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

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*Date of decision: 07<sup>th</sup> May, 2025*

+ ARB.P. 1199/2024

RINKOO AGGARWAL

.....Petitioner

Through: Mr. Aarush Bhandari, Mr. Dev Ahuja  
and Ms. Simran Jha, Advocates.

versus

GAURAV SABHARWAL &amp; ANR.

.....Respondents

Through: Mr. Dhruv Madan and Mr. Shivanshu  
Gusain, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition is preferred on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties emanate from a Memorandum of Understanding ('MoU') dated 25.11.2013 for purchase of two units ad measuring 2250 sq. ft. each at basic sale price Rs.21,000/- per sq. ft. in the project 'Lifestyle Street K8' (Kay Eight), proposed to be developed in Sector-129, Noida Expressway, Noida, by 'K. Rasa International Pvt. Limited'. Petitioner avers that it was an agreed term of the MoU that in view of the investment made by the Petitioner in K. Rasa International Pvt. Limited, all rights, title and interest in Unit No. B-04-31, Gurgaon Hills,



Gwal Pahari, Gurugram, Haryana would be transferred in the name of the Petitioner.

3. It is further stated that in furtherance of the MoU, Agreement to Sell was executed between the parties on 13.12.2013, transferring all rights in the apartment in favour of the Petitioner. It was agreed that out of total sale consideration of Rs.4,31,75,999.48, a sum of Rs.1,56,00,000/- would be paid by the Petitioner on or before 30.06.2014 and the balance sum was to be paid directly to the builder. Petitioner paid an amount of Rs.25 lacs by cheque on 22.12.2013 followed by another amount of Rs.21,13,547/- on 27.12.2013 and a sum of Rs. 20 lacs on 11.04.2014. It is further stated that addendum to the Agreement was executed on 12.08.2014 whereby it was agreed that the balance sum of Rs.1,51,00,000/- along with interest of 12% p.a. would be paid to Respondents No. 1 and 2 on or before 31.12.2014.

4. Grievance of the Petitioner is that the project in question was shelved as the land could not be procured and the MoU became void. Hence, Petitioner asked for cancellation of Agreement to Sell and refund of the payments made. Petitioner sent legal notices between May, 2015 till February, 2024 demanding the outstanding amounts but to no avail. Petitioner avers that on 04.03.2024, a legal notice was sent for termination of the MoU and Agreement to Sell and refund of the money outstanding. However, there was no response from the Respondents and Petitioner sent notice dated 22.04.2024, invoking the arbitration clause incorporated in the MoU and requested the Respondents to appoint a Sole Arbitrator to adjudicate the *inter se* disputes, but even to this there was no response and Petitioner was constrained to approach this Court.



5. Learned counsel for the Respondents raises an objection to the maintainability of the petition on the ground that it is barred by limitation having been filed 07 years from the date of issuance of invocation notice dated 12.01.2017 under Section 21 of the 1996 Act. It is urged that Petitioner has not disclosed the correct and material facts in the petition and has presented the case as though for the first time, invocation notice was sent by the Petitioner on 22.04.2024, which is wholly incorrect and a deliberate attempt to mislead the Court. It is argued that Petitioner had initially sent a legal notice of demand dated 26.11.2016 to which reply dated 30.12.2016 was sent by the Respondents. Responding to the reply, Petitioner through his counsel sent a rejoinder-cum-notice of invocation dated 12.01.2017 requesting for appointment of an Arbitrator. Taken from this date, this petition filed in 2024, is beyond a period of 3 years and hence barred by limitation. In support, reliance is placed on the judgment of the Supreme Court in *Arif Azim Company Limited v. Aptech Limited, 2024 SCC OnLine SC 215*.

