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

\# **CNR No. DLHC010413212026**

\+ ARB.P. 1568/2026 & I.A.30312/2026

DAYARAM BHARDWAJ & ANR. .....Petitioners

Through: Ms. Riddhi Jad Rand Mr. Ashutosh Kumar, Advs.

versus

VIRESH PROMOTERS AND DEVELOPERS PVT LTD .....Respondent

Through: Mr. Uttam Dutt, Sr. Adv. with Mr. Siddharth Mittal, Mr. Vaibhav Tomar, Mr Abhijeet Varshney and Ms Sonakshi Sinha, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 03.11.2026

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996[1] seeking appointment of a Sole Arbitrator to adjudicate the disputes arising out of the Agreement to Sell[2] dated 07.04.2014.

2. The Petitioners entered into the aforesaid agreement with the Respondent for purchase of Commercial Unit No.903, situated on the 9th Floor of the proposed Business Square project at Village Badshahpur, Gurugram for a total sale consideration of Rs.2,38,68,000/-. Against the aforesaid consideration, the Petitioners admittedly paid Rs.4,82,123/-.

[1] "Act" hereinafter
[2] "ATS" hereinafter

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3. Ms. Riddhi Jad, learned Counsel appearing on behalf of the Petitioners submits that the Respondent failed to deliver possession of the unit by the stipulated date of 31.12.2017, as required under Clause 14 of the ATS. They consequently seek delivery of possession and compensation for delayed possession, quantified at Rs.1,85,43,600/-.

4. Mr. Uttam Dutt, learned Counsel for the Respondent opposes the petition, *inter alia,* on the ground that the claims sought to be referred are *ex facie* barred by limitation.

5. Ms. Riddhi contends that the present petition is maintainable and that the claims sought to be referred to arbitration are not *ex facie* barred by limitation.

6. It is submitted that the Respondent does not dispute the execution of the ATS dated 07.04.2014 or the existence of the arbitration agreement contained in Clause 44 thereof.

7. The objection raised by the Respondent relates only to the limitation governing the underlying claims and not to the limitation applicable to the present petition under Section 11(6) of the Act.

8. Learned Counsel submits that the Respondent's failure to hand over possession by 31.12.2017 does not bring the contractual obligations under the ATS to an end. In this regard, reliance is placed on Clause 14 of the Agreement, which expressly provides for payment of compensation at the rate of Rs 30/- per sq. ft. per month for the period

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of delay in handing over possession.

9. It is contended that the stipulation for monthly compensation demonstrates that the Respondent's liability continues for every month during which possession remains undelivered. The Agreement has neither been terminated nor have the Petitioners relinquished their contractual rights.

10. It is further submitted that the Respondent continues to pursue its disputes with the landowners under the Collaboration Agreement dated 05.04.2008. The Respondent institutes Civil Suit No. 17/2022 on 08.02.2022 against the landowners, seeking recovery of approximately Rs.203.60 crores

11. It is further submitted that the Respondent continues to pursue its disputes with the landowners under the Collaboration Agreement dated 05.04.2008. The Respondent institutes Civil Suit No. 17/2022 on 08.02.2022 against the landowners, seeking recovery of approximately Rs203.60 crores

12. Learned Counsel further submits that the Petitioners become aware of the aforesaid civil suit only in December 2025 and thereafter seek impleadment in the proceedings. The Commercial Court, while dismissing their application on 20.02.2026, recognises that the Petitioners possess independent contractual rights and remedies against the Respondent. The Petitioners thereafter withdraw their Civil Revision Petition No. 2378/2026 on 13.03.2026.

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13. It is submitted that the Respondent rejects the Petitioners' claims for possession and delay compensation for the first time *vide* its reply dated 20.05.2026 to the legal notice dated 04.05.2026. The Petitioners thereafter invoke arbitration *vide* notice dated 18.06.2026. It is, therefore, contended that the cause of action crystallises upon the Respondent's unequivocal rejection of the Petitioners' contractual entitlements and that the invocation of arbitration is within limitation.

14. Learned Counsel places reliance on ***Samruddhi Cooperative Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd.***[3], and ***Lata Construction v. Dr. Rameshchandra Ramniklal Shah***[4], to contend that where the contractual obligation to deliver possession remains unperformed, the cause of action may continue to subsist. It is submitted that the present case involves not merely the continuing consequences of a past breach, but an unperformed contractual obligation accompanied by an express stipulation for monthly compensation.

