



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION (L) NO.5187 OF 2026

Edelweiss Financial Services Limited
(Formerly known as Edelweiss Capital
Limited)]

...Applicant

V/s.

1. Percept Finserve Private Limited
2. PERCEPT Limited
(Formerly known as Percept Picture
Company Limited),

...Respondents

Mr. Kevic Setalvad, *Senior Advocate with Mr. Biju Mattam and Mr. Shalaj Mridul i/b. Ms. Sharon Patole for the Applicant.*

Mr. Hrushi Narvekar *with Ms. Shaheda Madraswala, Ms. Laleh Pandole, Ms. Sharanya Sahadevan i/b. M/s. Vashi & Vashi for Respondent No.1.*

Mr. Aditya Mapara *i/b. M/s. Dhruve Liladhar & Co. for Respondent No.2.*

CORAM: SANDEEP V. MARNE, J.

DATED: 9 MARCH 2026.

Judgment:

1) This is an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the **Arbitration Act**) for constitution of Arbitral Tribunal for commencement of fresh arbitral proceedings after setting aside of the arbitral Award by the Court.

2) Applicant carries on business of financial services including investments, consultancy, and merchant banking. On 8 December 2007 a Share Purchase Agreement (**SPA**) was executed between the Applicant-Edelweiss Financial Services Limited (**Edelweiss**) as Investor/Purchaser, Respondent No.1- Percept Finserve Private Limited (**Percept**) as Seller and Respondent No.2- Percept Picture Company Limited (**the Company**), under which Applicant purchased 2,28,374 equity shares of the second Respondent -Company representing 9.83% of issued and paid up equity share capital for an aggregate consideration of Rs.20,000,000/-. The SPA was subsequently amended vide Deed of Rectification dated 21 April 2008.

3) According to the Applicant-Edelweiss, the SPA contained critical 'Conditions Subsequent' in clauses 8.5 and 8.5.1 of the SPA requiring the Respondents to complete the exercise of restructuring of the Percept Group within the stipulated time and in the event of non-fulfillment of said 'Condition Subsequent' the Applicant had right to resell the subject equity shares back to the selling shareholder or to its affiliates at a price, which would yield 10% Internal Rate of Return (**IRR**) on the purchase consideration paid for the equity shares.

4) According to the Applicant, Respondents failed to complete the restructuring by the deadline and allegedly committed breaches of the SPA. This is how disputes and differences arose between the parties which, led to invocation of arbitration in terms of clause No.13 of the SPA vide notice dated May 6, 2009. By order dated 13 August 2009 passed in Arbitration Petition No.388 of 2009, this Court appointed a sole

Arbitrator with the consent of parties and referred the disputes for arbitration.

5) The learned sole Arbitrator entered the reference. On 6 June 2013, the learned sole Arbitrator made an Award *inter-alia* holding that clauses 8.5 and 8.5.1 of the SPA were illegal and unenforceable and accordingly, dismissed the claim of the Applicant even though it was held that Respondents had committed breach of the 'conditions subsequent'. The Applicant challenged the Award dated 6 June 2013 under Section 34 of the Arbitration Act in Commercial Arbitration Petition No.220 of 2014 before this Court. By judgment and order dated 27 March 2019, this Court overturned the Arbitral Tribunal's findings of illegality and unenforceability of clauses 8.5 and 8.5.1 and set aside Award dated 6 June 2013. After the Award was set aside, the Applicant made a demand of Rs.59,43,99,314/- against the Respondents. The Respondents filed Appeal under Section 37 of the Arbitration Act challenging the order passed by the learned Single Judge on 27 March 2019. Commercial Appeal (L) No.284 of 2019 filed by the Respondents was dismissed by the Division Bench by order dated 2 February 2023. The Respondents challenged the order dated 2 February 2023 of Appeal Court before the Hon'ble Supreme Court by Special Leave to Appeal (c) No.6319 of 2023. The Hon'ble Supreme Court dismissed the SLP by order dated 10 April 2023.

