



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION (L) NO.37441 OF 2025
WITH
INTERIM APPLICATION (L) NO.11418 OF 2026
IN
ARBITRATION APPLICATION (L) NO.37441 OF 2025

INFRA Poonam Developers LLP **...Applicant**

V/s.

Jasbir Singh s/o. Ajit Singh and Ors. **...Respondents**

Mr. Aman Saraf with Ms. Sakshi Agarwal i/b. Mr. Bipin J. Joshi for the Applicant.

Mr. Ziyad Madon with Mr. Chittesh Dalmia for Respondent No.6

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 30 MARCH 2026.

Judgment pronounced on: 07 APRIL 2026.

JUDGMENT:

1) This is an Application filed by the Applicant under Section 11 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) for appointment of an Arbitrator for adjudication of disputes between the parties arising out of Deed of Alteration of Partnership dated 10 April 2013. Since there is delay of 258 days in filing the Application, the Applicant has filed Interim Application (L) No.11418 of 2026 for condonation thereof.

2) The Applicant is a registered Limited Liability Partnership Firm. The subject matter of dispute between the parties is the property known as -Panwala chawl Nos. 2 and 3 situated at City Survey No.1/112 of Parel Sewri Division, Building No.75-75A and 75-B, Dr. S.S. Rao Road, Lalbaug, Mumbai (**suit property**). The property originally belonged to a private trust, which are acquired by M/s. R.B. Builders and Developers (**the Firm**) pursuant to order passed by this Court. At that time, there were 7 partners namely Respondent Nos.1 to 7 in the Firm. The acquisition was for the purpose of redevelopment of the suit property. The Maharashtra Housing and Area Development Authority (**MHADA**) issued NOC for redevelopment of the property in the year 2008, which was modified in the year 2010. The Municipal Corporation granted Intimation of Disapproval (**IOD**) dated 4 August 2010. A Memorandum of Understanding came to be executed between the Respondents and sister concern of the Applicant (Poonam Infra) for transfer of development rights for consideration of Rs.20.70 crores. It is the case of the Applicant that its nominee made a payment of Rs.4 crores to the Firm. Deed of Admission of Partner dated 30 April 2011 was executed, under which Applicant's nominee -Poonam Infra, a partnership firm was added as 8th partner in the Firm having 15% profit and loss sharing ratio. Poonam Infra was to make contribution of its share for carrying on construction and redevelopment of the project. The Firm obtained commencement certificate dated 9 December 2011. Construction commenced and was completed upto the plinth level. A stop work notice was issued in the year 2012, which was revoked in the year 2013. According to the Applicant, it later realised that its sister concern-

Poonam Infra cannot be a partner of another Firm and accordingly, Deed of Alteration of Partnership Firm dated 10 April 2013 was executed, under which the Applicant was made 8th Partner in the Firm. According to the Applicant, MHADA issued show cause notice to the Firm for revocation of NOC. On 29 December 2016 MHADA directed the Firm to effect redevelopment work and pay rent to the tenants, which the Firm was unable to pay. Thereafter litigation took place between the Society, Firm and MHADA relating to the redevelopment project.

3) In the light of above background, the Applicant decided to withdraw itself from the project and sought refund of amount of Rs.29,63,67,674.97. The notice issued by the Applicant was responded by the Respondents denying the contents therein. The Applicant apparently filed police complaints. By notice dated 20 June 2020, the Applicant invoked arbitration clause. Since no response was received, the Applicant filed Arbitration Petition No.241 of 2023 under Section 9 of the Arbitration Act seeking interim measures. On 20 July 2020, this Court granted ad-interim measures restraining the Respondents from creating third party rights or from putting up any construction or altering the status of the property. Statement made on behalf of the MHADA for not taking coercive steps was also recorded. According to the Applicant, due to outbreak of Covid-19 Pandemic, it could not make any fruitful movement in the matter. In 2023, the Applicant started making efforts to protect its interests in the project. It made several representations to various authorities. In the meantime, MHADA passed order on 11 January 2024 for acquisition of the property by blacklisting the Firm. The Applicant filed Writ Petition No.722 of 2024 before this

