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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: 13.05.2025+ ARB.P. 1029/2024 & IA No.41353/2024

TIRUPATI CONSTWELL PRIVATE LIMITED Petitioner
Through: Mr. Tanmay Mehta, Mr. Vijay
Kasana, Ms. Chetna Singh and
Mr. Chirag Verma, Advocates.
versus

DELHI STATES EMPLOYEES FEDERATION CGHS LTD
..... Respondent
Through: Mr. Shashank Garg, Mr. Aman Garg,
Ms. Nishtha Garg and Mr. Akarsh
Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

FACTUAL MATRIX

1. The present petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'A&C Act') seeks appointment of arbitrator(s) to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the backdrop of a letter dated 24.10.2005, in terms of which the petitioner was awarded a tender for 'Civil, Sanitary and Electrical work (bother external and internal electrification) including External Development work of 131 Dwelling Units of D.S.N.E.F Cooperative Group Housing Society Ltd. at plot no.1, Sector - 19, Dwarka, Phase-I, New Delhi' (hereinafter '*the project*') by the respondent.



3. Pursuant thereto, an agreement dated 31.10.2005 was executed between the parties for the execution of the project. Under the agreement, the drawings and specifications describing the work, were to be prepared by an architecture consultancy firm name and styled as M/s Khurmi Associates Pvt. Ltd (hereinafter '*the architect firm*').

4. The disputes between the parties have arisen on account of alleged failure of the respondent to clear petitioner's running account bills amounting to Rs. 80,92,26,992/-. It is stated that as per the agreement, the respondent was obligated to clear the outstanding dues within a month from receiving running bills from the petitioner. It is further submitted that the respondent during the subsistence of the agreement never disputed the aforesaid outstanding payment and time and again reassured the petitioner that the said outstanding amount will be duly paid.

5. Disputes having arisen between the parties, a conciliation notice dated 11.12.2018 was issued by the petitioner to the respondent. The respondent, *vide* letter dated 10.10.2019, vehemently opposed the averments made and advised the petitioner to recall/withdraw the aforesaid notice.

6. Since the disputes between the parties persisted, the petitioner *vide* a notice dated 22.02.2019, sought to invoke arbitration as per clause 39.1 of the agreement, for adjudication of disputes between the parties. The arbitration clause in the agreement executed between the parties reads as under:

"39. *Dispute & Arbitration*

39.1 In case of any dispute arising out of execution of this works, Items, Terms and Conditions of the Contract, at first instance it shall be decided by the Architects and Owner. In case of disagreement, the dispute shall be referred to arbitration. The panel of arbitrators shall comprise one person appointed by the Owner. One person appointed by the Contractor



and third shall be Architect. The provisions of the new Arbitration and Conciliation Act, 1996 and rules made there under shall apply to the arbitration proceedings. The decision of the Arbitrators shall be final and binding on both the parties.”

7. While respondent's response to invocation notice was awaited, the petitioner vide letter dated 15.03.2019 also issued a notice to the architect firm seeking its consent to act as an arbitrator. The same reads as under :

“Date: 15.03.2019

*To,
M/s. Khurmi Associates Pvt. Ltd.
Through: Managing Director
16, Jangpura Extension Market,
New Delhi-110014*

SUBJECT: Seeking your consent to act as an arbitrator

Dear Sir,

As you are aware that Delhi States Employees Federation C.G.H.S. Ltd. (referred to as “Society”) was constructed by our company, Tirupati Constwell Pvt. Ltd. (referred to as “Company”). The payments of constructions were to be cleared by the Society in accordance with contract however, the Society has failed to make the complete payments. The company had sent notice dated 11.12.2018 to the Society for conciliation proceedings however, the said request of the company was rejected and therefore, in accordance with clause 39 of the Agreement between the company and society, the company vide its letter dated 22.02.2019 has invoked arbitration clause and nominated Shri Anil Sharma, Advocate to adjudicate disputes between the company and further requested the society to nominate Second arbitrator on its behalf. Sir, as you are aware, as per the arbitration clause the Architect has to act as the third arbitrator and therefore the company is requesting you to give your consent to act as an arbitrator to adjudicate the disputes between the Society and the Company. The arbitration clause is reproduced for your reference:

