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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 09-02-2026**

CORAM

**THE HONOURABLE MR JUSTICE N. ANAND VENKATESH**

**Arb O.P(COM.DIV.) No. 775 of 2025**

Shanthi

..Petitioner(s)

Vs

1. The Senior Regional Manager  
Retail RO, Hindustan Petroleum  
Corporation Limited, Petro Bhavan,  
2nd Floor, New No.82, TTK Road,  
Alwarpet, Chennai - 600 018.

2.The Chief Regional Manager  
Retail RO, Hindustan Petroleum  
Corporation Limited, Level 4, GK  
Towers. D.No.395/2, First Main Road,  
New Fairlands, Salem - 636 016.

Respondent(s)

**PRAYER**

Petition filed under Section 11(6) of the Arbitration and Conciliation Act,1996, to appoint sole arbitrator to preside over the Arbitration Proceedings to be commenced with respect to the disputes that have arisen with respect to the Dealership Agreement dated 25.02.2015 between the parties hereto.

For Petitioner(s): Mr. N.Saravanan

For Respondent(s): M/s. Mohammed Fayaz Ali



## **ORDER**

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for the sake of brevity, hereinafter referred to as 'the Act') to decide the dispute that has arisen between the parties under the Dealership Agreement dated 25.02.2015.

2. When this petition came up for hearing on 10.12.2025, this Court passed the following order:

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the Act] to appoint an arbitrator to resolve the dispute arising out of the Dealership Agreement dated 25.02.2015.

2. The agreement provides for referring the dispute for Arbitration under clause 66 and the same is extracted hereunder:-

66. ANY DISPUTE OR DIFFERENCE OF ANY NATURE WHATSOEVER OR REGARDING ANY RIGHT, LIABILITY, ACT, OMISSION OR AGCOUNT OF ANY OF THE PARTIES HERETO ARISING OUT OF OR IN RELATION TO THIS AGREEMENT (OTHER THAN THOSE IN RESPECT OF WHICH THE DECISION OF ANY PERSON, IS BY THE AGREEMENT, EXPRESSED TO BE FINAL AND BINDING) SHALL BE REFERRED TO THE SOLE ARBITRATION OF THE CHAIRMAN AND MANAGING DIRECTOR OF THE CORPORATION OR SOME OFFICER OR RETIRED OFFICER OF THE



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CORPORATION OR RETIRED OFFICER OF OTHER OIL PS PSUS OR RETIRED SENIOR CENTRAL GOVT. OFFICER WHO MAY BE NOMINATED BY THE CHAIRMAN AND MANAGING DIRECTOR. THE DEALER WILL NOT BE ENTITLED TO RAISE ANY OBJECTION TO ANY SUCH ARBITRATOR ON THE GROUND THAT THE ARBITRATOR IS OR WAS AN OFFICER AND/OR SHARE HOLDER OF THE CORPORATION OR THAT HE HAS TO DEAL WITH OR DEALT WITH THE MATTERS TO WHICH THE CONTRACT RELATES OR THAT IN THE COURSE OF HIS DUTIES AS AN OFFICER OF THE CORPORATION HE HAD EXPRESSED VIEWS ON ALL OR ANY OF THE MATTERS IN DISPUTE OR DIFFERENCE. IN THE EVENT OF THE ARBITRATOR TO WHOM THE MATTER IS ORIGINALLY REFERRED VACATING HIS OFFICE OR BEING UNABLE TO ACT FOR ANY REASON, THE CHAIRMAN AND MANAGING DIRECTOR AS AFORESAID AT THE TIME OF SUCH VACATION OF OFFICE OR INABILITY TO ACT, SHALL DESIGNATE ANOTHER PERSON TO ACT AS ARBITRATOR. IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT SUCH PERSON SHALL BE ENTITLED TO PROCEED WITH THE REFERENCE FROM THE POINT AT WHICH IT WAS LEFT BY HIS PREDECESSOR. IT IS ALSO A TERM OF THIS CONTRACT THAT NO PERSON OTHER THAN THE CHAIRMAN AND MANAGING DIRECTOR OR A PERSON NOMINATED BY SUCH CHAIRMAN AND MANAGING DIRECTOR OF THE CORPORATION AS AFORESAID SHALL ACT AS ARBITRATOR HEREUNDER. THE COST OF ARBITRATION SHALL BE SHARED EQUALLY BY THE PARTIES.



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3. The trigger notice under Section 21 of the Act was issued on 06.03.2025 and the same has also been received by the respondent. Since there was no response, the present petition has been filed before this Court.