6) Applicant issued notice dated 25 November 2025 under Section 21 of the Arbitration Act invoking the arbitration for commencement of fresh arbitration and proposed the name of an Arbitrator. Since Respondents failed to respond to the notice within a period of 30 days,

the Applicant has filed the present Application under Section 11(6) of the Arbitration Act.

7) Mr. Setalvad, the learned Senior Advocate appearing for the Applicant submits that the Applicant is entitled to commence the arbitral proceedings after setting aside the Award by Section 34 Court under provisions of sub-section (4) of Section 43 of the Arbitration Act. He submits that the disputes are arbitrable as is apparent from prior arbitral proceedings, which ultimately culminated into order dated 10 April 2023 passed by the Supreme Court. That since no other Arbitrator is appointed till date and since the procedure mutually agreed by the parties for appointment of Arbitrator has failed, the Applicant has filed the present Application under Section 11(6) of the Arbitration Act.

8) Mr. Setalvad further submits that the present Application filed by the Applicant is perfectly within limitation. That notice under Section 21 of the Arbitration Act for commencement of arbitral proceedings has been issued on 25 November 2025 and that therefore, the Application is filed within prescribed period of limitation of three years. He submits that even the claim of the Applicant is within limitation since the period from the date of commencement of previous round of arbitration (May 6, 2009) till dismissal of the SLP by the Hon'ble Supreme Court (April 10, 2023) is required to be calculated while computing the limitation period for present round of arbitration under Section 43(4) of the Arbitration Act. He submits that expression 'Court' used in Section 43(4) of the Arbitration Act means the last court which was in *sessin* of Award passed in previous arbitral proceedings, which in the present case would be the Hon'ble Supreme Court.

9) Without prejudice to the contention that the claim of the Applicant is within limitation, Mr. Setalvad submits that the issue of limitation needs to be left open to be decided by the Arbitral Tribunal as held by the Apex Court in *SBI General Insurance Company Limited V/s. Krish Spinning*¹ and *Managing Director Bihar State Food and Civil Supply Corporation Limited and Another V/s. Sanjay Kumar*². He therefore prays for constitution of Arbitral Tribunal comprising of a sole Arbitrator as suggested in the invocation notice dated 25 November 2025. He however, leaves it to the Court to appoint any other Arbitrator.

10) Mr. Narvekar, the learned counsel appearing for Respondent No.1 submits that reference to arbitration cannot be made since the present Application filed under Section 11(6) of the Arbitration Act is grossly barred by limitation. He submits that the limitation period of three years applies even to filing of Application under Section 11(6) of the Arbitration Act. That when the Award was set aside by Section 34 Court, the cause of action for filing Application under Section 11(6) arose and the period of limitation commenced. That this is clear from letters exchanged between the parties from 6 May 2019, 24 July 2019 and 8 August 2019. He submits that the starting point of limitation under Article 137 of the Limitation Act, 1963 (**Limitation Act**) is when right to apply first arises. He submits that the right for the Applicant to commence arbitral proceedings arose when order under Section 34 of the Arbitration Act was passed by the learned Single Judge of this Court. He relies on judgment of the Apex Court in *B AND T AG V/s. Ministry of Defence*³ in support of his contention that cause of action for filing

1 (2024) 12 SCC 1

2 2025 SCC OnLine SC 1604

3 (2024) 5 SCC 358

Application under Section 11(6) of the Arbitration Act ought to be seen in the context of 'breaking point' for raising of the claim. That period of limitation for commencement of arbitration runs from the date on which 'cause of arbitration' accrued i.e. the date on which the Applicant first acquired the right for action or right to arbitrate. That the principles enunciated by the Hon'ble Supreme Court in **B AND T AG** (supra) pertaining to Application under Section 11(6) of the Arbitration Act squarely apply to the facts of the present case.