39.1. In case of any dispute arising out of this works, items, terms, and conditions of the contract, at first instance it shall be decided by the architects and owners, In case of disagreement, the dispute shall be referred to arbitration. The panel of arbitrators shall comprise one person appointed by the Owner. One person appointed by the



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Contractor and third shall be the Architect. The provisions of the new Arbitration and Conciliation Act 1996 and rules made there under shall apply.

Sir, in view of the above, the company requests your kind self to give your consent to act as the Arbitrator to adjudicate and decide disputes between the Company and Society.

*Thanking you,
Sd/-*

TIRUPATI CONSTWELL PRIVATE LIMITED,
Through Its Director: Shri Subhash Dabas
Plot No. 3, Sector-10,
Dwarka City Centre,
Dwarka, New Delhi.”

8. Subsequently, vide a letter/communication dated 16.03.2019 respondent responded to the notice of invocation and refused to consent for arbitration. The aforesaid letter/communication reads as under:

“SPEED POST

Dated: 16-03-2019

TO
Tiruputi Constwell Pvt. Ltd
Through its Director
Mr. Subash Dabas.
Plot No.3, Sector-10,
Dwarka City Centre, Dwarka,
New Delhi

REPLY TO NOTICE DATED 22/02/2019

Under the instruction and on behalf of my client The Delhi State Newspaper Employees Fedration CGHS Ltd. Through its Administrator, Mr. Jagat Bhushan Kapil, Plot No.1, Sector-19, Dwarka, New Delhi, I do hereby serve upon you reply to legal notice dated 20/02/2019 to the following effects:

- 1. That as the complete records pertaining to the society have never been provided by the previous Management Committee, hence the copy of agreement/ contract if any is not available with my client.*
- 2. That without prejudice to the agreement/contract, if any, it is further submitted on behalf of my client that the clause of arbitration as mentioned in the para 10 of the notice dated 20/02/2019 cannot be verified as my client is not in possession of the agreement referred to in*



the notice in reply as the same is in the possession of the alleged Management Committee comprising of the following members namely Mr. Kulbeer Singh, Mr. Narender Kumar, Mr. D.K. Tandon, Mr. Mukesh Sharma, Mr. Kapil Kumar, Ms. Vandana Sharma and Ms. Manju Doohan, the said record has not been handed over to the Administrator and the Advisory Committee of the society till date.

3. That as there is no valid agreement for arbitration between you and my client, hence the courts of Delhi is having jurisdiction over all the matter between you and my client.

4. That my client has already served you reply to the legal notice dated 11/12/2018, hence all the allegations levelled by you in the notice are denied in toto.

It is therefore I call upon you through this reply to withdraw the notice dated 22/02/2019 and also supply complete copy of agreement mentioned in the notice dated 22/02/2019 immediately so the Administrator alongwith the advisory committee and all members of the society can take a considered decision.

Therefore, the society, at this moment of time, is not in a position to send an affirmative reply. You, being in adverse possession of the rightful records of the society, are called upon to make available the said record immediately so that a considered reply could be sent.

A copy of this reply is being kept in my office for further reference and records.

*Yours truly,
Sd/-
(NAGENDER DESWAL)
Advocate”*

9. It is averred in the present petition that since the respondent declined to participate in arbitration, Mr. Harpreet Singh Khurmi of the architect firm (the architect) acted in capacity of a mediator as per the agreement and issued notice dated 27.03.2019 to the parties, for exploring the possibility of arriving at an amicable resolution through mediation. However, amicable resolution could not be arrived at and the said arbitrator/mediator on 24.08.2019 recused from the proceedings, with liberty to the petitioner to



appoint an arbitrator(s) in accordance with law.

10. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of arbitrator(s) to adjudicate the dispute between the parties.

SUBMISSION ON BEHALF OF THE PETITIONER

11. Learned counsel of the petitioner strongly relies upon a communication dated 27.03.2019 issued by the architect firm, calling upon the respondent “to discuss” the matter, in order “to reach to an Agreement”. It is stated that the said communication was issued in the aftermath of the petitioner issuing a notice invoking arbitration dated 22.02.2019, and a subsequent letter dated 15.03.2019 to the architect firm, calling upon the latter to give consent to act as one of the arbitrators. The communication dated 27.03.2019 reads as under: -

“Administrator,
Delhi State Newspaper Employees
Federation CGHS Ltd.,
Plot No.-1, Sector-19,
Dwarka,
New Delhi-75

27-3-2019

Sub: Letter from M/S Tirupati Const. Well Pvt Ltd dated 15-3-19.

Dear Sir,

We are in receipt of a Letter from M/s Tirupati Const Well Pvt Ltd., dated 15-3-2019 seeking consent from us to act as an Arbitrator as per clause 39.1 of the Agreement dated 31-10-2005 entered between your Society Delhi State Newspaper Employees Federation CGHS Ltd (Employer) and their company M/S Tirupati Const Well Pvt Ltd (Contractor), they are invoking the Arbitration Clause mentioning that the Society has failed to make payments and that they have sent notices for the same.

With reference to the same clause in the Agreement we hereby call upon



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you to discuss with us on the 3rd of April any time between 10 am to 5 pm) in our office any dispute arising out of execution of this work, items, terms and conditions of the contract to reach to an Agreement amongst us.

Regards,

For Khurmi Associates Pvt Ltd.

Sd/-

Director

(M)-9810198424

Cc:M/S Tirupati Const Well Pvt Ltd.

For TRUPATI CONST WELL (P) LTD

Sd-

Director”

12. It is submitted that pursuant to issuance of the aforesaid communication, another communication dated 04.06.2019 was sent by the architect firm to the respondent. The said communication reads as under: -

*“Administrator,
Delhi State Newspaper Employees
Federation CGHS Ltd.,
Plot No-1, Sector-19,
Dwarka,
New Delhi-75.*

04-06-2019

Sub: Letter from M/S Tirupati Const. Well Pvt Ltd dated 15-3-19.

Dear Sir,

This is with reference to the above mentioned subject, further our letter dated 27-3-19 for a meeting to discuss the letter received from M/S Tirupati Const Well Pvt Ltd., and your reply 3-4-19 citing busy schedule due to the ongoing elections during that time and if that can be postponed to a convenient date later.

We again hereby call upon you to discuss the same issue on the 20th June, 2019 any time between 2-5 pm in our office any dispute arising out of the execution of this work, items, terms and conditions of the contract to reach to an Agreement amongst us.

Regards,

For Khurmi Associates Pvt Ltd.



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Sd/-
Director
(M)-9810198424
Cc: M/S Tirupati Const Well Pvt Ltd.

For TRUPATI CONST WELL (P) LTD.
Sd/-
Director”

13. Thereafter, “proceedings” were purportedly held on 20.06.2019, 15.07.2019, 30.07.2019 and 24.08.2019 by an architect, being a member of the “architect firm”. It is submitted that on each of these dates “proceedings” were issued by the architect. However, on 24.08.2019, the Architect recused from the said “proceedings”. The reasoning accorded for the same reads as under: -

“.....

Reply by Hand is received on behalf of the Delhi State Newspaper Employees Federation CGHS Ltd, aspersions have been casted on my acting as the Arbitrator, though the Society participated in the mediation proceedings but has chosen to question my impartiality to act as an Arbitrator, without going into the allegations, I hereby decline to act as an Arbitrator.

In view of the above Tirupati Const Well Pvt Ltd., to take action as per law to appoint an Arbitrator.”