15. Learned Counsel further relies upon ***SBI General Insurance Co. Ltd. v. Krish Spinning***[5] and ***Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re,***[6], to submit that the scope of enquiry at the referral stage is limited and that this Court ought not to undertake an intricate evidentiary enquiry into the limitation of the underlying claims. It is contended that the questions concerning the continued subsistence of the Agreement, the

[3] (2022) 4 SCC 103
[4] (2000) 1 SCC 586
[5] (2024) 12 SCC 1
[6] **(2024) 6 SCC 1**

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operation of Clause 14, the alleged assurances and the subsequent conduct of the parties are matters for determination by the Arbitral Tribunal.

16. *Per Contra* Mr. Uttam, submits that the substantive claims sought to be referred to arbitration are *ex facie* barred by limitation. It is submitted that the Respondent does not dispute the existence of the ATS dated 07.04.2014 or Clause 44 thereof; however, the existence of an arbitration agreement does not revive a substantive claim which has already become barred by limitation.

17. Learned Counsel submits that, as per the Petitioners' own case, the Respondent is required to hand over possession by 31.12.2017. The alleged breach, therefore, becomes apparent upon expiry of the stipulated date, and the Petitioners are aware of the alleged non-delivery of possession from that date. It is contended that the Petitioners neither invoke arbitration nor initiate any proceedings within the applicable period of limitation. Instead, they issue a legal notice dated 04.05.2026 and a notice invoking arbitration dated 18.06.2026, more than eight years after the alleged breach.

18. It is further submitted that the subsequent issuance of a legal notice or invocation of arbitration cannot create a fresh cause of action or revive a claim which has already become time-barred. The Respondent contends that the limitation period for the substantive claims is distinct from the limitation applicable to the petition under Section 11 of the Act and that a petition filed within limitation cannot, by itself, revive stale claims.

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19. Learned Counsel submits that the Petitioners cannot characterise the breach as a continuing cause of action merely because the consequences of non-delivery of possession continue to subsist. It is contended that a continuing cause of action must arise from a continuing breach recognised by law, and the continued existence of the consequences of an alleged past breach does not, by itself, extend limitation. The provision for compensation under Clause 14 does not, according to the Respondent, permit the Petitioners to indefinitely postpone the accrual of their claims.

20. It is further submitted that the Petitioners' reliance upon alleged assurances and discussions between the parties is vague and unsupported by any specific communication or contemporaneous material. The Petitioners do not establish any legally recognised ground for exclusion or extension of limitation.

21. The Respondent contends that mere negotiations, assurances or a unilateral demand cannot extend limitation in the absence of an acknowledgment satisfying Section 18 of the Limitation Act, 1963[7].

22. Learned Counsel submits that their own reply dated 20.05.2026 does not constitute an acknowledgment of liability. The Respondent merely offers to refund the sum of Rs 4,82,123/- received from the Petitioners, without admitting any liability towards delay compensation or other monetary claims. Such an offer, it is contended, does not revive

[7] "Limitation Act" hereinafter

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the Petitioners' claims.

23. It is further submitted that the Petitioners pay only Rs 4,82,123/- against the total sale consideration of Rs 2,38,68,000/-, which, according to the Respondent, represents approximately 2% of the total consideration. The Petitioners do not thereafter pay or tender the balance consideration. The Respondent, therefore, disputes the Petitioners' entitlement to claim substantial delay compensation without demonstrating their readiness and willingness to perform their own contractual obligations.

24. Learned Counsel further submits that the project does not progress because the landowners fail to hand over vacant and peaceful possession of the licensed land in terms of the Collaboration Agreement dated 05.04.2008. The Respondent obtains the requisite statutory licences and takes steps towards development but is prevented from proceeding with construction on account of the landowners' defaults. The Respondent, accordingly, institutes Civil Suit No. 17/2022 on 08.02.2022 against the landowners, seeking recovery of approximately Rs 203.60 crores.

25. It is contended that the ATS has become frustrated and incapable of performance on account of the failure of the landowners to hand over possession of the land. The Respondent submits that, in the event of frustration, the Petitioners' remedy, if any, is confined to restitution of the amount received under Section 65 of the Indian Contract Act, 1872, which the Respondent remains willing to refund. It is further pointed out that 37 out of 38 similarly placed purchasers accept refunds and

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settle their claims, whereas the Petitioners alone decline the refund arrangement.

