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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 528/2025**

Date of Decision: **10.10.2025**

IN THE MATTER OF:

M/S SMART GUARD AND ALLIED SERVICES

RZ-F-157, MAHAVIR ENCLAVE, GALI NO.1,

PALAM, NEW DELHI-110045

THROUGH ITS AUTHORIZED REPRESENTATIVE:

MR. NEELENDRA SINGH CHAUHAN

.....Petitioner

*(Through: Mr. Sumit K. Batra, Mr. Manish Khurana, Ms. Priyanka Jindal,
Mr. Siddhanth Sarwal and Mr. Parth Sharma, Advocates.)*

versus

CENTRAL WAREHOUSING CORPORATION

REGIONAL OFFICE, SCOPE MINAR,

CORE-3, 1ST FLOOR,

LAXMI NAGAR DISTRICT CENTRE,

DELHI 110092

ALSO AT:

CENTRAL WAREHOUSING CORPORATION,

4/1 SIRI INSTITUTIONAL AREA, HAUZ KHAS,

NEW DELHI-110016

.....Respondent

(Through: Mr. Bhaskar Vali, Advocate.)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINdra KUMAR KAURAV

J U D G E M E N T

PURUSHAINdra KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter “A&C Act”)



seeking the following reliefs:

“a. Allow the present application and appoint an Arbitrator in terms of clause XVI of the Agreement as executed between the parties on 30.06.2012.

b. Pass any other or such further order(s) or direction(s) which this Hon'ble Court may deem fit and proper under the circumstances of the case as well as in the interest of justice.”

2. The petitioner, a proprietorship concern providing security services, entered into an agreement dated 23.04.2012 with the respondent, a Central Government Public Sector Enterprise, for a two-year period to provide its services for the respondent's warehouses in the Noida region (hereinafter **“said Agreement”**).

3. It is the case of the petitioner that the respondent has withheld payment for the security services rendered by it under the said Agreement. The dispute which has thus arisen, is sought to be referred to a sole arbitrator appointed by this Court.

4. Upon the respondent objecting to the maintainability of the present petition on grounds that the petition is barred by the Limitation Act, 1963, the parties were heard at length and the record is perused.

5. The arbitration clause provided for under the said Agreement reads as under:

“XVI. All disputes and differences arising out of or in any way touching or concerning this contract whatsoever shall be referred to the sole arbitration of the persons appointed by the Managing Director, Central Warehousing Corporation, Corporate Office, 4/1 Siri Institutional Area, August Kranti Marg, New Delhi – 110016. There will be no objection to such appointment. The award of such arbitrator shall be final and binding



on the parties to this contract.”

6. Evidently, as a result of the disqualification provided for under Section 12(5) of A&C Act, and the judgement of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***,¹ the procedure provided for under the above-extracted arbitration clause has become non-est. However, claiming that the right to seek an appointment of arbitrator under Section 11(6) of the A&C Act remains with the petitioner, the present petition has been filed.

7. Owing to the Limitation Act, 1963 not specifically providing for a limitation period for an application under Section 11(6) of the A&C Act, the residuary Article 137 applies. It is reproduced as under:

PART II—OTHER APPLICATION

137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues.
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8. It, thus, needs to be seen when the right to apply under Section 11(6) of the A&C Act accrues. For ease of analysis, the said provision is extracted as under:

“11.

...

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Supreme Court or, as the case may be, the High

¹ (2020) 2 SCC 760.



Court or any person or institution designated by such Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.”

9. Naturally, a failure by the other party under Section 11(6)(a)-(c) can only take place when a notice for arbitration under Section 21 of the A&C Act has been sent. The right to move a Court under Section 11(6) of the A&C Act, therefore, accrues when a given respondent does not adhere to the procedure provided for under the relevant arbitration agreement, invoked through a notice under Section 21 of the Act or upon the passing of thirty days from the date of issuance of the said notice.

10. This Court in ***Rinkoo Aggarwal v. Gaurav Sabharwal and Anr.***,² has dealt with the application of the Limitation Act, 1963 to Section 11(6) of the A&C Act. This Court in para. 9 thereto summarised the dictum of the Supreme Court in ***Arif Azim Company Ltd. v. Aptech Ltd.***,³ and has held as under:

“9. The Supreme Court further observed that under Article 137 of the 1963 Act, limitation period for making an application under Section 11 (6) is 03 years from the date when the right to apply accrues and then examined the issue as to when the right to apply accrues. In this context, it was held that limitation period for filing of petition under Section 11(6) can only commence, once a valid notice invoking arbitration has been sent by the applicant to the other party and there is a failure or refusal on part of the other party in complying with the requirements of the notice....”