14. In the above backdrop, it is contended that the period that was spent between 27.03.2019 (date on which the first communication was issued by the Architect) to 24.08.2019 is to be excluded for the purpose of reckoning whether the present petition has been filed within the period of limitation.

15. It is acceded by the learned counsel for the petitioner that on issuance of notice invoking arbitration, the limitation period for filing a petition under Section 11 of the A&C Act, seeking constitution of an arbitral tribunal begins to run. However, it is contended that the period spent before architect in the “proceedings” are in the nature of mediation (between 27.03.2019 to



24.08.2019) and therefore liable to be excluded for reckoning whether the present petition filed by the petitioner on 02.07.2024 is within the period of limitation or not.

16. Learned counsel for the petitioner further concedes that if the aforesaid period is not excluded, then the present petition is time barred for having been instituted beyond the prescribed period of limitation, which began to run upon issuance of the notice invoking arbitration.

17. Learned counsel for the petitioner relies upon the following judgements in support of his contention that the period between 27.03.2019 to 24.08.2019 is liable to be excluded for the purpose of adjudging whether the present petition has been filed within the period of limitation :

- (i). ***Shree Ram Mills Ltd. v. Utility Premises (P.) Ltd.***, 2007 4 SCC 599 ;
- (ii) ***Shri KR Anand v. NDMC***, 2024 SCC OnLine Del 8388;
- (iii) ***Blooming Orchid v. FP Life Education Foundation***, 2024 SCC OnLine Del 3691;
- (iv) ***Unisys Infosolutions Pvt. Ltd. v. Gurbani Media Pvt. Ltd*** 2024 SCC OnLine Del 1280 ;
- (v) ***Bharat Singh v. Karan Singh & Ors.***, 2025 SCC OnLine Del 691.

18. It is also contended by the learned counsel for the petitioner that in terms of judgments rendered by the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 SCC OnLine SC 1754 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666, issue as to whether the claims themselves are barred or not is an aspect that is required to be left for consideration by the Arbitral Tribunal.



SUBMISSION ON BEHALF OF THE RESPONDENT

19. Learned counsel for the respondent controverts the aforesaid submissions made on behalf of the petitioner. He contends that the period between 27.03.2019 to 24.08.2019 cannot be excluded for reckoning whether the present petition has been filed within the period of limitation; it is squarely denied that any mediation proceedings took place between the parties. Reference in this regard is made to the communications issued by the Architect as also the “proceedings” that were issued by the Architect during the period between 27.03.2019 to 24.08.2019 to contend that by no stretch of imagination can it be said that any mediation proceedings or any *inter-se* discussions took place between the parties during the aforesaid period. As such, it is contended that the present petition is hopelessly time barred and deserves to be dismissed.

20. It is further emphasized that the claims sought to be raised by the petitioner are also stale and hopelessly time barred. He submits that the judgment of the Supreme Court ***SBI General Insurance Co. Ltd. v. Krish Spinning*** (supra) does not preclude this Court from weeding out claims which are deadwood even at a stage of adjudging an application under Section 11 of the A&C Act.

REASONING AND CONCLUSION

21. At the outset, it is necessary to examine the sequence of events as transpired in the aftermath of the issuance of notice invoking arbitration.

22. Pursuant to issuance of notice invoking arbitration by the petitioner to the respondent, the petitioner addressed a letter to the Managing Director of



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the concerned architect firm on 15.03.2019 apprising that arbitration had been invoked *vide* letter dated 22.02.2019 as per Clause 39.1 of the Contract and in terms thereof, the Architect was required to be one of the members of the three-member Arbitral Tribunal. Consequently, the Architect/Managing Director of the architect firm was requested “*to give your consent to act as the Arbitrator to adjudicate and decide disputes between the company and society*”.

23. It can be seen that there was no request whatsoever made to the Architect to act as a mediator for amicable resolution of the disputes between the parties, prior to adjudication by way of arbitration.