Court challenging the order of acquisition. It also filed Interim Application (L) No.4358 of 2024 in the pending Petition (Arbitration Petition No.241 of 2023) filed under Section 9 of the Arbitration Act seeking restraint order against MHADA. By order dated 27 February 2024 passed in Writ Petition No.722 of 2024, the Applicant was directed to deposit an amount of Rs.2 crores as a pre-condition for hearing of the Petition, which amount was deposited by the Applicant. The Petition was finally disposed of on 21 March 2024 granting liberty to the Applicant to make representations to the State Government and MHADA. The Applicant accordingly made representation showing readiness and willingness to complete the project. However, the representation was rejected by order dated 14 August 2024. The Applicant accordingly filed Writ Petition (L)No.32243 of 2024 in this Court, which is pending. In the meantime, by order dated 20 March 2025 the property stood acquired by MHADA.

4) In the above background, the Applicant has filed the present Application for appointment of an Arbitrator on 15 November 2025. After filing of the present Application, this Court disposed of Section 9 Petition (Arbitration Petition No.241 of 2023) by order dated 4 February 2026, which was withdrawn in the light of filing of Section 11 Application.

5) Since notice under Section 21 of the Arbitration Act was issued on 20 June 2020 there is delay in filing the present Application. The Applicant however contends that the period from 15 March 2020 to 28 February 2022 is required to be excluded on account of Covid-19 pandemic. This is how the Applicant submits that delay in filing the

Application is only of 258 days. It has accordingly filed Interim Application for condonation of delay.

6) Mr. Aman Saraf, the learned counsel appearing for the Applicant would contend that the delay caused in filing the Application deserves to be condoned considering the facts and circumstances of the present case. He submits that the Applicant was required to initiate several litigations and correspondence with the authorities for the purpose of preserving the subject matter of arbitration. That decision to file Application under Section 11 of the Arbitration Act was taken only after acquisition of the property by MHADA. Since subject matter of arbitration was itself under cloud, the Applicant was first required to resolve the issues relating to project and could not rush before this Court for seeking appointment of the Arbitrator. He submits that merits of the claim of the Applicant are also required to be borne in mind while deciding the issue of condonation of delay. That the Applicant has invested amount of Rs.30 crores in the project and if reference to arbitration is not made, the Applicant would lose right to have the disputes with the Respondents adjudicated on merits. That condoning the delay would only result in adjudication of claims of parties against each other on merits. On the other hand, refusal to condone the delay would result in drastic consequences. That the Applicant would lose investment of over Rs.30 crores in the project.

7) In support of his contention that the referral court exercising jurisdiction under Section 11 of the Arbitration Act can condone delay in filing of application, Mr. Saraf relies on judgment of the Hon'ble

Supreme Court in *HPCL Bio-Fuels Ltd. V/s. Shahaji Bhanudas Bhad*¹ and of this Court in *Tata Motors Passenger Vehicles Ltd and Another V/s. Ghosh Brothers Automobiles and Others*². Mr. Saraf submits that the Applicant has made out sufficient cause for condonation of delay in filing the Application. In support, he relies on judgments of the Hon'ble Supreme Court in *N. Balakrishnan V/s. M. Krishnamurthy*³ and *Sheo Raj Singh (deceased) through Legal Representatives and Others V/s. Union of India and Another*⁴. He would accordingly pray for condoning the delay in filing the Application.

8) So far as merits of the Arbitration Application is concerned, Mr. Saraf submits that existence of arbitration is not in dispute. He invites attention of the Court to the arbitration agreement contained in clause 16 of the Deed of Alteration of Partnership Dated 10 April 2013. He would accordingly pray for appointment of a sole Arbitrator.