11. Further, while analysing the judgement of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***,⁴ and the clarification so

² 2025 SCC OnLine Del 3658.

³ 2024 SCC OnLine SC 215.

⁴ 2024 SCC OnLine SC 1754



rendered by the Supreme Court *qua* the application of **Arif Azim Company Ltd.**, this Court held as under:

“10. This position was reiterated by the Supreme Court in SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754. It was held that the observations made in Arif Azim Company Limited (supra), to the extent that Limitation Act is applicable to applications under Section 11(6) and that it is the duty of the referral Court to examine that the application is not barred by limitation prescribed under Article 137 i.e. 03 years from the date valid notice invoking arbitration is sent by the applicant to the other party and there is a failure on the part of the recipient to act as per the notice, needs no clarification. It was, however, clarified that while determining the issue of limitation in a petition under Section 11(6), the referral Court would confine its inquiry to examining whether the petition is within the period of limitation of 03 years or not. The referral Court will not conduct an intricate evidentiary inquiry into the question whether the claims raised by the applicant are time barred and this would be left for determination by the Arbitrator....”

12. Importantly, in **Rinkoo Aggarwal**, the petitioner therein had claimed that it had authorized its counsel only to send the legal notice dated 26.11.2016 calling upon the respondents therein to pay the outstanding dues and the notice invoking arbitration dated 12.01.2017 was sent by the lawyer, without his knowledge, instructions or authority. On this premise, the petitioner therein claimed the petition to be within the period of limitation. Rejecting this argument, this Court held as under:

“12. In light of this, I may now examine whether the present petition is barred by limitation and this shall entail an examination of when the right to apply accrued. Petitioner contends that for the first time invocation notice was sent on 04.03.2024 and thus the petition is within the limitation period while Respondents urge that the invocation notice was sent by the Petitioner on 12.01.2017 and thus the petition is barred by limitation, having been filed in the year 2024. Broadly understood, case of the Petitioner is that it had authorized its counsel only to send the legal notice dated 26.11.2016 calling upon the Respondents to pay the outstanding dues but the invocation notice dated 12.01.2017 which was allegedly a rejoinder-cum-notice of invocation was sent by the lawyer, without his



knowledge, instructions or authority.

13. Having given my thoughtful consideration to the rival pleas, I am of the view that the stand of the Petitioner cannot be accepted for more than one reason. Indisputably, Petitioner authorized his counsel to send the legal notice dated 26.11.2016 to the Respondents demanding the dues allegedly outstanding. It is unbelievable that Petitioner did not follow up the matter thereafter with the lawyer he engaged, to find out the outcome of the notice. There is also no reason to accept the plea that the lawyer did not inform the Petitioner of the receipt of the reply to the notice and of sending the rejoinder-cum invocation notice, as no lawyer would act without instructions or authority from the client and ordinarily, without consideration. If the stand of the Petitioner is accepted, it would make a mockery of the mandatory requirement of sending a notice under Section 21 of the 1996 Act as also the limitation period prescribed for filing a petition under Section 11(6) as every applicant, who sends an invocation notice through a counsel, would take a plea that it was without authority, when confronted with an objection that the petition is time barred. Interestingly, even after allegedly learning of the invocation notice from the reply filed in this Court, Petitioner has not sent a single communication to the lawyer questioning him about the notice. Clearly, Petitioner abandoned his claims in 2017 after sending the invocation notice and got up from the deep slumber in 2024 and again sent an invocation notice, only to overcome the bar of limitation, as an afterthought.”

13. The parties in the instant case have admitted that the petitioner had issued a notice invoking the arbitration clause on 17.05.2019. The date on which the right to apply accrues shall be thirty days from 17.05.2019 i.e., 17.06.2019. Applying Article 137 of the Limitation Act, 1963, the limitation period ended on 17.06.2022. Even if the benefit of the COVID-19 limitation extension is to be granted, the petitioner, at best, could have filed the instant petition on or before 02.06.2024.

14. The petitioner sending to the respondent a notice dated 27.10.2022, purportedly invoking arbitration, does not reset the clock which began to run on 17.06.2019. But for this, the requirement to comply with statutory requirements pertaining to time limits would be rendered otiose.



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15. Under these circumstances, it is seen that the petition is barred by Article 137 of the Limitation Act, 1963, having been filed beyond the period of three years from the date on which the right to apply accrued in favour of the petitioner.

16. Accordingly, the instant petition stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 10, 2025

aks/sph