4. Notice to the respondent returnable by 19.01.2026. Private notice is also permitted.

5. Post this case for hearing on 19.01.2026.

3. After the service of notice, the respondents have filed counter affidavit. The respondents have taken a stand that the Dealership Agreement dated 25.02.2015 was valid only for a period of ten years and this period has already come to an end by efflux of time. The respondents have also raised the issue of limitation on the ground that the Dealership Agreement was terminated on 10.06.2021 and whereas, this petition has been filed only in the year 2025. Hence, the respondents have sought for the dismissal of this petition on the ground of all delay and laches. The respondents have also taken a stand that the grievance of the petitioner revolves around the restoration of the dealership and for the continuance of the same and that this relief itself cannot be granted, since the Agreement has already come to an end by efflux of time. On all these grounds, the respondents have sought for the dismissal of this petition.

4. This Court has carefully considered the submissions made on either side and also the materials available on record.



5. In the case in hand, the Dealership Agreement was terminated on 10.06.2021 and hence, the learned counsel for the respondents has taken a stand that the present petition filed in the year 2025 is barred by limitation.

6. The issue that has been raised by the learned counsel for the respondents is no longer *res integra* and it is already covered by the judgement of the Apex Court in **Arif Azim Company Limited vs. Aptech Limited** reported in **2024 5 SCC 313**. The relevant portions are extracted hereunder:

46. The plain reading of Section 11(6) of the Act, 1996, which provides for the appointment of arbitrators, indicates that no time-limit has been prescribed for filing an application under the said section. However, Section 43 of the Act, 1996 provides that the Limitation Act, 1963 would apply to arbitrations as it applies to proceedings in court. The aforesaid section is reproduced hereinbelow:

“43. Limitations.—(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21.



(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.”

47. Since none of the Articles in the Schedule to the Limitation Act, 1963 provide a time period for filing an application under Section 11(6) of the Act, 1996, it would be covered by Article 137 of the Limitation Act, 1963 which is the residual provision and reads as under:

|             | Description of Application                                                                      | Period of Limitation | Time from which period begins to run |
|-------------|-------------------------------------------------------------------------------------------------|----------------------|--------------------------------------|
| <b>137.</b> | Any other application for which no period of limitation is provided elsewhere in this Division. | Three years          | When the right to apply accrues.     |

48. In his authoritative commentary, “International Commercial Arbitration, Wolters Kluwer, 3rd Edition, pp. 2873-2875”, Gary B. Born has observed that as a general rule, limitation statutes are applicable to arbitration proceedings. The relevant extract is as follows:

“Most nations impose limitation or prescription periods within which civil claims must be brought. Of course, statutes



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of limitation differ from country to country. As discussed below, statutes of limitations are virtually always applicable in international arbitration proceedings, in the same way that they apply in national court proceedings. Choosing between various potentially- applicable statutes of limitations in international arbitration raises significant choice-of-law questions.

Conflict of laws issues also arise as to the date that the statute of limitations period is tolled. The issue can be addressed by national laws, as well as by institutional arbitration rules. Unfortunately, inconsistencies can arise between institutional rules and one or more potentially-applicable national laws (which may also apply in a mandatory fashion). For counsel in a particular dispute, of course, the only safe course is to satisfy the shortest potentially-applicable limitations period.” (emphasis supplied)

49. A seven-Judge Bench of this Court in *SBP & Co. v. Patel Engineering Ltd.* and Another reported in (2005) 8 SCC 618 held that the issue of limitation being one of threshold importance, it must be decided at the pre-reference stage, so that the other party is not dragged through a long-drawn arbitration, which would be expensive and time consuming.

50. A three-Judge Bench of this Court in *Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited* reported in (2020) 14 SCC 643 observed as follows:

“14. Sections 43(1) and (3) of the 1996 Act are in pari materia with Sections 37(1) and (4) of the 1940 Act. It is well-settled that by virtue of Article 137 of the First Schedule to the Limitation Act, 1963 the limitation period for reference of a dispute to arbitration or for seeking appointment of an arbitrator before a court under the 1940 Act (see *State of Orissa v. Damodar Das* [(1996) 2 SCC 216] ) as well as the 1996 Act



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(see *Grasim Industries Ltd. v. State of Kerala* [ (2018) 14 SCC 265 : (2018) 4 SCC (Civ) 612] ) is three years from the date on which the cause of action or the claim which is sought to be arbitrated first arises.

15. In *Damodar Das* [(1996) 2 SCC 216], this Court observed, relying upon *Russell on Arbitration* by Anthony Walton (19th Edn.) at pp. 4-5 and an earlier decision of a two-Judge Bench in *Panchu Gopal Bose v. Port of Calcutta* [(1993) 4 SCC 338], that the period of limitation for an application for appointment of arbitrator under Sections 8 and 20 of the 1940 Act commences on the date on which the “cause of arbitration” accrued i.e. from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned.