9) Mr. Ziyad Madon, the learned counsel appearing for Respondent No.6 opposes the Application submitting that the same is grossly barred by limitation. That the cause of action for filing the Application arose on 20 June 2020, but the Application is filed more than 5 years later on 15 November 2025. He submits that the period of Covid-19 Pandemic cannot be excluded while computing period of limitation in the facts of the present case as the Applicant undertook various other litigations during pandemic period. That it secured interim measures under Section 9 of the Arbitration Act by filing Petition right in the middle of pandemic restrictions on 20 July 2020. That the Applicant sat

1 2024 SCC OnLine SC 3190

2 2026 SCC OnLine Bom 1100

3 (1998) 7 SCC 123

4 (2023) 10 SCC 531

on relief secured under Section 9 of the Arbitration Act over 5 years and has filed the present Application after considerable delay. That therefore nothing prevented the Applicant from filing Application under Section 11 of the Arbitration Act. That the Applicant has failed to make out sufficient cause for condonation of delay. He submits that mere length of delay is not material and cause for delay is the relevant factor for deciding application for condonation of delay. In support, he relies on judgment of the Supreme Court Court in *Mool Chandra V/s. Union of India and Another*⁵. Mr. Madon submits that the Applicant is seeking to infuse life into a dead claim. That *qua* Respondents, the Applicant has absolutely no claims, which are capable of being arbitrated. Not only the claims are time barred, the Application filed for appointment of Arbitrator is also grossly barred by limitation. Mr. Madon accordingly prays for dismissal of the Applications.

10) I have considered the submissions canvassed by the learned counsel appearing for the rival parties.

11) The present Arbitration Application is filed by the Applicant for appointment of Arbitrator under Section 11 (6) of the Arbitration Act. By now, it is well settled position that the limitation period prescribed in Article 137 of the Limitation Act, 1963 (**the Limitation Act**) applies to filing of Application under Section 11(6) of the Arbitration Act. The period of limitation prescribed under Article 137 of the Limitation Act is three years, to be computed from the date when right to sue accrues. In *Arif Azim Co. Ltd. Vs. Apteck Ltd.*⁶ the Apex Court has held that the

⁵ (2025) 1 SCC 625

⁶ (2024) 5 SCC 313

right to apply for appointment of an arbitrator under Section 11 of the Arbitration Act accrues when a notice under Section 21 of the Act is served and there is failure on the part of the opposite side in complying with the requirements mentioned in the notice. It is held in paragraphs 56 and 62 of the judgment as under:

56. 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 the 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 Page 31 of 58 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 Act, 1996 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 Act, 1996 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 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.**

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62. A perusal of the above shows that the request for appointment of an arbitrator was first made by the petitioner vide notice dated 24.11.2022 and a time of one month from the date of receipt of notice was given to the respondent to comply with the said notice. The notice was delivered to the respondent on 29.11.2022. Hence, the said period of one month from the date of receipt came to an

end on 28.12.2022. Thus, it is only from this day that the clock of limitation for filing the present petition would start to tick. The present petition was filed by the petitioner on 19.04.2023, which is well within the time period of 3 years provided by Article 137 of the Limitation Act, 1963. Thus, the present petition under Section 11(6) of the Act, 1996 cannot be said to be barred by limitation.

(emphasis added)

Thus, Application under Section 11(6) of the Arbitration Act needs to be filed within a period of three years from the date of failure to act in accordance with the notice invoking arbitration under Section 21 of the Arbitration Act.

12) In the present case, the notice under Section 21 of the Arbitration Act has been issued by the Applicant on 20 June 2020, by which the Applicant gave time of 7 days to concur with the suggested names of arbitrators and therefore Application for appointment of Arbitrator under Section 11 (6) of the Arbitration Act was required to be filed on or before 26 June 2023. The Applicant failed to apply for appointment of arbitrator within the period of 3 years prescribed in Article 137 of the Limitation Act. However, the Applicant cites the reason of COVID-19 pandemic related restrictions when the Notice under Section 21 was issued on 20 June 2020 and relies on Order passed by the Hon'ble Supreme Court in ***RE: Cognizance for Extension of Limitation***⁷, under which the Hon'ble Supreme Court has excluded period from 15 March 2020 to 28 February 2022 for the purpose of computation of limitation in the light of Covid-19 pandemic. According to the Applicant, since notice under Section 21 of the Arbitration Act was issued right during pandemic period on 20 June 2020, the period upto 28 February 2022 is required to be excluded. Mr. Madon contests this position and