6. Responding to the preliminary objection, learned counsel for the Petitioner submits that there is no misrepresentation by the Petitioner and all material and correct facts have been brought forth in the petition. It is argued that it is true that Petitioner had authorized his lawyer to send a legal notice dated 26.11.2016 to the Respondents but it is equally true that Petitioner was unaware of the reply dated 30.12.2016 allegedly sent by the Respondents to Petitioner's lawyer and learnt of this fact only from the reply filed in this Court. It is vehemently denied that Petitioner sent a rejoinder-cum-notice of invocation dated 12.01.2017 to the counsel for the Respondents. Learned counsel urges that after sending the legal notice on 26.11.2016, demanding



outstanding amounts from the Respondents, Petitioner did not give any instruction to the lawyer to follow up the matter and/or to send any communication to the Respondents, much less the stated invocation notice dated 12.01.2017. On learning of the said notice, Petitioner has already filed a complaint against the lawyer on 17.12.2024 in this regard. In this light, it is argued that since the invocation notice under Section 21 of the 1996 Act was sent by the Petitioner only on 04.03.2024, the petition is not barred by limitation.

7. Heard learned counsels for the parties.

8. The short question that arises for consideration before this Court is whether the present petition is barred by limitation. It is no longer *res integra* that the Limitation Act, 1963 applies to arbitration proceedings. This question came up for consideration before the Supreme Court in *Arif Azim Company Limited (supra)* and the Supreme Court held as under:-

***“(i) Issue 1 : 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 present petition is barred by limitation?”***

***45. The basic premise behind the statutes providing for a limitation period is encapsulated by the maxim “Vigilantibus non dormientibus jura subveniunt” which translates to “the law assists those who are vigilant and not those who sleep over their rights”. The object behind having a prescribed limitation period is to ensure that there is certainty and finality to litigation and assurance to the opposite party that it will not be subject to an indefinite period of liability. Another object achieved by a fixed limitation period is to only allow those claims which are initiated before the deterioration of evidence takes place. The law of limitation does not act to extinguish the right but only bars the remedy.***

***46. The plain reading of Section 11(6) of the 1996 Act, 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 1996 Act 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 1996 Act, it would be covered by Article 137 of the Limitation Act, 1963 which is the residual provision and reads as under:*

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

**48.** *In his authoritative commentary, International Commercial Arbitration, Wolters Kluwer, 3rd Edn., pp. 2873-75, 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 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.*

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*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 Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (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 & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd. [Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643] observed as follows : (SCC pp. 649-50, paras 14-17)*

*“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 [State of Orissa v. Damodar Das, (1996) 2 SCC 216] ) as well as the 1996 Act (see Grasim Industries Ltd. v. State of Kerala [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 [State of Orissa v. 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 [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 [Panchu Gopal Bose v. Port of Calcutta, (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 [Panchu Gopal Bose v. Port of Calcutta, (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 [Panchu Gopal Bose v. Port of Calcutta, (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 in original and 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 1996 Act 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.”*

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. Relevant paragraphs are as follows:-

*“53. It has been held in a catena of decisions of this Court that the limitation period for making an application seeking appointment of arbitrator must not be conflated or confused with the limitation period for raising the substantive claims which are sought to be referred to an Arbitral Tribunal. The limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of the parties to the other party and there has been either a failure or refusal on the part of the other party to make an appointment as per the appointment procedure agreed upon between the parties.*

*54. O.P. Malhotra in The Law and Practice of Arbitration and Conciliation, 3rd Edn., pp. 688-89 has summarised the position of law on the limitation period for a Section 11(6) petition thus:*

*“There is no specific period of limitation prescribed for making the*



*request under Section 11(6) to the Chief Justice or his designate, to take the necessary measure for appointing an arbitrator. Therefore, Article 137 of the Limitation Act, 1963, which provides the limitation period of three years for filing any other application for which no period of limitation is provided elsewhere in the third division of the Schedule to the Act from the day when the right to apply accrues. It is the residuary article in regard to the applications, and it can only be applied if no other article is applicable. It would only apply to an application where it is required by law to be made. It is restricted to applications for the exercise of the Acts and powers which the Court is not bound to perform suo motu. Therefore, the period of limitation for making a request under Section 11(6) is three years, and the limitation is to be counted from the date on which 30 days from the date of notice by one party to the other for appointing arbitrator expires. The question whether the claims/disputes made in reference to arbitration was valid is a question to be decided by the arbitrator, and not by the appointing authority of the arbitrator under Section 11(6) of the Act. The appointing authority is certainly required to ascertain whether the application under Section 11(6) of the Act was barred by time.”*

