

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION APPLICATION NO.75 OF 2026**

Wellgroomed Venture.

An association of persons formed by:

(i) Akruti Kailash Construction and

(ii) Solidity Developers Pvt. Ltd.

.. Applicants

**Vs.**

Vishal Gupta

.. Respondent

Mr. Manoj P. Mhatre, Advocate for the Applicants.

Mr. Anuj Pande with Mr. Rohan Surve, Advocates for the Respondent.

**CORAM : GAUTAM A. ANKHAD, J.**

**Closed for Order : 3<sup>rd</sup> September, 2026.**

**For Pronouncement of Order : 8<sup>th</sup> September, 2026.**

**P.C. :**

1. The Applicant is a Developer who has executed an Agreement for Sale dated 26<sup>th</sup> December, 2012 (“**Agreement**”) in respect of Commercial Unit no. 316 on 3<sup>rd</sup> Floor of “Hubtown Viva” at Jogeshwari (East), Mumbai – 400 060. Disputes have arisen between the parties in respect of the arrears for maintenance and other charges which the Applicant claims are payable from 31<sup>st</sup> December, 2016 until 30<sup>th</sup> June, 2021.

2. The Applicant by its notices dated 27<sup>th</sup> May, 2017, 20<sup>th</sup> August, 2019 and 8<sup>th</sup> January, 2022 raised the demands for arrears of the maintenance charges. On 11<sup>th</sup> January, 2022, the Respondent by its e-mail replied to the notice of 8<sup>th</sup> January, 2022 and denied the claims of the Applicant. The Respondent stated that as the Applicant had not fulfilled its obligations, in terms of providing promised amenities and since the Society had already been incorporated, the Applicant had no right or authority to ask for any dues. Further correspondence was exchanged in 2022-2023 between the parties. Finally on 4<sup>th</sup> July, 2024, the Applicant invoked arbitration under Clause no. 51 of the said Agreement and called upon the Respondent to confer on the name of the proposed arbitrator.

3. The Respondent has neither disputed the existence of the arbitration clause nor the receipt of the notice invoking arbitration.

4. Apart from merits, a preliminary objection raised by Mr. Pande, learned counsel for the Respondent, is that the claims from January, 2017 until June, 2021, that are sought to be referred to arbitration, are ex-facie time barred and constitute dead claims. He submits that repeated demands do not extend limitation and this is a fit case for the Court to reject the reliefs claimed in this Application. In support of the above submissions, he relies upon the judgments

of the Hon'ble Supreme Court in ***Bharat Sanchar Nigam Ltd. v. Nortel Networks (India) (P) Ltd.***<sup>1</sup> and ***Arif Azim Co. Ltd. v. Aptech Ltd.***<sup>2</sup>

5. I have heard the learned counsels and perused the record. It is now well settled that, at the stage of considering an Application under Section 11, the referral Court is required to undertake only a limited examination as to the existence of a valid arbitration agreement. The Court cannot adjudicate on the merits of the disputes or conduct a detailed examination into the limitation applicable to the substantive claims. The judgments relied upon by the Respondent in ***Bharat Sanchar Nigam Ltd.*** and ***Arif Azim Co. Ltd.*** have subsequently been considered by the Hon'ble Supreme Court in the Three-Judge Bench judgment in ***Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd.***<sup>3</sup>. The judgment draws a distinction between:

- (i) the limitation applicable to the claims which are to be adjudicated on merits by the Arbitral Tribunal; and
- (ii) the limitation applicable to an application under Section 11 seeking appointment of an Arbitrator.

6. The position is also consistent with the subsequent development of the

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1 (2021) 5 SCC 738

2 (2024) 5 SCC 313

3 (2025) 1 SCC 502

law by the Hon'ble Supreme Court, including the judgment of the Seven-Judge Bench in *Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re*<sup>4</sup> and the subsequent decision in *SBI General Insurance Company v. Krish Spinning*<sup>5</sup>.

7. The Applicant invoked arbitration by its notice dated 4<sup>th</sup> July, 2024 and the present Application was filed on 7<sup>th</sup> October, 2024. The Section 11 Application is consequently within the period of limitation of 3 years for seeking appointment of an Arbitrator. There is, therefore, no impediment to the exercise of jurisdiction under Section 11 of the Act on this ground.

8. As regards the Respondent's contention that the claims are ex-facie barred by limitation, I do not intend to adjudicate the same. The question as to when the cause of action in respect of each individual claim arose, whether the correspondence and demands exchanged between the parties have any bearing on the computation of limitation and whether the claims, or any part thereof, are barred by limitation, are matters which require examination of the factual and contractual matrix. At paragraph 50 of *Aslam Ismail Khan Deshmukh* the Hon'ble Supreme Court held that "*this Court cannot conduct and interpret*

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<sup>4</sup> (2024) 6 SCC 1

<sup>5</sup> (2025) 3 SCC (Civ) 567

*evidenciary enquiry into the question of when the cause of action can be said to have arisen between the parties and whether the claim raised by the Petitioner is time barred*". Whether the claims are barred by limitation, in whole or in part, are matters which can appropriately be considered by the Arbitral Tribunal upon pleadings and material being placed before it. The Respondent's objection on limitation is, therefore, expressly kept open. The Tribunal shall be at liberty to consider the same in accordance with law.

9. Learned Counsel for the Respondent further submits that referring such allegedly time-barred claims to arbitration would unnecessarily compel the Respondent to incur substantial costs and participate in proceedings which ought not to have been initiated. The Hon'ble Supreme Court in ***Aslam Ismail Khan Deshmukh*** has recognised this concern and after reiterating the limited scope of the referral Court's jurisdiction, held as follows:-

*"51. It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims*

*which have been discharged through “accord and satisfaction”, or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc.*

*52. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration.”*

10. In view of the above, if the Tribunal ultimately finds that the Applicant has pursued claims which were barred by limitation or has otherwise abused the arbitral process, it would be open to the Tribunal to make an appropriate order as to costs, including directing the Applicant to bear full costs occasioned by such claims.

11. In the circumstances, the existence of the arbitration agreement being undisputed, the invocation of arbitration being duly made, and the present Section 11 Application being within limitation, **Arbitration Application no. 75 of 2026 is allowed** in the following terms:

[A]. Mr. Nirav Shah, learned Advocate is hereby appointed as the sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in

connection with the Agreement for Sale referred to above.

The contact details of the sole Arbitrator, are as under:

*Office Address : 1/1, Kothari House, 1<sup>st</sup> Floor,  
5/7 Oak Lane, Fort, Mumbai 400 001.*

*Mobile Number : 9820770788*

*E-mail ID : nirav.g.shah@outlook.com*

[B]. A copy of this order will be communicated to the learned Arbitrator by the Advocate for the Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The Applicant shall provide the contact and communication particulars of the parties to the Arbitrator along with a copy of this order;

[C]. The learned Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocate for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocate for the Applicant to the Respondent;

[D]. The parties shall appear before the learned Arbitrator on such date either on V.C. mode or at such place as indicated to obtain appropriate directions with regard to conduct of the arbitration including fixing schedule for pleadings, examination of witnesses, schedule of hearings etc.

[E]. The fees of the learned Arbitrator shall be as per the Fourth Schedule of the Act read with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

[F]. All issues, claims and counterclaims are kept open to be agitated before the Tribunal.

[G]. The arbitration shall be held at Mumbai.

**[ GAUTAM A. ANKHAD, J. ]**