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

Date of Decision: 9th July, 2021

\+ ARB.P. 593/2020, I.A. 10525/2020 & I.As. 987-988/2021

M/S GOLDEN CHARIOT RECREATIONS PVT. LTD. .... Petitioner
Through: Mr. Rajat Aneja, Advocate.

versus

MUKESH PANIKA & ANR. ..... Respondents
Through: Mr. Vijay Sharma, Advocate.

\+ O.M.P.(I) (COMM.) 295/2020 & I.As. 10546-10547/2021

M/S GOLDEN CHARIOT RECREATIONS PVT LTD ..... Petitioner
Through: Mr. Rajat Aneja, Advocate.

versus

MUKESH PANIKA AND ORS ..... Respondents
Through: Mr. Vijay Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

ARB.P. 593/2020, I.A. 10525/2020 & I.As. 987-988/2021

1. The earlier rejection of a nearly identical petition, also filed by the Petitioner herein under Section 11 of the Arbitration and Conciliation Act, 1996, (in short 'the Act'), for the same relief as sought in the present petition has not dissuaded it from making another attempt. The Petitioner asserts that notwithstanding the dismissal of the earlier petition, the instant petition is maintainable as a new cause of action has occurred. The Court is eager to know what this new cause of action is.

Brief Facts

2. Since the facts of the case have a long and chequered history leading to multiple litigations before this Court, it would be apposite to briefly note crucial facts, before embarking upon deciding the contentions put forth by the parities. As a matter of fact, the factual narrative stated in the instant petition is largely identical to what had been stated in the earlier petition. Thus, we have taken the liberty, in certain places, to cull out some facts verbatim as recorded in the judgment of this Court in the previous round of litigation in Arb. P. 143/2018.[1]

Disputes between the parties

2.1. The Petitioner claims that on 29th November, 1994, a firm was constituted by Mr. Georges Mailhot and his wife Ms. Bina K. Ramani. The firm known as 'Integration 2020' purchased the property being 1,038 square yards along with construction thereon bearing municipal numbers H-5/6 to H-5/10, Municipal Ward No. 1, situated opposite Qutub Minar, Mehrauli, New Delhi and some adjoining land, totalling 1440 sq. mt., popularly known as Qutub Colonnade (hereinafter 'suit premises') by an Agreement to Sell dated 2nd March, 1995 executed by the owners of the property, namely, Amarnath and Dewan Chand. The said owners also executed a Power of Attorney and affidavits in favour of the Firm. It is stated that the suit premises was duly mutated in the records of the Municipal Corporation of Delhi, in the name of the Firm.

2.2. The partnership deed dated 29th November, 1994 entered into between Mr. Georges Mailhot and Ms. Bina K. Ramani was modified by the partners on 23rd July, 2005 and the Firm was duly registered with the Registrar of Firms, Government of NCT of Delhi. On 20th May, 2010, the partnership deed dated

29th November, 1994 (as amended on 23rd July, 2005) was further amended and the name of the Firm was changed from 'Integration 2020' to 'Integration 2020 Developers' (in short 'the Firm').

2.3. The Petitioner claims that sometime in the month of May/June, 2012, Respondent No. 1 approached the Petitioner and expressed his interest to acquire the entire stake of the partners in the Firm. It is claimed that Respondent No. 1 was interested in opening an art club/art gallery and required the property owned by the Firm for the said purpose. As per the Respondent No. 1, the then partners of the Partnership Firm were willing to sell their entire stake in the Partnership Firm to the Respondent No. 1 for a sum of Rs. 20,00,00,000/-. The Respondent No. 1 intimated to the Petitioner that although he had investors who were willing to infuse Rs. 10,00,00,000 for buying out 50% stake in the Firm, he was in need of another sum of Rs. 10,00,00,000/- for buying out the balance stake, and requested the Petitioner to fund the same by way of a loan. The Respondent No. 1 said that he will repay the loan in about a month or so. The Petitioner accordingly agreed to fund the buy-out of the Firm from the then partners.

2.4. The Petitioner claims that they entered into a Loan Agreement with the Respondents on 4th June, 2012, whereby the Petitioner agreed to give a loan of Rs. 5 crores to each of the Respondents. The original loan amount alongwith interest due was to be repaid within a minimum period of one month and maximum period of three months effective from 4th June, 2012. In the Loan Agreement, it was agreed that in case the principal amount of the original loan amount and interest thereon or any part of the same shall remain unrealised after a lapse of six months from the date of the loan agreement, then the Petitioner shall be at liberty to sell the suit premises on behalf of the

[1] Delivered on 23rd July, 2018 by a coordinate bench of this court.