⁷ (2022) 1 SCC (L&S) 501

highlights the fact the Applicant filed Petition under Section 9 of the Arbitration Act on 20 July 2020. He submits that therefore Covid-19 pandemic restrictions could not have selectively come in the way of the Applicant filing Application under Section 11 of the Arbitration Act. However, all Courts in India are bound by the directions issued by the Apex Court in ***RE: Cognizance for Extension of Limitation*** (supra) and it is not permissible to make case specific exceptions. Once the Supreme Court has directed exclusion of period from 15 March 2020 to 28 February 2022 for the purpose of computation of limitation, mere filing of Section 9 Petition by the Applicant on 20 July 2020 cannot be a reason for denying him the benefit of exclusion of Covid-19 Pandemic period. Applicant may have filed Section 9 Petition to preserve the subject matter of arbitration. That does not mean that there was any compulsion for him to seek appointment of arbitrator contemporaneously. Considering the limited functioning of Courts during pandemic period, non-filing of Section 11 Application, involving no urgency, was quite justified. In my view, therefore, period from 26 June 2020 to 28 February 2022 is required to be excluded while computing period of limitation of three years under Article 137 of the Limitation Act.

13) After excluding the period from 26 June 2020 to 28 February 2022, the present Application ought to have been filed on or before 28 February 2025. The Application is however filed on 15 November 2025. This is how there is delay of 258 days in filing Application under Section 11(6) of the Arbitration Act. In ***HPCL Bio-Fuels*** (supra) the Apex Court has ruled that benefit under Section 5 of the Limitation Act is available

in respect of the application filed for appointment of arbitrator under Section 11(6) of the Arbitration Act. However, the Apex Court has held that discretion for condonation of delay under Section 5 of the Limitation Act can be exercised only in exceptional cases where very strong case is made out by the Applicant for condonation of delay in filing Application under Section 11(6) of the Arbitration Act. The Apex Court held in paragraphs 121 to 124 of the judgment in *HPCL Bio-Fuels* as under:

121. **The position of law that emerges from the aforesaid discussion is that the benefit under Section 5 of the Limitation Act is available in respect of the applications filed for appointment of arbitrator under Section 11(6) of the Act, 1996. Further, the requirement of filing an application under Section 5 of the Limitation Act is not a mandatory prerequisite for a court to exercise its discretion under the said provision and condone the delay in institution of an application or appeal.** Thus, the only question that remains to be considered is whether in the facts of the present case, the respondent could be said to have made out a case for condonation of delay in instituting the fresh Section 11(6) application.

122. As discussed, the respondent took a conscious decision to abandon its first Section 11(6) application with a view to pursue proceedings under Section 9 of the IBC. The respondent made such choice despite a specific objection raised by the appellant in its reply to the statutory demand notice that there were pre-existing disputes between the parties. In view of this, maximisation of the chances of getting the application under Section 9 of the IBC admitted by the NCLT seems to have been the only reason for the abandonment of the first Section 11(6) application by the respondent. In light of such conduct on the part of the respondent, we are of the view that the present case does not warrant the exercise of our discretion under Section 5 of the Limitation Act.

123. The primary intent behind Section 5 of the Limitation Act is not to permit litigants to exploit procedural loopholes and continue with the legal proceedings in multiple forums. Rather, it aims to provide a safeguard for genuinely deserving applicants who might have missed a deadline due to unavoidable circumstances. This provision reflects the intent of the legislature to balance the principles of justice and fairness, ensuring that procedural delays do not hinder the pursuit of

substantive justice. Section 5 of the Limitation Act embodies the principle that genuine delay should not be a bar access to justice, thus allowing flexibility in the interest of equity, while simultaneously deterring abuse of this leniency to prolong litigation unnecessarily.