26. Learned Counsel places reliance on ***Vidya Drolia v. Durga Trading Corpn.***[8]***, Bharat Sanchar Nigam Ltd. v. Nortel Networks India Pvt. Ltd***[9], ***M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd***[10] and ***State of W.B. v. B.B.M. Enterprises***[11]**,** to submit that the referral Court is empowered to refuse appointment where the claims are manifestly and *ex facie* barred by limitation.

27. It is contended that the present case falls within the narrow category of cases where the relevant dates emerge from the Petitioners' own pleadings and no elaborate evidentiary enquiry is required to determine that the claims are stale.

28. Learned Counsel further submits that the decisions in ***SBI General Insurance Co. Ltd.(supra)*** *and* ***In Re: Interplay(supra)*** do not preclude the referral Court from examining a claim which is demonstrably dead on the basis of the admitted facts. It is contended that the Respondent does not seek an elaborate adjudication of disputed facts but relies upon the dates pleaded by the Petitioners themselves, namely, the stipulated date of possession, the date of the legal notice and the date of invocation of arbitration.

29. On the aforesaid grounds, learned Counsel submits that the

[8] **(2021) 2 SCC 1,**
[9] **(2021) 5 SCC 738**
[10] **(2024) 5 SCC 313**
[11] **2026 SCC OnLine SC 980**

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Petitioners cannot revive a stale claim by issuing a belated notice invoking arbitration and that the present petition deserves to be dismissed.

30. In rejoinder, Ms. Riddhi submits that the Respondent's reliance on ***B.B.M. Enterprises(Supra)*** ,is distinguishable. It is contended that the said case concerns a claim which remains dormant for approximately 21 years after completion of the work, whereas the present case concerns an unperformed obligation to deliver possession and an express contractual provision for monthly compensation. It is, therefore, submitted that the claims cannot be characterised as *ex facie* dead on the basis of the stipulated date of possession alone.

31. Learned Counsel also distinguishes ***Bharat Sanchar Nigam Ltd***.(supra), on the ground that, unlike the said case, there is no earlier unequivocal rejection of the Petitioners' claims before 20.05.2026. It is further submitted that the Respondent's dealings with similarly situated allottees, including refund and settlement arrangements with 37 out of 38 purchasers, are relevant circumstances which require consideration while determining the limitation objection.

32. On the aforesaid grounds, learned Counsel submits that the claims are not manifestly barred by limitation and that the objection raised by the Respondent involves disputed questions of fact and contractual interpretation which are appropriately left to the Arbitral Tribunal. The Petitioners, accordingly, seek appointment of an independent Sole Arbitrator.

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33. I have heard the learned counsel for the parties and perused the material placed on record.

34. The principal question which arises for consideration is whether the claims sought to be referred to arbitration are so manifestly barred by limitation that this Court ought to decline reference at the threshold, or whether the objection raised by the Respondent involves disputed questions which must necessarily be left to the Arbitral Tribunal.

35. At the outset, it is necessary to distinguish between the limitation governing the substantive claims arising out of the Agreement. The two operate in distinct fields and cannot be conflated.

36. Section 43(1) of the Act makes the provisions of the Limitation Act, applicable to arbitral proceedings in the same manner as they apply to proceedings before a Court. Further, in terms of Section 43(2) of the Act, arbitral proceedings are deemed to have commenced on the date referred to in Section 21, namely, the date on which the request for referring the dispute to arbitration is received by the other party.

37. Insofar as the present petition is concerned, Article 137 of the Schedule to the Limitation Act prescribes a period of three years for an application for which no period of limitation is otherwise provided. In ***Arif Azim Co. Ltd(supra)***, the Supreme Court has held that limitation for an application under Section 11(6) commences when a valid notice invoking arbitration is issued and the other party fails or refuses to act in accordance with the agreed appointment procedure.

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38. The question which nevertheless arises is whether the claims sought to be referred to arbitration had already become *ex facie* barred by limitation on the date of commencement of arbitration, and whether this Court can decline reference on that ground.

39. Let us now look into the scope of scrutiny at the stage of Section 11 petition.

40. In ***Bharat Sanchar Nigam Ltd(supra)***, the Supreme Court recognised that although limitation is ordinarily an issue of admissibility to be determined by the Arbitral Tribunal, the referral Court is not precluded from declining a reference where the claims are manifestly and *ex facie* time-barred.

