri Ashim Kumar on 31.05.2023, the Respondents, being his legal heirs and successors-in-interest, have stepped into the shoes of the deceased and are bound by all obligations undertaken by him under the said Agreement. The existence and validity of the arbitration agreement is not in dispute before this Court. This Court is therefore satisfied that a valid and subsisting arbitration agreement exists between the parties within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996.

16. The principal objection raised on behalf of the Respondents is that the claims of the Petitioner are barred by limitation and are therefore not arbitrable. Before examining this objection, it is necessary to delineate the correct scope of inquiry available to this Court at the Section 11 stage, as the legal position in this regard has undergone a significant and decisive shift in recent years.

17. The Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning,*** reported as ***2024 SCC OnLine SC 1754,*** representing a paradigm shift in the landscape, held that the scope of enquiry at the stage of appointment of an arbitrator is limited to the scrutiny of the prima facie existence of the arbitration agreement, and nothing else. The Supreme Court in Krish Spinning (supra) further held that when deciding the issue of limitation, a court exercising jurisdiction under Section 11 must restrict its scope as to whether the Section 11 application itself was filed within a period of three years; the question as to whether the underlying claims are barred by limitation must be left to the arbitrator. The Court also reiterated that frivolity in litigation is an aspect which the referral court should not decide at the stage of Section 11, as the arbitrator is equally, if not more, competent to adjudicate the same. The relevant portion of the said Judgment, reads, inter alia, as follows:

> *"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)."*

18. Tested on the aforesaid legal touchstone, the Respondents' objection as to limitation, though urged with considerable force, cannot be conclusively determined by this Court at the present stage. The Respondents have placed strong reliance on **BSNL v. Nortel Networks India Pvt. Ltd.** (Supra)**,** for the proposition that the Court exercising jurisdiction under Section 11 must examine whether the claims are ex facie time-barred. It is true that the said judgment recognised the duty of the referral court to prima facie examine and reject dead claims. However, the subsequent three Judge Bench decision of the Hon'ble Supreme Court in **Krish Spinning** *(supra)* has materially qualified and narrowed the scope of that inquiry, confining it to the question as to whether the Section 11 application itself has been filed within the three-year period prescribed under Article 137 of the Limitation Act, 1963, and no further.

19. As settled by the Hon'ble Supreme Court, the limitation period for a petition under Section 11 commences upon the failure of the opposite party to appoint an arbitrator within 30 days from the issuance of the notice invoking arbitration. In the present case, the Petitioner issued the notice invoking arbitration on 15.09.2023 and the Respondents failed to act upon the same. The present petition has been filed within three years from the date of such failure, and therefore, the Section 11 application cannot be said to be barred by limitation. On the question of whether the underlying claims are time barred, this Court, following the law as authoritatively laid down in ***Krish Spinning*** *(supra)*, declines to conduct an intricate evidentiary inquiry at this stage.

20. This Court is further of the view that the question of limitation in the present case is, in any event, a mixed question of fact and law that is wholly unsuitable for threshold determination. The Petitioner's claims before the Arbitral Tribunal are not confined to specific performance of the Development Agreement, a relief that is already the subject matter of the pending T.S. No. 77/2028 before the learned 2nd Civil Judge (Senior Division), Howrah. The claims sought to be raised in arbitration encompass recovery of substantial amounts paid by the Petitioner aggregating Rs. 30,00,000/-, damages for breach, and reliefs arising from the Respondents' refusal to execute a fresh Power of Attorney following the demise of Late Shri Ashim Kumar in 2023 etc. The cause of action in respect of this latter category of claims, arises out of the Respondents' post 2023 conduct and this court is of the considered opinion that such claims cannot by any measure be said to be time barred at the threshold. The determination of which claims are live and which, if any, are barred by limitation would necessarily require a full factual inquiry that is the exclusive province of the Arbitral Tribunal. As the Hon'ble Supreme Court held in ***Krish Spinning*** (supra*)*, whether there has been a discharge of contract, and by analogy, whether claims are time barred, is a mixed question of law and fact which is arbitrable under the arbitration agreement contained in the underlying contract.

21. This Court notes with concern that the Petitioner has failed to disclose the pendency of T.S. No. 77/2028 before the learned 2nd Civil Judge (Senior Division), Howrah, in the present petition, and this Court highly deprecates such conduct on the part of the Petitioner. However, it is well settled that non-disclosure of a collateral proceeding, by itself, does not operate as an absolute bar to the limited and ministerial relief of appointment of an Arbitrator under Section 11 of the Act. In view thereof, all questions touching upon the pendency of the said civil suit are expressly left open for consideration and determination by the Arbitral Tribunal in accordance with law.

22. In view of the foregoing, this Court is satisfied that a valid and subsisting arbitration agreement exists between the parties in terms of Clause 5 of Article XVII of the Development Agreement dated 04.12.2014. The present petition under Section 11 has been filed within the prescribed period of limitation and the objections raised by the Respondents, including the objection as to limitation of the underlying claims, raise mixed questions of fact and law falling within the exclusive domain of the Arbitral Tribunal. This Court, in exercise of the limited jurisdiction available under Section 11, is neither required nor permitted to conduct a detailed inquiry into the merits or the limitation of the claims at this stage.

23. Accordingly, this Court appoints Ms. Amrita Pandey, Advocate (Mobile No. 9432820002) as the Sole Arbitrator to adjudicate all disputes and differences between the parties arising out of and in relation to the

Development Agreement dated 04.12.2014. The appointment of the learned Arbitrator shall be subject to compliance with Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be entitled to fix the remuneration in accordance with the Fourth Schedule to the Act.

24. The learned Arbitrator shall be at liberty to consider all objections, including the question of limitation of individual claims and the question of maintainability in view of the pending civil suit, as preliminary issues, and decide the same on merits after affording full opportunity to both parties. The arbitral proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

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

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

(Gaurang Kanth, J.)

SAKIL AMED P.A.