124. The legislative intent of expeditious dispute resolution under the Act, 1996 must also be kept in mind by the courts while considering an application for condonation of delay in the filing of an application for appointment of arbitrator under Section 11(6). **Thus, the court should exercise its discretion under Section 5 of the Limitation Act only in exceptional cases where a very strong case is made by the applicant for the condonation of delay in filing a Section 11(6) application.**

(emphasis and underlining added)

14) As a matter of fact, in *HPCL Bio-Fuels*, the Apex Court, while recognising the principle of application of Section 5 of the Limitation Act to filing of an Application under Section 11(6) of the Arbitration Act, has gone a step further by holding that filing of Application under Section 5 of the Limitation Act is not a mandatory prerequisite for the Court to exercise its discretion and that Court can condone the delay in institution of an Application even without any formal Application for condonation of delay.

15) In *Tata Motors Passenger Vehicles Ltd.* (supra) I have condoned the delay of 76 and 91 days in filing Applications under Section 11 of the Arbitration Act in absence of filing of a formal Application for condonation of delay. This Court held in paragraph 38 of the judgment as under:

38) Thus the Apex Court has ruled in *HPCL Bio-Fuels* (supra) that benefit under Section 5 of the Limitation Act is available in respect of the application filed for appointment of arbitrator under Section 11(6) of the Arbitration Act. The Apex Court has gone a step further and has held that the requirement of filing application under Section 5 of the Limitation Act is not a mandatory pre-requisite for a Court to exercise its discretion under the said provision and

condone the delay in institution of the application. **Thus, the delay in filing application under Section 11(6) can be condoned by the Court, in a given case, even in absence of a formal application for condonation of delay. In the present case, the delay is of 76 and 91 days. Considering the peculiar facts and circumstances of the case where appointment of substitute arbitrator is necessitated essentially for carriage of the reference and for its logical conclusion, in my view, delay of 76 and 91 days in filing the present application deserves to be condoned.** The Applicants have been taking requisite steps for having the disputes adjudicated. The situation has arisen essentially on account of earlier arbitrator withdrawing from arbitral proceedings and the Institute (BCCI) failing to appoint the arbitrator despite repeated requests by the Applicants. It is Applicants' case that the liability to pay the demanded amount is admitted by the Respondents. It is not necessary to delve deeper into that aspect at this stage. However, suffice it to observe that an opportunity needs to be granted to the Applicants to have their disputes adjudicated on merits. I am therefore inclined to condone the delay of about 76 and 91 days in filing the present Applications.

(emphasis added)

16) Thus, this Court is invested with power to condone the delay in filing application under Section 11(6) of the Arbitration Act on account of applicability of provisions of Section 5 of the Limitation Act. Though filing of formal application for condonation of delay is not a prerequisite, the Applicant has, in the present case, filed Interim Application (L) No.11418 of 2026 seeking condonation of delay of 258 days. The issue for consideration is whether the Applicant has made out sufficient cause as well as exceptional case for condonation of delay of 258 days. While Courts need to adopt liberal approach while considering condonation of delay in usual cases, the approach while considering the issue of condonation of delay in filing application under Section 11(6) needs to be different. The discretion under Section 5 of the Limitation Act is not to be exercised routinely and by adopting a liberal approach. The Applicant needs to make out a very strong case for

condonation of delay in filing Section 11(6) Application and the reference Court needs to be satisfied that the case is exceptional one. I accordingly proceed to examine whether the Applicant has made out a sufficient cause keeping in mind the caveat prescribed by the Apex Court in *HPCL Biofuels* that the delay can be condoned only in exceptional case where very strong case is made out by the Applicant,

17) From narration of facts, it is seen that the Applicant has entered as the 8th partner in the Partnership Firm where the Respondents were the original partners. The Firm was entrusted with the project of redevelopment of Panwala Chawl at Lalbaug in Mumbai. It is Applicant's case that it has invested amount of Rs.30 crores in the project. The initial investments were through its sister concern Poonam Infra and later, the Applicant is admitted as the partner in the Firm. It appears that the project is taken away from the Firm by MHADA by acquisition of property vide order dated 20 March 2025. The Petitioner therefore wants back the invested amounts from the Firm and accordingly seeks adjudication of disputes through arbitration.