*(emphasis supplied)*

55. *Dr P.C. Markanda in Law Pertaining to Arbitration and Conciliation, 9th Edn., LexisNexis, pp. 550-51 has discussed on the applicability of law of limitation to a petition under Section 11(6) of the 1996 Act as follows:*

*“For the purpose of examining the right of the petitioner to apply under sub-section (6) for calculating the period of limitation, it is necessary to establish, in the first instance, the relevant date when the right to apply accrued in favour of the petitioner. It is the date on which the right to apply accrues that determines the starting point. The starting point does not coincide with the date on which the cause of action for filing a suit arises. Whether the claims of a party are barred by limitation or not is for the arbitrator to see, but it is the duty of the Court to see whether the application filed in the Court is within limitation or not. Limitation for filing application under sub-section (4) would commence only from the expiry of 30 days from the receipt of request mentioned in sub-section (4)(a) or (b) and the limitation for an application under sub-section (6) would commence from the happening of the contingencies mentioned in sub-clauses (a) or (b) or (c) thereof. The procedure prescribed under this section is mandatory and Article 137, Limitation Act providing for limitation shall apply.*

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*It would be entirely wrong to mix the two aspects, namely, whether there was any valid claim and secondly the claim to be adjudicated by the arbitrator was barred by time. As for the second matter, it is for*



*the arbitrator to see whether the claim was within limitation or not and the Court should confine itself to see whether the application made to the Court is within limitation. An application made more than three years after the accrual of cause of action is palpably time-barred and liable to be dismissed. Article 137 of the Limitation Act makes it obligatory for claims to be filed within 3 years of the rescission/termination of the contract. The right of action for the department starts from the date when the work is rescinded and not from the date when the balance work is got completed through another agency.*

*If the petitioner delays invocation of arbitration clause for months together for no justifiable cause after the period prescribed in the arbitration agreement had elapsed, the Court would not come to the rescue of such a party seeking appointment of arbitrator and the abnormal delay of more than a year cannot be condoned.”*

*(emphasis supplied)*

**56.** *This Court in BSNL v. Nortel Networks (India) (P) Ltd. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738] held thus : (SCC p. 752, paras 15-16)*

*“15. It is now fairly well settled that the limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30 days from issuance of the notice invoking arbitration. In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration [as contemplated by Section 21 of the Act] is made, and there is failure to make the appointment.*

*16. The period of limitation for filing a petition seeking appointment of an arbitrator(s) cannot be confused or conflated with the period of limitation applicable to the substantive claims made in the underlying commercial contract. The period of limitation for such claims is prescribed under various Articles of the Limitation Act, 1963. The limitation for deciding the underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an arbitrator. This position was recognised even under Section 20 of the Arbitration Act, 1940. Reference may be made to the judgment of this Court in J.C. Budhraj v. Orissa Mining Corpn. Ltd. [J.C. Budhraj v. Orissa Mining Corpn. Ltd., (2008) 2 SCC 444 : (2008) 1 SCC (Civ) 582] wherein it was held that Section 37(3) of the 1940 Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have commenced when one party to the arbitration agreement serves on the other party, a notice requiring the*



appointment of an arbitrator. Para 26 of this judgment [J.C. Budhraja v. Orissa Mining Corpn. Ltd., (2008) 2 SCC 444 : (2008) 1 SCC (Civ) 582] reads as follows : (SCC p. 460)

*'26. Section 37(3) of the Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have been commenced when one party to the arbitration agreement serves on the other party thereto, a notice requiring the appointment of an arbitrator. Such a notice having been served on 4-6-1980, it has to be seen whether the claims were in time as on that date. If the claims were barred on 4-6-1980, it follows that the claims had to be rejected by the arbitrator on the ground that the claims were barred by limitation. The said period has nothing to do with the period of limitation for filing a petition under Section 8(2) of the Act. Insofar as a petition under Section 8(2) is concerned, the cause of action would arise when the other party fails to comply with the notice invoking arbitration. Therefore, the period of limitation for filing a petition under Section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for making a claim. The decisions of this Court in Inder Singh Rekhi v. DDA [Inder Singh Rekhi v. DDA, (1988) 2 SCC 338] , Panchu Gopal Bose v. Port of Calcutta [Panchu Gopal Bose v. Port of Calcutta, (1993) 4 SCC 338] and Utkal Commercial Corpn. v. Central Coal Fields Ltd. [Utkal Commercial Corpn. v. Central Coal Fields Ltd., (1999) 2 SCC 571] also make this position clear.' "*