11) Mr. Narvekar further submits that the Applicant did not challenge order passed by Section 34 Court and therefore it was free to commence arbitral proceedings immediately after arbitral Award was set aside by Section 34 Court on 27 March 2019. That filing of Appeal and SLP by Respondents cannot extend the period of limitation for the application under Section 43(4) of the Arbitration Act. That the date of invocation notice under Section 21 of the Arbitration Act (25 November 2025) is irrelevant as the 'cause of arbitration' accrued for the Applicant the moment the Award was set aside on 27 March 2019. He submits that in **SBI General Insurance Company Limited** (supra) the Apex Court held that matters pertaining to limitation under Section 11(6) of the Arbitration Act ought to be decided by the referral court. He would therefore urge that Application be dismissed by deciding the issue of limitation in filing Section 11(6) Application against the Applicant.

12) Rival contentions of the parties now fall for my consideration.

13) The Applicant desires to commence the arbitral proceedings once again on account of earlier Award being set aside under Section 34 of the

Arbitration Act. As observed above, earlier Arbitral Tribunal had rejected the claim of the Applicant by holding that clauses 8.5 and 8.5.1 of the SPA are illegal and unenforceable. However, the Court exercising powers under Section 34 of the Arbitration Act invalidated the Award dated 6 June 2013 by overturning Tribunal's findings of illegality and unenforceability of clauses 8.5 and 8.5.1 of the SPA. However by restricting its jurisdiction to limited scope under Section 34 of the Arbitration Act, the Court could not grant any positive relief in favour of the Applicant even though it did not agree with Arbitral Tribunal's finding on legality and enforceability of clauses 8.5 and 8.5.1 of the SPA. Therefore, it has become incumbent for the Applicant to seek fresh reference for arbitration. Accordingly, the Applicant raised a demand for Rs.59,43,99,314/-vide letter dated 6 May 2019. However, the Applicant apparently did not take steps for commencement of arbitral proceedings on account of Respondents challenging the order dated 27 March 2019 passed by Section 34 Court by filing Appeal before the Division Bench under Section 37 of the Arbitration Act. The Appeal was dismissed by the Division Bench on 2 February 2023. The Respondents carried the challenge further to the Hon'ble Supreme Court, which dismissed Respondent's SLP on 10 April 2023. The Applicant has therefore served notice under Section 21 of the Arbitration Act on the Respondents on 25 November 2025 and has thereafter filed the present application for constitution of Arbitral Tribunal under Section 11(6) of the Arbitration Act.

14) There is no dispute between the parties about existence of arbitration agreement in Clause 13 of the SPA or about arbitrability of the dispute. This is apparent from previous round of arbitration. The

Respondents however oppose reference to arbitration on the ground that the application under Section 11(6) of the Arbitration Act is barred by limitation and that, in any case, the claims of the Applicant are also barred by limitation.

15) The Arbitration Act does not prescribe any period of limitation for filing application under Section 11 of the Arbitration Act. However, the Hon'ble Supreme Court has applied provisions of Article 137 of the Limitation Act for filing of Application under Section 11(6) of the Arbitration Act. So far as the issue of limitation in filing the present application is concerned, it must be noted that the present Application is filed for the purpose of constitution of Arbitral Tribunal under Section 11(6) of the Arbitration Act for the purpose of commencement of the arbitral proceedings under Section 43(4) of the Arbitration Act. Section 43 of the Arbitration Act reads thus:-

Section 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.

16) Thus, when Arbitral Award is set aside by the Court either under Section 34 or under Section 37 of the Arbitration Act, the period between commencement of arbitration and date of order of the Court is required to be excluded for the purpose of computation of limitation for commencement of fresh arbitral proceedings with respect to the dispute so submitted. Since the Court has not agreed with the Arbitrator's finding about unenforceability of clauses of the SPA, the Applicant now seeks determination of its monetary claims in the light of the finding so recorded by Section 34 Court.

17) There are two periods of limitations contemplated for arbitration proceedings viz., (i) limitation in respect of the claims, which are sought to be referred to arbitration and (ii) the time limit within which Application under Section 11(6) of the Arbitration Act is required to be filed. For the ease of reference, I treat the limitation in respect of the claims, which are sought to be referred to arbitration as '***the first aspect of limitation***' and the time limit within which Application under Section 11(6) of the Arbitration Act is required to be filed as '***the second aspect of limitation***'.