18) The Applicant is thus desirous of seeking adjudication of its claim against the other 7 partners on account of losses suffered by it by investing amount of Rs.30 crores in the project. Though the Applicant has invoked arbitration by issuing notice dated 20 June 2020, it was first required to secure and preserve the subject matter of arbitration, which was in the danger of being wasted. The subject matter of arbitration in the present case is the redevelopment project and the Applicant was required to make efforts and engage into a maze of litigation to save and preserve the project. On account of the rift amongst the partners,

the society members were complaining to MHADA, who wanted to take away the project from the Firm. The Applicant was first required to file Arbitration Petition No.241 of 2023 on 10 July 2020 for securing interim measures against the Respondents. By order dated 20 July 2020, this Court restrained the Respondents from creating any third-party rights, parting with possession or putting up any construction altering the status or condition of the property. More importantly, this Court also made interim measures against MHADA from taking coercive actions in respect of the project. This is how the Applicant was required to take steps for preserving the subject matter of arbitration. On account of Covid-19 Pandemic, no development took place in respect of the project for some time. In May-2023, the Applicant started making the representations to various authorities such as Chief Minister, Additional Chief Secretary of Housing Department, MHADA, etc. It also made representation on 12 July 2023 to president of MHADA.

19) It appears that the subject matter of arbitration came under real threat when MHADA made application before the Housing Department seeking acquisition of the property for effecting redevelopment of the chawl. The Housing Department accepted MHADA's Application and permitted MHADA to pursue the application by blacklisting the Partnership Firm on 11 January 2024. On account of this development, the Applicant was required to file Writ Petition No.722 of 2024 for setting aside the order of acquisition. Simultaneously, the Applicant also filed Interim Application in Section 9 Petition for securing the interim measures against MHADA. According to the Applicant, this Court issued oral directions to MHADA not to take any coercive steps on

12 February 2024. As a pre-condition for entertainment of Writ Petition No.722 of 2024, this Court directed the Applicant to deposit an amount of Rs.2 crores, possibly towards arrears of transit rent of 80 members of the Chawl-Society. It is the Applicant, who complied with the said order and deposited amount of Rs.2 crores in this Court to preserve the subject matter of arbitration. According to the Applicant, it was the responsibility of Respondent No.6 to pay the transit rent, but for saving the project, it was required to make the deposit. Writ Petition No.722 of 2024 was thereafter entertained and disposed of with liberty to the Applicant to make representation to the State Government and to MHADA. The Applicant accordingly made representation in April 2024 showing readiness and willingness to pay outstanding transit rent and to complete the project. Representations were heard in July 2024 and were finally rejected on 14 August 2024. The Applicant was required to file Writ Petition (L)No.32243 of 2024 challenging the order dated 14 August 2024, which is pending. While the Applicant was taking above steps for preserving the subject matter of arbitration, the period of three years for filing Application under Section 11(6) of the Arbitration Act came to an end on 1 March 2022. However, on 20 March 2025 MHADA completed acquisition proceedings and property vested in MHADA. The Applicant called upon the Respondents to appear in Section 9 Petition for securing appropriate interim measures, but the Respondents failed to show any interest. After learning that the Respondents were not showing any interest in the project and that the entire investment made by the Applicant would go waste, he has ultimately filed Application under Section 11(6) of the Arbitration Act on 15 November 2025.

20) The Applicant was thus required to take several steps for ensuring preservation of the subject matter of arbitration, before it could seek adjudication of disputes with other partners of the Firm.