41. The aforesaid principle was elaborated in ***Arif Azim Co. Ltd*. (supra).** The Supreme Court held that, while considering limitation in proceedings under Section 11, the Court is required to undertake a two-fold examination: first, whether the application under Section 11 itself is barred by limitation; and, secondly, whether the claims sought to be arbitrated are *ex facie* dead claims on the date of commencement of arbitration. The Court further observed, that it is the duty of the referral Court to *prima facie* examine and reject dead claims so as to protect the other party from being drawn into a time-consuming and costly arbitral process.

42. The aforesaid position requires to be read with the subsequent decision of the Supreme Court in ***SBI General Insurance Co. Ltd*. *(supra)***. In the said decision, the Supreme Court clarified that the

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referral Court must not conduct an intricate evidentiary enquiry into the limitation of the underlying claims and that such questions are ordinarily to be left for determination by the Arbitral Tribunal. The clarification, however, was not intended to dilute the limited power recognised in ***Arif Azim (supra)*** to decline reference where the claims are demonstrably dead.

43. The position has thereafter been considered in ***B.B.M. Enterprises (supra)***. The Supreme Court reiterated that, where the bar of limitation is apparent from the bare minimum pleadings and admitted chronology, and no intricate evidentiary enquiry is required, the referral Court is justified in declining to set the arbitral process in motion. The Supreme Court observed that arbitration, though encouraged as an alternative dispute resolution mechanism, cannot depart from the fundamental principle that the law favours the diligent and not the indolent.

44. Thus, the scope of enquiry at this stage is undoubtedly narrow. This Court is not required to conduct a mini-trial or determine the merits of the contractual claims. However, neither is it required to mechanically refer every dispute to arbitration irrespective of whether the claim itself is demonstrably barred by limitation. The enquiry must remain confined to the contractual terms, the admitted dates and the Petitioners' own pleaded case here.

45. Now this Court will analysis the accrual of the cause of action here, the ATS dated 07.04.2014 stipulated 31.12.2017 as the date by which possession of the allotted unit was to be delivered. The

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Petitioners' own case is that the Respondent failed to deliver possession by the said date. The cause of action arising from such failure, therefore, accrued upon the expiry of the stipulated date.

46. In terms of Article 54 of the Limitation Act, a suit for specific performance, where a date is fixed for performance, must be instituted within three years from the date so fixed. Likewise, Article 55 prescribes a period of three years for compensation for breach of contract, commencing from the date when the contract is broken, subject to the statutory provisions relating to successive or continuing breaches. The mere continuation of the consequences of an earlier breach does not, by itself, give rise to a fresh cause of action or extend limitation indefinitely.

47. In ***Ahmadsahab Abdul Mulla (2) v. Bibijan,*** [12], the Supreme Court has explained that, where a date is fixed for performance of the contract, limitation under Article 54 commences from the date so fixed. Consequently, the Petitioners cannot contend that the period of limitation for seeking specific performance commenced only upon issuance of the legal notice dated 04.05.2026 or upon receipt of the Respondent's reply dated 20.05.2026. A subsequent demand or refusal cannot postpone the commencement of limitation where the contract itself specifies the date for performance.

48. The law regarding the same is clear, the Supreme Court has even recently held that under the first limb of Article 54 of the Limitation

[12] **(2009) 5 SCC 462**

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Act , if a date is fixed for the performance of a contract, the three-year limitation period strictly starts running from that specific date. The same was also recently held in ***Usha Devi & Ors v Ram Kumar Singh & Ors***[13]**.**

49. Article 55 of the Limitation Act, contemplates three distinct situations for commencement of limitation: where the contract is broken, where there are successive breaches, and where the breach is continuing. In the first situation, limitation commences when the contract is broken; in the second, from the occurrence of the particular breach in respect of which compensation is claimed; and in the third, upon cessation of the continuing breach. The mere continuation of the consequences of an earlier breach, however, does not convert such breach into a continuing breach. The applicability of the latter two situations must depend upon the nature of the contractual obligation and whether the subsequent defaults constitute independent or continuing breaches, rather than merely successive financial consequences of the original breach.

50. The Petitioners have sought to overcome the aforesaid position by placing reliance upon Clause 14 of the Agreement, which provides for compensation at the rate of Rs.30/- per sq. ft. per month in the event of delay in delivery of possession. They contend that the Respondent's failure constitutes a continuing breach and that compensation consequently accrues on a monthly basis. This contention, however, requires the distinction between a continuing breach and the continuing

[13] **2024 INSC 599**

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effect of a completed breach to be kept in view. The mere fact that the financial consequences of a breach continue to accumulate does not, in every case, result in a fresh cause of action arising from month to month.