18) Section 43(4) of the Arbitration Act uses the expression '*for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted*'. Section 21 of the Arbitration Act deals with '*commencement of arbitration proceedings*' and provides thus:-

Section 21. Commencement of arbitral proceedings. –

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

19) Thus, notice issued under Section 21 for reference of dispute to arbitration commences the arbitral proceedings. The limitation provided in Section 43(4) of the Arbitration Act applies to ‘commencement of arbitral proceedings’. This essentially mean that the limitation exclusion provision under Section 43(4) of the Arbitration Act refers to the first aspect of limitation discussed above viz. to the period of limitation in respect of claims sought to be referred to arbitration. It does not apply to the second aspect of limitation viz. the period of limitation in filing application under Section 11(6) of the Arbitration Act.

20) Under Section 43(4) of the Arbitration Act, fresh arbitration proceedings need to be commenced after setting aside of the Arbitral Award within the prescribed period of limitation applicable in respect of the claim by excluding the time spent in commencement of earlier arbitration (the date of issuance of earlier notice under Section 21) and the date of Order of the Court. This relates to period of limitation for adjudication of claims sought to be referred to arbitration.

21) As of now I do not propose to go into the issue as to whether a fresh notice under Section 21 of the Arbitration Act would be necessary for recommencement of arbitration after the award is set aside and I do take note of the decision of this Court in ***Kirloskar Pneumatic Company Ltd. Vs. Kataria Sales Corporation***⁴ in which it is held that issuance of

4 Commercial Arbitration Petition No. 16 of 2023 decided on 21 March 2024

fresh Notice under Section 21 of the Act may not strictly be necessary for commencement of fresh arbitration proceedings after the Award is set aside. However, I would tend to leave the issue open by only observing that for deciding the issue of limitation applicable to the claim, fresh notice issued under Section 21 after setting aside the award would determine the stopping point of limitation. This is because if fresh notice is not issued after the Award is set aside, at what point of time the limitation would stop to run? It would begin running from the date of accrual of cause of action and the period during the date of first invocation notice under Section 21 till order of Court would be excluded and the period would stop when the arbitration is commenced afresh by issuing a notice under Section 21. To illustrate, if cause of action arose on 1 January 2022 and the period of limitation was to end by 1 January 2025, but claimant issues notice under Section 21 on 1 January 2023, Award is made and later set aside by Court on 1 January 2024, the period of limitation for commencement of fresh arbitral proceedings would be till 1 January 2026 (by excluding the time between 1 January 2023 to 1 January 2024). This means that the fresh arbitral proceedings need to be 'commenced' on or before 1 January 2026 and to determine whether the commencement occurred on or before 1 January 2026, fresh notice under Section 21 may possibly be necessary. Though party may be entitled to straightway file application under Section 11 for appointment of arbitrator after the Award is set aside (without issuing fresh notice) as held in *Kirloskar Pneumatic Company Ltd*, for determining the stopping point of limitation, fresh notice under Section 21 may possibly be necessary. However, since the Applicant has issued fresh notice under Section 21 in the present case, I need not delve deeper into that aspect.

22) Reverting to the controversy at hand, this Court is exercising mere referral jurisdiction under Section 11 of the Arbitration Act where limited remit of inquiry ought to be about *prima facie* existence of arbitration agreement. At this stage, this Court cannot decide the issue whether the claim itself is time barred by conducting inquiry into the first aspect of limitation. Thus, first aspect of limitation *qua* the claim would be outside the remit of inquiry at this stage. However, the inquiry into the second aspect of limitation viz. about period of limitation in filing of Section 11 application as applicable under Article 137 of the Limitation Act, needs to be conducted. This is dealt with in greater details by examining the development of law through latest judgments of the Apex Court in latter part of the judgment. Suffice it to observe at this juncture that the limitation contemplated under Section 43(4) is not the second aspect of limitation i.e. limitation for filing application under Section 11(6) of 3 years from the date of invocation notice.