24. Subsequently, the Architect, referring to the notice invoking arbitration dated 22.02.2019, issued communications dated 27.03.2019 and 04.06.2019 to the respondent (which have been reproduced hereinabove). It is noticed that the said communications merely record by way of narration that the petitioner had sought consent from the architect to act as arbitrator and calling upon the parties for a discussion.

25. The aforesaid communications do not contain any reference to any request from either of the parties requesting the Architect to act as a mediator or conciliator in the matter.

26. Thereafter, on subsequent occasions, the Architect issued “proceedings” on 20.06.2019, 15.07.2019, 30.07.2019 and 24.08.2019. The same read as under:-

“Proceeding relating to Arbitration in the matter of Tirupati Const. Well Pvt Ltd vs DSNEF, CGHS Ltd.

Pursuant to the notice issued to the Society for the 20th June 2019, Sh J.B. Kapil, Administrator of the Delhi State Newspaper Employees Federation CGHS Ltd., is present today.



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None is present on behalf of the Tirupati Const Well Pvt Ltd., notice having not been issued for the same.

The Society representative/ Administrator asked for the copies of the claim filed before me by the Tirupati Const Well Pvt Ltd along with all the additional documents on the basis of which this claim has been filed.

Tirupati Const Well Pvt Ltd is directed to provide all documents related within 15 days.

Next date fixed for 15th July, 2019

Sd/-

*Harpreet Singh Khurmi
Arbitrator
M-9810198424*

*For Trupati Const Well (P) Ltd.
Sd/-
Director”*

“Proceeding relating to Arbitration in the matter of Tirupati Const. Well Pvt Ltd vs DSNEF, CGHS Ltd.

Pursuant to the notice issued to parties for the 15th July 2019, Sh Subhash Dabas, M.D of Tirupati Const Well Pvt Ltd. is present today. None is present on behalf of the Delhi State Newspaper Employees Federation CGHS Ltd.

Mr Subhash Dabas has submitted photocopies of Legal Notice served to the Society by their firm, Reply of the Advocate of M/S Delhi State Newspaper Employees Federation CGHS Ltd., copy of the Agreement based on which the payment is due to him. The same is being forwarded to the Society.

Next date fixed for 30th July, 2019

*Harpreet Singh Khurmi
Arbitrator
M-9810198424*

*For Tirupati Const Well (P) Ltd.
Sd/-
Director”*

“Proceeding relating to Arbitration in the matter of Tirupati Const. Well Pvt Ltd vs DSNEF, CGHS Ltd.



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Pursuant to the notice issued to parties for the 30th July 2019. None present.

Reply by Hand is received on behalf of the Delhi State Newspaper Employees Federation CGHS Ltd, aspersions have been casted on my acting as the Arbitrator, though the Society participated in the mediation proceedings but has chosen to question my impartiality to act as an Arbitrator, without going into the allegations, I hereby decline to act as an Arbitrator.

In view of the above Tirupati Const Well Pvt Ltd., to take action as per law to appoint an Arbitrator.

Sd/-

Harpreet Singh Khurmi

Arbitrator

M-9810198424

Dated: 24-08-2019

For Tirupati Const Well (P) Ltd.

Sd/-

Director”

27. It is noticed that in each of the aforesaid “proceedings”, the concerned Architect describes himself as an Arbitrator. The said proceedings clearly do not reflect that the concerned Architect was asked by either of the parties to act as a mediator at any point of time. In fact, in the final “proceedings” dated 24.08.2019, the Architect records that the respondent herein had “questioned his impartiality to act as Arbitrator”.

28. In the above circumstances, it cannot be said that at any point of time after issuance of the notice invoking arbitration “bonafide negotiations” were conducted or that the Architect was authorized to act as a mediator. It is trite law that the limitation for filing of an application under Section 11 of the A&C 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 notice¹”.