51. Clause 14, when read as a whole, stipulates a fixed date for delivery of possession and provides a monthly rate as the measure for computing compensation for delay. It further contemplates adjustment of such compensation at the time of execution of the conveyance/sale deed. The provision for monthly computation, therefore, cannot, by itself, be construed as an agreement to keep the cause of action for enforcement of the primary obligation alive indefinitely. The Petitioners' claim arises from the Respondent's failure to deliver possession by the contractually stipulated date. The continued non-fulfilment of that obligation and the continuing financial consequences thereof cannot, without more, be treated as successive independent breaches for the purpose of extending limitation.

52. The decisions relied upon by the Petitioners in ***Samruddhi Co-operative Housing Society Ltd(Supra)***. and ***Lata Construction(supra)***, do not advance their case. In ***Samruddhi Co-operative Housing Society Ltd(Supra)***, the continuing cause of action arose from the failure to discharge a continuing statutory obligation to obtain an occupancy certificate. In ***Lata Construction(Supra)***, the subsequent agreement and the obligations preserved thereunder were material to the conclusion reached by the Supreme Court. The present case does not disclose a comparable continuing statutory obligation or any subsequent agreement extending or renewing the original obligation to

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deliver possession.

53. The subsequent correspondence dated 04.05.2026 between the parties does not furnish a fresh starting point for limitation. An acknowledgment under Section 18 of the Limitation Act must be made in writing and signed by the party against whom the right is claimed, and must be made before expiry of the prescribed period. A communication issued after limitation has already expired cannot revive a claim which has become barred.

54. Equally, mere negotiations, correspondence or an offer to refund the amount received cannot, in the absence of a legally cognisable acknowledgment, extend the period of limitation.

55. The Petitioners' reliance upon the Respondent's proceedings against the landowners, as well as the proceedings initiated by the Petitioners for impleadment therein, also does not alter the aforesaid position. The dispute between the Respondent and the landowners under their separate Collaboration Agreement is distinct from the contractual relationship between the Petitioners and the Respondent. The pendency of such proceedings, or the Petitioners' decision to await their outcome, does not, in law, suspend the running of limitation in respect of the Petitioners' independent contractual remedies. The Petitioners' decision to await resolution of the Respondent's dispute with the landowners cannot operate to extend a statutory period of limitation.

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56. In ***B & T AG v. Union of India***,[14]the Supreme Court has held that mere correspondence, reminders or settlement discussions between parties do not, by themselves, extend the period of limitation. The relevant consideration is the point at which the cause of action accrued and the dispute crystallised. A party cannot, by continuing negotiations or issuing successive communications, revive a claim which has already become barred by limitation. Thus, the Petitioner also cannot press the ground that they were even engaged in talks of settlement for a long period.

57. Further this Court is conscious that the power exercised under Section 11 of the Act is limited and that the question of limitation ordinarily falls within the domain of the Arbitral Tribunal. However, the present case does not require an intricate evidentiary enquiry.

58. Thus it is clear that the contractual date for performance is undisputed; the date of the alleged breach is ascertainable from the Agreement itself; the claims are founded on the failure to deliver possession by the stipulated date; and the subsequent notices and correspondence do not disclose any legally recognised event extending or postponing limitation.

59. The present case is, therefore, distinguishable from cases in which the date of accrual itself depends upon disputed correspondence, subsequent determinations, or factual circumstances requiring evidence. The position is closer to the principle applied by the Supreme

[14] **(2024) 5 SCC 358**

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Court in ***B.B.M. Enterprises*** (supra), where the Court declined to refer a claim that was demonstrably stale on the basis of the admitted chronology and where no intricate evidentiary enquiry was necessary.