*(emphasis supplied)*

*57. The other way of ascertaining the relevant point in time when the limitation period for making a Section 11(6) application would begin is by making use of Hohfeld's analysis of jural relations. It is a settled position of law that the limitation period under Article 137 of the Limitation Act, 1963 will commence only after the right to apply has accrued in favour of the applicant. As per Hohfeld's scheme of jural relations, conferring of a right on one entity must entail the vesting of a corresponding duty in another. When an application under Section 11(6) of the 1996 Act is made before this Court without exhausting the mechanism prescribed under the said sub-section, including that of invoking arbitration by issuance of a formal notice to the other party, this Court is not duty-bound to appoint an arbitrator and can reject the application for being premature and non-compliant with the statutory mandate. However, once the procedure laid down under Section 11(6) of the 1996 Act is exhausted by the applicant and the application passes all other tests of limited judicial scrutiny as have been evolved by this Court over the years, this Court becomes duty-bound to appoint an arbitrator*



*and refer the matter to an Arbitral Tribunal. Thus, the “right to apply” of the applicant can be said to have as its jural correlative the “duty to appoint” of this Court only after all the steps required to be completed before instituting a Section 11(6) application have been duly completed. Thus, 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 part of that other party in complying with the requirements mentioned in such notice.”*

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. Relevant passages from the judgment are as follows:-

*“128. 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 Act, 1996. Further, we also held that it is the duty of the referral court to examine that the application under Section 11(6) of the Act, 1996 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 paragraph 56 of the said decision that “the limitation period for filing a petition under Section 11(6) of the Act, 1996 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 part of that other party in complying with the requirements mentioned in such notice.”*

**129.** *Insofar as the first issue is concerned, we are of the opinion that the observations made by us in Arif Azim (supra) do not require any clarification and should be construed as explained therein.*

**130.** *On the second issue it was observed by us in paragraph 67 that the referral courts, while exercising their powers under Section 11 of the Act, 1996, 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.”*

**131.** *Our findings on both the aforesaid issues have been summarised in paragraph 89 of the said decision thus:—*

*“89. 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 Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test - first, whether the petition under Section 11(6) of the Act, 1996 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.”*

**132.** *Insofar as our observations on the second issue are concerned, we clarify that the same were made in light of the observations made by this Court in many of its previous decisions, more particularly in Vidya Drolia (supra) and NTPC v. SPML (supra). However, in the case at hand, as is evident from the discussion in the preceding parts of this judgment, we have had the benefit of reconsidering certain aspects of the two decisions referred to above in the light of the pertinent observations made by a seven-Judge Bench of this Court in In Re : Interplay (supra).*

**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)*.*

*134. The observations made by us in *Arif Azim (supra)* are accordingly clarified. We need not mention that the effect of the aforesaid clarification is only to streamline the position of law, so as to bring it in conformity with the evolving principles of modern-day arbitration, and further to avoid the possibility of any conflict between the two decisions that may arise in future. These clarifications shall not be construed as affecting the verdict given by us in the facts of *Arif Azim (supra)*, which shall be given full effect to notwithstanding the observations made herein.”*

11. It is thus evident that two kinds of limitations may come into play in a petition under Section 11(6) of the 1996 Act : (a) where the petition under Section 11(6) may be barred by limitation having been filed beyond a period of 3 years from the date when the right to apply accrues in favour of the applicant; and (b) where the claims sought to be referred to arbitration may be *ex facie* time barred and/or dead claims. The decision with respect to time barred claims in the latter category is to be left to the Arbitrator, as held by the Supreme Court in *SBI General Insurance Co. Ltd. (supra)*. However, the objection falling under the former category has to be examined by the referral Court.

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



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slumber in 2024 and again sent an invocation notice, only to overcome the bar of limitation, as an afterthought.

14. In my view, this petition is barred by limitation and cannot be entertained and is accordingly dismissed.

**JYOTI SINGH, J**

**MAY 07, 2025/YA/RW/Shivam**