21) Considering the above position, in my view, an exceptional and strong case is made out by the Applicant for condonation of delay in filing Application under Section 11(6) of the Arbitration Act. The case involves peculiar circumstances, where taking of steps for preservation of subject matter of arbitration was more important than seeking adjudication of disputes with the other partners. If the Applicant was successful in securing the project, the very perspective of the disputes between the Applicant and other partners would have changed. In the facts of the present case, the Applicant thought it more prudent, and in my view rightly, to first take steps to prevent the property being acquired by MHADA. It was required to litigate repeatedly for ensuring that the Firm does not lose the project. The real cause for seeking arbitration against the Respondents has occurred only after MHADA acquired the property and the Firm has lost the possession. It now appears that the Applicant does not have much hopes left in securing back the investment allegedly made by it in the project by completing the same and it desires to seek recovery of the same from other partners (Respondents).

22) Considering the above unique circumstances, in my view delay in filing the Application deserves to be condoned. The Applicant has made out sufficient cause as well as a strong and exceptional case for

condonation of delay. All the three decisions relied upon by rival parties in *N. Balakrishnan, Sheo Raj Singh (deceased) through Legal Representatives* and *Mool Chandra* (supra) discuss the principles governing the approach and methodology to be adopted by the Courts in deciding applications for condonation of delay in cases other than application under Section 11(6) of the Arbitration Act and are therefore not relevant for deciding the present application. In the present case, length of delay is not inordinate. There is a strong cause shown by the Applicant, who is not found to be dormant or negligent in respect of its remedy. Its remedy of seeking appointment of arbitrator was also dependent, to a great extent, on preserving the subject matter of arbitration. This Court is satisfied with the justification for delay since the Applicant was required to take several steps for preserving the subject matter of arbitration. Therefore, it cannot be inferred that the Applicant was negligent or indolent in respect of its right to seek adjudication of disputes through arbitration.

23) In my view, therefore, the Applicant has made out a strong and exceptional case for condonation of delay of 258 days in filing the Arbitration Application. In my view therefore, the delay in filing the application deserves to be condoned.

24) So far as merits of the Application is concerned, clause 16 of the Deed of Alteration of Partnership dated 10 April 2013 undoubtedly contains arbitration agreement. Clause 16 reads thus:

16.If during the continuance of the said partnership or at any time afterwards any difference shall arise between the partners and the

heirs, executors or administrators in regard to the construction of any of the articles herein contained or to any division, act or thing to be made or done in pursuance hereto or to any other matter or thing relating to the said partnership the same shall be forthwith referred to one arbitrator if the parties agree or otherwise to two arbitrators, one to be appointed by each party to the reference or to an Umpire to be chosen by the Arbitrators before entering upon the reference and every such reference shall be deemed to be an Arbitration in accordance with and subject to the provisions of Indian Arbitration in accordance with the subject to the provisions of Indian Arbitration Act, 1940, or any statutory modification or re-enactment thereof for the time being in force.

25) Mr. Madon has fairly not disputed the existence of arbitration between the parties. The parties have also agreed for appointment of a sole arbitrator. In my view, therefore, it would be just and proper to constitute Arbitral Tribunal of sole Arbitrator for adjudication of disputes and differences between the parties.

26) I accordingly proceed to pass the following order:-

- (i) Delay of 258 in filing Application under Section 11(6) of the Arbitration Act is condoned and accordingly, Interim Application (L) No.11418 of 2026 is allowed.
- (ii) Mr. Justice A. A. Sayed, former Chief Justice of Himachal Pradesh High Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of Deed of Alteration of Partnership dated 10 April 2013. The contact details of the Arbitrator are as under:-

Office Address:- American View Bungalow, Omer Park (Opp. Tata Garden), Bhulabhai Desai Road (Warden Road), Mumbai-400 026.

Mobile No.:- 982007240

Email id:- sayamjad@gmail.com

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

(iv) 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.

(v) 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.

(vi) The fees of the sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

27) All rights and contentions of the parties are expressly kept open to be agitated before the arbitral tribunal.

28) With the above order, Arbitration Application is allowed and **disposed of**. There shall be no orders as to costs.

29) Interim Application (L) No.11418 of 2026 is **disposed of**.

[SANDEEP V. MARNE, J.]