60. The Court is also mindful of the clarification in ***SBI General Insurance*** (supra). Relevant paragraphs are reproduced below:

> ***"127. Section 11 also envisages a time-bound and expeditious disposal of the application for appointment of arbitrator. One of the reasons for this is also the fact that unlike Section 8, once an application under Section 11 is filed, arbitration cannot commence until the Arbitral Tribunal is constituted by the Referral Court. This Court, on various occasions, has given directions to the High Courts for expeditious disposal of pending Section 11 applications. It has also directed the litigating parties to refrain from filing bulky pleadings in matters pertaining to Section 11. Seen thus, if the Referral Courts go into the details of issues pertaining to "accord and satisfaction" and the like, then it would become rather difficult to achieve the objective of expediency and simplification of pleadings.***
>
> ***128. We are also of the view that ex facie frivolity and dishonesty in litigation is an aspect which the Arbitral Tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the Arbitral Tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the Referral Court. If the Referral Court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the Arbitral Tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material."***
>
> ***129.*** *Before we close the matter, it is necessary for us to clarify the dictum as laid in Arif Azim Co. Ltd. v. Aptech Ltd. [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] , so as to streamline the position of law and prevent the possibility of any conflict between the two decisions that may arise in future.*
>
> ***130.*** *In Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] , while deciding an application for appointment of arbitrator under Section 11(6) of the 1996 Act, two issues had arisen for our consideration:*
>
> ***130.1.*** *(i) Whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996? If yes, whether the petition*

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filed by M/s Arif Azim was barred by limitation?

130.2. *(ii) Whether the Court may decline to make a reference under Section 11 of the 1996 Act where the claims are ex facie and hopelessly time-barred?*

131. *On the first issue, it was observed by us that the Limitation Act, 1963 is applicable to the applications filed under Section 11(6) of the 1996 Act. Further, we also held that it is the duty of the Referral Court to examine that the application under Section 11(6) of the 1996 Act is not barred by period of limitation as prescribed under Article 137 of the Limitation Act, 1963 i.e. 3 years from the date when the right to apply accrues in favour of the applicant. To determine as to when the right to apply would accrue, we had observed in para 57 of the said decision that: (Arif Azim case [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] , SCC p. 340)*

"57. ... the limitation period for filing a petition under Section 11(6) of the 1996 Act can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on the part of that other party in complying with the requirements mentioned in such notice."

132. *Insofar as the first issue is concerned, we are of the opinion that the observations made by us in Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] do not require any clarification and should be construed as explained therein.*

133. *On the second issue it was observed by us in para 68 of Arif Azim case [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] that the Referral Courts, while exercising their powers under Section 11 of the 1996 Act, are under a duty to "prima facie examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process".*

134. *Our findings on both the aforesaid issues have been summarised in para 92 of the said decision thus: (Arif Azim case [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] , SCC p. 357)*

"92. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the 1996 Act, the courts should satisfy themselves on two aspects by employing a two-pronged test — first, whether the petition under Section 11(6) of the 1996 Act is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an Arbitral Tribunal."

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61. The present determination does not proceed upon an examination of disputed evidence or a conclusive adjudication of the merits of the parties' contractual defences. It is based on the plain terms of the Agreement, particularly the stipulated date of performance and the manner in which Clause 14 provides for adjustment of compensation, read with the Petitioners' own computation of the claims and the dates pleaded by them. On this material, the plea of a continuing breach does not disclose a legally sustainable basis to keep the original claims alive indefinitely.

62. In view of the above this Court is of the view that the mere issuance of a legal notice in May 2026 or a notice invoking arbitration in June 2026 cannot revive claims which had already become barred by limitation. The limitation applicable to the substantive claims cannot be circumvented by postponing the invocation of arbitration until a subsequent communication is exchanged between the parties.

63. The Act is intended to provide an efficacious, expeditious and time-bound mechanism for resolution of disputes. While arbitration is to be encouraged, the statutory framework cannot be employed to revive claims which have already become barred by limitation. Permitting claims which are *ex facie* dead to be referred to arbitration would defeat the very object of the Act by compelling parties to undergo a time-consuming and costly arbitral process in respect of claims which, on the admitted material, are no longer legally enforceable.

64. In view of the foregoing discussion, this Court finds that the substantive claims sought to be referred to arbitration had become *ex*

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facie barred by limitation before commencement of the arbitral proceedings under Section 21 of the Act.

65. The fact that the present petition under Section 11(6) has itself been filed within the period prescribed under Article 137 of the Limitation Act does not revive the underlying claims or entitle the Petitioners to seek their reference.

66. Accordingly, the objection raised by the Respondent is sustained.

67. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 is dismissed in its entirety, as the claims sought to be referred to arbitration are *ex facie* barred by limitation.

68. The present petition is dismissed. Pending application(s), if any, also stand disposed of. No order as to costs.

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