



2026:DHC:8664



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010412752026**+ **ARB.P. 1564/2026****ILMUDDIN**

.....Petitioner

Through: Mr. Harshit Goel, Adv. along
with Petitioner in person.

versus

MODERN PREFAB SYSTEMS PRIVATERespondentThrough: Mr. Aditya Kumar, Mr. Parv
Verma and Mr. Ish Chopra,
Advs.**CORAM:****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT(ORAL)**

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28.09.2026

1. This Court by order dated 03.09.2026 recorded the following:

"1. The present petition is being filed by the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an independent Sole Arbitrator for adjudication of the disputes and differences which have arisen between the parties in terms of the arbitration clause contained in the Work Order dated 01.07.2011 executed between the parties.

2. The Arbitration Clause is reproduced herein:

"Arbitration: Dispute arises during contract: In the event of any difference or dispute arising out of or in connection with the work order, the same shall be first amicably settled by mutual dialogue. If the parties fail to settle their differences or dispute arising out of or in connection with this work order (including interpretation of the terms thereof) the same shall be referred to arbitration. A single Arbitrator appointed by the Managing Director of Modern Prefab shall conduct the Arbitration proceedings and the award/decision of such arbitrator shall be final and binding upon with the parties. The venue of the arbitration shall be Delhi."

3. It is the case of the Petitioner that pursuant to the execution of the aforesaid Work Order, the Petitioner duly commenced and



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completed the fabrication work assigned by the Respondent to the satisfaction of the Respondent and raised bills from time to time in accordance with the work executed.

4. The Respondent released the 90% of the billed amount upon submission and certification of the bills. However, despite repeated assurances, the Respondent failed and neglected to release the balance retention amount of 10% against various bills, which became payable after successful completion and commissioning of the work.

5. It is alleged that the Respondent has withheld the balance amount aggregating to approximately Rs.7,50,000/- payable to the Petitioner.

6. The Petitioner, upon non-payment of its outstanding dues, issued several communications and, through Counsel, issued a legal notice dated 04.05.2016 demanding payment and seeking appointment of an arbitrator under the agreement, to which the Respondent replied on 07.06.2016 acknowledging retention of 10% of the Petitioner's dues.

7. Thereafter, the Petitioner instituted CS No. 637 of 2017 before the Learned Civil Judge, Junior Division, Gurugram, for recovery of the outstanding amount, however, by order dated 16.05.2023, the Court allowed the Respondent's application under Section 8 of the Arbitration and Conciliation Act, 1996 and referred the disputes to arbitration.

8. Pursuant thereto, the Petitioner invoked arbitration vide notice dated 06.11.2023, which was rejected by the Respondent on 29.11.2023, resulting in the filing of Arb. No. 135 of 2023 under Section 11 before the Learned District Judge, Gurugram.

9. The said petition was withdrawn on 29.01.2026 with liberty to approach the appropriate forum. Subsequently, the Petitioner issued a fresh invocation notice dated 08.04.2026 proposing appointment of an arbitrator through the Delhi International Arbitration Centre, but the Respondent, vide reply dated 07.05.2026, denied the claims and failed to concur in the appointment of an arbitrator, necessitating the present proceedings.

10. Issue notice. Notice is accepted by Mr. Aditya Kumar, learned Counsel for the Respondent appearing on advance notice.

11. Reply be filed within two weeks. Rejoinder thereto, if any, be filed within one week thereafter.

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12. List on 28.09.2026.

2. Learned counsel for the Respondent has opposed the petition on the ground that both the underlying monetary claim and the present invocation are hopelessly barred by limitation.

3. According to learned Counsel for Respondent, the Petitioner's cause of action arose at the latest on 18 February 2014, when the last payment was made as full and final settlement of the running account, and the claim for the 10% retention amount was thereafter expressly rejected, including by reply dated 7 June 2016.

4. It is further contended that although the Petitioner was aware of the arbitration clause, it initially pursued a civil suit before the Gurugram Court and, even after the Section 8 order dated 16 May 2023 referring the disputes to arbitration, subsequently pursued Section 11 proceedings before Gurugram despite Delhi being the agreed venue, ultimately issuing what the Respondent treats as the first valid Section 21 notice only on 8 April 2026.

5. Accordingly, the learned counsel for the Respondent submits that the claims are *ex facie* dead claims and that the benefit of Section 14 of the Limitation Act is unavailable because the Petitioner did not prosecute the earlier proceedings with good faith and due diligence.

6. At this stage, both parties are *ad idem* that the matter can be referred to Mediation and Conciliation Centre of this Court to explore the possibility for an amicable settlement.

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7. Acceding to the same, the matter is referred to Delhi High Court Mediation and Conciliation (*SAMADHAN*) and the parties are directed to appear in person or through their authorized representative along with their respective Counsel before the Mediation Centre on 07.10.2026.

8. Three weeks' time is granted for exploring the possibility of settlement through mediation.

9. If mediation fails, the parties are also *ad idem* with respect to reference of the disputes to arbitration. There is no dispute with regard to the existence of a valid arbitration agreement between the parties.

10. It is well settled that while exercising jurisdiction under Section 11 of the Act, the scope of enquiry is confined to examining the *prima facie* existence of an arbitration agreement¹.

11. In the aforesaid circumstances, this Court finds no impediment in appointing a Sole Arbitrator.

12. Accordingly, Mr. Anshul K. Bishnoi, Advocate (Mob. No. 7877440029) is appointed as a learned Sole Arbitrator to adjudicate the disputes arisen between the parties if the mediation fails. The learned Sole Arbitrator shall enter upon the reference within three weeks from the date of the mediation report recording failure of settlement.

¹ **SBI General Insurance Co. Ltd. v. Krish Spinning 2024 SCC OnLine SC 1754**



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13. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required under Section 12(2) of the Act within three weeks of entering reference.

14. The arbitration shall be carried under the rules and aegis of Delhi International Arbitration Centre (“DIAC”). The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

15. The respondents are at liberty to raise preliminary objections with respect to limitation, if any, which shall be decided by the learned Sole Arbitrator in accordance with law.

16. It shall be open to both the parties to raise all pleas, including objections as to arbitrability, jurisdiction, limitation etc. before the learned Sole Arbitrator who shall decide the same in accordance with law.

17. It is clarified that the observations made herein are only for the purpose of deciding the present petition. The learned Sole Arbitrator shall adjudicate the disputes with claims and counter claims independently and on their own merits, uninfluenced by any observations contained in the present order.

18. The Registry is directed to send a receipt of this order to Mr. Mr. Anshul K. Bishnoi, learned Arbitrator through all permissible modes including email.



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19. Accordingly, the present petition is disposed of in the above terms.

OM PRAKASH SHUKLA, J

SEPTEMBER 28, 2026/gunn

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