16. We also find the decision in *Panchu Gopal Bose* [(1993) 4 SCC 338] relevant for the purpose of this case. This was a case similar to the present set of facts, where the petitioner sent bills to the respondent in 1979, but payment was not made. After an interval of a decade, he sent a notice to the respondent in 1989 for reference to arbitration. This Court in *Panchu Gopal Bose* [(1993) 4 SCC 338] observed that in mercantile references of this kind, it is implied that the arbitrator must decide the dispute according to the existing law of contract, and every defence which would have been open to the parties in a court of law, such as the plea of limitation, would be open to the parties for the arbitrator's decision as well. Otherwise, as this Court observed : (SCC p. 344, para 8)

“8. ... a claim for breach of contract containing a reference clause could be brought at any time, it might be 20 or 30 years after the cause of action had arisen, although the legislature has prescribed a limit of three years for the enforcement of such a claim in any application that might be made to the law courts.”



17. This Court further held as follows: (Panchu Gopal Bose case [ (1993) 4 SCC 338] , SCC pp. 345-46, paras 11-12) “11. Therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Just as in the case of civil actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.

12. In Russell on Arbitration....

At p. 80 it is stated thus:

‘An extension of time is not automatic and it is only granted if “undue hardship” would otherwise be caused. Not all hardship, however, is “undue hardship”; it may be proper that hardship caused to a party by his own default should be borne by him, and not transferred to the other party by allowing a claim to be reopened after it has become barred.’ ” (emphasis supplied)

51. Having traversed the statutory framework and case law, we are of the clear view that there is no doubt as to the applicability of the Limitation Act, 1963 to arbitration proceedings in general and that of Article 137 of the Limitation Act, 1963 to a petition under Section 11(6) of the Act, 1996 in particular. Having held thus, the next question that falls for our determination is whether the present petition seeking appointment of an arbitrator is barred by limitation.

52. The determination of the aforesaid question is an exercise involving both law and facts. As is evident from Article 137 of the Limitation Act, 1963, the limitation period for making an application under Section 11(6) of the Act, 1996 is three years from the date when the right to apply accrues.



Thus, to determine whether the present petition is barred by limitation, it is necessary to ascertain when the right to file the present petition under Section 11(6) of the Act, 1996 accrued in favour of the petitioner.

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7.Insofar as the issue as to when a right to apply under Section 11(6) of the Act accrues, the Apex Court in the said judgement held that none of the Articles in the Schedule to the Limitation Act provides a time period for filing an application under Section 11(6) of the Act and therefore, it would be covered by Article 137 of the Limitation Act, which is a residuary provision. Hence, the limitation period for making an application under Section 11(6) of the Act is three years from the date when the right to apply accrues.

8.In the case in hand, the trigger notice has been issued by the petitioner on 30.08.2023 and hence, the arbitral proceedings have commenced within limitation. From then on, the present petition for appointment of an Arbitrator has been filed on 11.11.2025, which is within the period of limitation under Article 137 of the Limitation Act. Therefore, the present petition cannot be held to be barred by limitation.

9.As rightly contended by the learned counsel for the respondent, the Apex Court had requested the legislature to bring about an amendment by fixing a period of limitation for filing an application under Section 11 of the Act. And



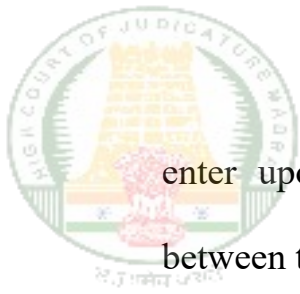
as usual, like in all other cases, it has fallen into deaf ears. As a result, Article 137 of the Limitation Act is being utilized to cover the legislative vacuum.

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9.The learned counsel for respondents further submitted that the claim made by the petitioner is a deadwood and it is also barred by limitation.

10.In the considered view of this Court, the issue that has been raised by the learned counsel for the respondents cannot be gone into this petition and at the best, it can only be taken as a preliminary issue before the Arbitrator. Useful reference can be made to the judgement of this Court in *S.Krishnamoorthy, Sole Proprietor of Sri Ram Engineering Company, No.6, G.P.Mahal, New Sidhapudur, Coimbatore vs. Engineering Projects India Ltd., 3-d, EC Chmbers, 92, GN Chetty Road, Tnagar, Chennai-17* reported in *2025 4 LW 716*, where this Court held that the Court can only examine the existence of an arbitration agreement with an arbitration clause, nothing more, nothing less. Therefore, the issue that has now been raked up by the respondents can be agitated as a preliminary issue before the Arbitral Tribunal.

11.In the light of the above discussion, this Court appoints inclined to appoint an Sole Arbitrator. Accordingly, **Mr.Abishek Jenasanan, Advocate, No.15/6, Deivasigamani Street, Royapettah, Chennai 600 014. [Mobile: 96000 00036]** is appointed as sole Arbitrator. The sole Arbitrator is requested to



enter upon reference, adjudicate upon arbitrable disputes that have arisen between the parties. The Arbitrator shall hold sittings in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) as per Madras High Court Arbitration Proceedings Rules 2017 and fee of Hon'ble sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

12.This petition is disposed of in the above terms. No Costs.

**09-02-2026**

Index: Yes/No  
Speaking/Non-speaking order  
Internet: Yes  
Neutral Citation: Yes/No  
ssr



To

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**N.ANAND VENKATESH J.**

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