29. In the present case, it is clear that the petitioner had sent a notice invoking arbitration which was responded on 16.03.2019, which unequivocally and emphatically denies/ refutes arbitration. Thus, it is clear that the aforesaid reply was a refusal on part of the respondent in complying with the requirements mentioned in such notice, and therefore, the limitation by virtue of Section 9 of Limitation Act, 1963² began to run from 16.03.2019 and never stopped at any subsequent point.

30. The Supreme Court in ***Geo Miller & Company Pvt. Ltd. vs Chairman, Rajasthan Vidyut Utpadan Nigam Ltd*** (2020) 14 SCC 643, contemplates that notwithstanding that limitation has begun to run, the period during which parties were “bonafide negotiating towards an amicable settlement”³ would be excluded for the purpose of reckoning whether a petition filed under Section 11(6) of A&C Act was filed within the period of limitation.

31. However, in the present case, the communications / “proceedings” issued by the Architect, which can be best described as inchoate, cannot be

¹**SBI General Insurance Co. Ltd. v. Krish Spinning**(Supra)

²9. Continuous running of time. —Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stop it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.

³ “28. Having perused through the relevant precedents, we agree that on a certain set of facts and circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act. However, in such cases the entire negotiation history between the parties must be specifically pleaded and placed on the record. The Court upon careful consideration of such history must find out what was the “breaking point” at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration. This “breaking point” would then be treated as the date on which the cause of action arises, for the purpose of limitation. The threshold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim.”



construed, by any stretch of imagination, as reflecting any “bonafide negotiations”. In fact, as noticed, neither of the parties ever requested the architect to act as mediator or to seek to encourage the parties to have bonafide negotiations to amicably resolve the disputes. Apparently, the architect was purporting to act as arbitrator even without an Arbitral Tribunal being constituted.

32. In such a situation, it cannot be said that the period between 27.03.2019 to 24.08.2019 is liable to be excluded for reckoning the period of limitation on the basis that bonafide negotiations were taking place between the parties.

33. The judgments, relied upon by the learned counsel for the petitioner, are clearly distinguishable. In ***Blooming Orchid v FP Life Education Foundation*** (supra), a termination letter had initially been issued but was thereafter withdrawn, subsequent to which, a notice invoking arbitration was sent. Pursuant thereto, the parties admittedly conducted bonafide negotiations which, however, failed. It was, thereafter, that a second notice under Section 21 of the A&C Act came to be issued. In the aforesaid background, it was held that the period spent by the parties in conducting negotiations for the purpose of settling the disputes ought to be excluded for ascertaining the date when the cause of action accrued. In the said judgment it was specifically observed as under:-

“25. In the Case of Geo Miller And Company Private Limited (Supra), it has been observed that period during which the parties were bonafide negotiating towards an amicable settlement, may be excluded for the purpose of computing the period of limitation for reference to Arbitration under 1996 Act. However, in such Cases, the entire negotiation history between the parties, must be specifically pleaded and placed on record. The Court must carefully consider the entire history to find out the breaking point at which any reasonable



party would have abandoned efforts of arriving at a settlement and contemplate referral of the dispute for Arbitration. This breaking point would then be treated as the day on which the cause of action arises for the purpose of limitation.

xxx

xxx

xxx

28. In the present case, as has already been discussed above, the negotiation talks took place from February to July, 2020, which again got resumed from January till March 2021, thereby establishing that all sincere efforts were being made mutually by both the parties, to settle their disputes. Thus, this period from February 2020 till March 2021, is liable to be excluded for ascertaining the date, when the cause of action accrued.”

34. As such, the aforesaid judgment, rather than advancing the case of the petitioner, advances the case of the respondent.