23) Before I proceed to examine the scope of inquiry into limitation aspect by the referral court under Section 11(6) of the Arbitration Act, it would be necessary to deal with the submission of Mr. Narvekar that period of limitation for filing Application under Section 11(6) needs to be computed from the date on which cause of action for adjudication of the claim arises. He has relied on judgment of the Apex Court in **B AND T AG** (supra) in which the claim itself was found to be time barred by the Hon'ble Apex Court. In **B AND T AG** (supra), the Bank Guarantee was encashed on 16 February 2016 whereas notice under Section 21 of the Arbitration Act was issued on 3 February 2022. It is in the light of this factual position where Hon'ble Supreme Court has held in **B AND T AG** that claim itself was hopelessly barred by limitation, it refused to make

reference to arbitration. No doubt, the Hon'ble Supreme Court in ***B AND T AG*** refused to make reference to arbitration on the ground of claim itself being hopelessly barred by limitation, thereby conducting the inquiry into first aspect of limitation relating to the claim. It has not refused the reference on the ground that Section 11 application was filed after expiry of period of 3 years from the date of invocation notice under Section 21 (*second aspect of limitation inquiry*). However even *qua* the inquiry into the first aspect of limitation (claim limitation), the law has developed post the judgment in ***B AND T AG***, which development is noted in paragraphs to follow.

24) In ***Arif Azim Co. Ltd. Vs. Aptech Ltd.***⁵ the Hon'ble Supreme Court has distinguished the concept of limitation in respect of filing of Application under Section 11(6) of the Arbitration Act (*second aspect of limitation*) and permissibility to make reference under Section 11(6) where the claims are *ex-facie* and hopelessly time-barred (*first aspect of limitation*). The Apex Court held that the provisions of the Limitation Act are applicable to applications filed under Section 11(6) of the Arbitration Act and it is further held that the referral court has to examine whether the application under Section 11(6) of the Arbitration Act is filed within the period of limitation prescribed under Article 137 of the Limitation Act. However, so far as the issue of permissibility to make reference in respect of *ex-facie* and hopelessly time barred claim is concerned (*first aspect of limitation*), the Apex Court has held in ***Arif Azim Co. Ltd.*** that Section 11 Court is under a duty to *prima facie* examine and reject non-arbitratble or dead claims, so as to protect the other party from being drawn into a time-consuming and costly

5 (2024) 5 SCC 313

arbitration process. Thus, judgment in *Arif Azim Co. Ltd.* creates an impression that as if referral court under Section 11(6) Arbitration Act can examine and determine even the first aspect of limitation and can refuse reference when the same is sought in respect of a dead wood claim. The relevant paragraphs of judgment in *Arif Azim Co. Ltd.* are not reproduced here to avoid repetition as the same are quoted in subsequent judgment to which I propose to make a reference.

25) However, in subsequent three Judge Bench decision in *SBI General Insurance Company Limited* (supra) the Apex Court has clarified that referral court under Section 11 need not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred (*first aspect of limitation*) and should leave that question for determination by the Arbitral Tribunal. This clarification is issued by the Apex Court after taking into consideration the views expressed by it in *Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1966 and the Indian Stamp Act 1899*⁶. It would be apposite to extract paragraphs 129 to 137 of the judgment in *SBI General Insurance Company Limited* (supra) for facility of reference, which also take note of ratio of the judgment in *Arif Azim Co. Ltd.* (supra), which read thus:

129 Before, we close the matter, it is necessary for us to clarify the dictum as laid in *M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd.* reported in 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* (supra), while deciding an application for appointment of arbitrator under Section 11(6) of the Act, 1996, two issues had arisen for our consideration:

6 (2024) 6 SCC 1

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 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 Act, 1996 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 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.”

132. 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.

133. 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.

(emphasis and underlining added)

26) More recently, in *Managing Director Bihar State Food and Civil Supply Corporation Limited (supra)* the Apex Court has once again clarified that Court exercising jurisdiction under Section 11(6) of the Arbitration Act must follow the mandate of sub-section (6A) and confine

the jurisdiction to examination of existence of arbitration Agreement.