35. Again, in ***Unisys Inforsolutions Pvt. Ltd. v. Gurbani Media Pvt. Ltd.*** (supra) the respondent therein raised an objection to the validity of the initial Notice dated 29.07.2016 on the ground that the contractual requirement of amicable settlement mechanism, as contemplated in the Agreement was not exhausted. It was an admitted position that parties thereafter actively engaged in settlement process. Further, it was specifically found in the facts of that case that in view of the “mutual discussion” undertaken by the parties, the period in which the parties were engaged in settlement process is liable to be excluded. The relevant portion of the judgment reads as under: -

“45. In the present case, Clause 28 of the agreement dated 8-1-2015 requires the parties to attempt at amicably settling the disputes before resorting to arbitration. The respondent had itself objected to notice of invocation dated 29-7-2016 and appointment of arbitrator pursuant thereto, in the light of settlement process as contemplated in the agreement, not having been exhausted by the petitioner. The proceedings before the arbitrator was consequently abandoned by the petitioner as the respondent not only objected to the unilateral appointment of the sole arbitrator, but also objected to the commencement of arbitration without exhausting the amicable settlement mechanism.



46. *It is the admitted position of the parties that thereafter they actively engaged in a settlement process through mails, meetings from 29-7-2016 to 25-4-2017. In these circumstances, the period taken in mutual discussions, has to be necessarily excluded.”*

36. In the present case, unlike in ***Unisys Inforsolutions Pvt. Ltd.*** (supra), the parties did not engage in a discernible settlement process so as to oust/exclude the period thereof for the purpose of reckoning limitation.

37. The judgment rendered by the Supreme Court in ***Shree Ram Mills Ltd. v. Utility Premises*** (supra), also does not advance the case of the petitioner at all. In that case, primary issue that was urged was that no live dispute/s exists between the parties. Further, in the facts of that case, the petition under Section 11(6) of the A&C Act was filed almost within a period of two months after the date of issuance of the notice invoking arbitration. As such, the said judgment is clearly distinguishable.

38. The judgment rendered by this Court in ***Shri K.R. Anand v. NDMC*** (supra) also does not advance the case of the petitioner inasmuch as to ascertain whether an application filed under Section 11 of the A&C Act is barred by limitation, period of limitation “*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*”. In the aforesaid conspectus, even though the invocation notice was invoked after a hiatus of 10 years, the date of issuance of the said notice being 26.08.2024 resulted in the petition filed before the Court being within the period of limitation.

39. In ***Bharat Singh v. Karan Singh & Ors.*** (supra), issue that fell for consideration before a co-ordinate Bench of this Court was whether the time



period for filing a written statement would begin to run notwithstanding that the parties were engaged in mediation proceedings. In the aforesaid context, the Court excluded the time period spent in mediation for calculating limitation. However, what is important to note is that the mediation proceedings commenced pursuant to the request of the parties which was duly recorded in an order dated 02.11.2022 passed by the Court.

40. As noticed hereinabove, in the present case, there is nothing whatsoever on record from which it can be discerned that any “mediation” or “bonafide negotiations” took place after the notice of invocation of arbitration was issued on 22.02.2019. Moreover, the said notice *vide* communication dated 16.03.2019 was promptly denied by the respondent.

41. In the circumstances, it is evident that the period between 27.03.2019 to 24.08.2019, cannot be excluded for the purpose of adjudging whether the present petition has been filed within the period of limitation.

42. As noticed above, learned counsel for the petitioner has acceded that if the said period is not excluded, the present petition would be beyond the prescribed period of limitation.

43. In terms of judgment rendered by the Supreme Court in **Arif Azim Co. v. M/s Aptech Ltd.**, 2024 5 SCC 313, it is incumbent on this Court to examine whether a petition filed under Section 11 of the A&C Act is beyond the period of limitation. In **Arif Azim Co.v. M/s Aptech Ltd.** (supra), it has been clearly held as under: -

“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.”

44. The said portion of **Arif Azim Co. v. M/s Aptech Ltd.** (supra) has been clarified in **SBI General Insurance Co. Ltd. v. Krish Spinning** (supra), wherein it has been observed as under:

“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.”

45. In the circumstances, the present petition is dismissed, inasmuch as the same has been filed beyond the prescribed period of limitation. The pending application also stands disposed of.

SACHIN DATTA, J

MAY 13, 2025/sl, r