The Apex Court has held in paragraphs 27 to 29 as under:-

27. The curtains have fallen. Courts exercising jurisdictions under Section 11(6) and Section 8 must follow the mandate of sub-section (6A), as interpreted and mandated by the decisions of this Court and their scrutiny must be "confine(d) to the examination of the existence of the arbitration agreement".

28. We have examined the matter in detail. There is an arbitration agreement. The matter must end here. While we agree with Mr. Ranjit Kumar submissions that his client has much to say, let all that be said before the arbitral tribunal. It is, as we have said elsewhere, just as necessary to follow a precedent as it is to make one.

29. All the issues raised by Mr. Ranjit Kumar, senior counsel are kept open for being raised and contested before the arbitral tribunal. The issues that we have not taken up and left it to the arbitral tribunal are jurisdictional issues, involving barring of the arbitral proceedings due to limitation or for the reason that they are non-arbitrable. These issues shall be taken up as preliminary issues and the arbitral tribunal will consider them after giving opportunity to all the parties.

27) Thus, the law enunciated by the judgments in ***Re: Interplay, Arif Azim Co. Ltd., SBI General Insurance Company Limited*** and ***Managing Director Bihar State Food and Civil Supply Corporation Limited*** (supra) is that referral court exercising power under Section 11(6) of the Arbitration Act has a duty to determine whether the application filed under Section 11(6) of the Arbitration Act is within the period of limitation prescribed under Article 137 of the Limitation Act. The Court however, cannot conduct intricate evidentiary enquiry into the question as to whether the claims sought to be arbitrated are time barred or not and should leave the question for determination by the arbitrator. Thus the referral court can conduct inquiry into second aspect of limitation, but not into the first aspect of limitation. In short, referral court needs to adopt 'hands off' approach so far as the issue of limitation in respect of

the claim sought to be arbitrated is concerned and same needs to be left open to be determined by Arbitral Tribunal.

28) Applying above principles to the facts of the present case, it is seen that the present Application is within the period of prescribed limitation under Article 137 of the Limitation Act since it is filed within three years of invocation of notice dated 25 November 2025. However, whether claim sought to be arbitrated by the Applicant is within limitation or not is something which Arbitral Tribunal needs to decide. This Court is not going into the issue as to whether the word 'Court' appearing in Section 43(4) of the Arbitration Act would mean only Section 34 Court or also Appeal Court under Section 37 of the Arbitration Act and Hon'ble Supreme Court. This Court, at this juncture, is also not determining whether the time spent by the Respondents in preferring appeal and SLP would be excluded under Section 43(4) of the Arbitration Act. That issue will have to be decided by the Arbitral Tribunal, while determining the issue whether the claims sought to be arbitrated by the Applicant are within limitation or time barred.

29) Since existence of arbitration agreement is not disputed, I proceed to exercise jurisdiction under Section 11(6) of the Arbitration Act by constituting Arbitral Tribunal of a sole Arbitrator. This Court has suggested name of Mr. Justice S.V. Gangapurwala, former Chief Justice of Madras High Court for being appointed as a sole Arbitrator. Both the sides have expressed agreement on the name suggested by the Court.

30) I accordingly, proceed to pass the following order:

(A) Mr. Justice S.V. Gangapurwala, former Chief Justice of Madras High Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the concerned Agreements. The contact details of the Arbitrator are as under :

Mobile No. 9545111995

Email – sanjay.gangapurwala@gmail.com

Add. : Near Porwal Bhawan Govardhan Giri Khara

Kuwa, Kranti Chowk, Aurangabad – 431 001

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Applicant within a period of one week from the date of uploading of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

(C) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of 2 weeks from receipt of a copy of this order.

(D) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by him, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

(E) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance and shall be

subject to any final Award that may be passed by the Tribunal in relation to costs.

31) All rights and contentions of the parties, including the issue as to whether claims sought to be arbitrated are within the limitation or not, are left open to be decided by the Arbitral Tribunal.

32) With the above directions, the Application is allowed and **disposed of**. No costs.

[SANDEEP V. MARNE, J.]