Respondent No. 1 and appropriate the proceeds thereof for satisfaction of the outstanding amount. The original title deeds of the suit premises were also deposited by the Respondent No. 1 with the Petitioner with the intent to secure the interest of the Petitioner *qua* the loan given by the Petitioner to the Respondent No. 1.

2.5. It is stated that on the same date, that is, on 4th June, 2012, Mr. Georges Mailhot and Ms. Bina K. Ramani sold half of their respective shares to the Respondents. Consequently, the Respondents were inducted as partners in the Firm holding 25% stake each. After the first supplementary deed, there were 4 partners (the 2 original partners and the 2 new inducted partners). It is claimed that, thereafter, the original partners (Mr. Georges Mailhot and Ms. Bina K. Ramani) retired from the Firm and entered into a second supplementary deed on 5th June, 2012 whereby the remaining 50% stake of the original partners was bought out by the Respondents on payment of Rs. 10,00,00,000/-.

2.6. On 14th June, 2012, Respondent No. 1 requested the Petitioner to advance more money to him as the former's investors had backed out. In this regard, Respondent No. 1 offered 50% stake in the Firm to the Petitioner at a price of Rs. 10,00,00,000/-. Thus, the Petitioner paid another sum of Rs. 9.5 crores to the Respondents (Rs. 5 crores on 14th June, 2012 to Respondent No. 2 and Rs. 4.5 crores on 19th June, 2012 to Respondent No. 1).

2.7. Since the Respondents failed to pay the total loan amount of Rs. 19,50,00,000/-, the Petitioner, on 9th July, 2012, entered into a supplementary partnership deed, whereby Respondent No. 2 transferred its entire share in the Firm to the Petitioner against a receipt of Rs. 10,00,00,000/-. Consequently, both Respondent No. 1 and the Petitioner now held 50% stake in the Firm. Furthermore, only an amount of Rs. 9,50,00,000/-, as borrowed by Respondent

No. 1, remained outstanding. The supplementary partnership deed dated 9th July, 2012 includes an arbitration clause, which is set out below:

> *"13. In the event of any dispute or difference in relation to or arising out of the present Deed, the same shall be settled through arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 1996. All parties will jointly and mutually nominate and appoint a sole arbitrator. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 and the venue of arbitration shall be New Delhi."*

2.8. Since Respondent No. 1 was unable to return the outstanding loan amount of Rs. 9,50,00,000/-, the possession of the suit premises was given to the Petitioner until the aforementioned amount was returned by Respondent No. 1. It is claimed that, thereafter, on 15th July, 2013, the Petitioner extended a further loan of Rs. 30,00,000/- to Respondent No. 1 and in turn Respondent No. 1 acknowledged that the Petitioner would have the right to sell his stake in the Firm to another party to recover the dues.

2.9. Respondent No. 1 did not return the amount due to the Petitioner by 31st October, 2013. Furthermore, the Petitioner, on 26th September, 2014, was informed by a real estate broker that the suit premises had been put up for sale. This forced the Petitioner to move this Court under Section 9 of the Act [OMP 1198/2014]. Thereafter, the Petitioner also issued a notice dated 14th November, 2014 invoking the abovementioned arbitration clause.

2.10. Respondent No. 1 replied to the said notice by a letter dated 22nd December, 2014. The Petitioner claims that the said response was handed over in Court on 5th February, 2015. Be that as it may, on the said date, this Court disposed of the petition [OMP 1198/2014] in the following terms:

> *"5. This is petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') seeking interim reliefs.*
>
> *6. The Court passed an order dated 5th November 2014 recording the submission of the counsel for the Respondent that since according to the Respondent there is no partnership agreement between the parties, there is no question of his selling*

his share in the said partnership.

7. Ms. Ritika Pal, learned counsel for the Petitioner pointed out that in the order dated 5th November 2014 it was recorded by the Court that "at this stage, the property prima facie is owned by the original owner. None of the parties has right to dispose of the same." The 'original owner' in the above sentence is M/s. Amar Chand and Diwan Chand. However, Ms. Pal states that the ownership of the property at H-5/6 to H-5/10, Municipal Ward No. 1, Qutub Collonade, situated opposite Qutub Minar, Mehrauli, New Delhi stands mutated in the name of the firm "Integration 2020 Developers". While the Petitioner asserts that he and the Respondent have 50% share each in the said partnership firm, this is denied by the Respondent. Be that as it may, as per the claim by the Petitioner, if the property in question as of today stands in the name of the firm "Integration 2020 Developers", there cannot be any apprehension that the Respondent can unilaterally sell or create any third party right interest in relation to the said property.

8. Ms. Pal stated that the Petitioner has already issued a public notice warning unsuspecting third party purchasers from dealing with the Respondent in relation to the property in question. The Petitioner can put the Sub-Registrar of the concerned area on notice if there is any attempt made to sell the property in question.

9. As regards the apprehension that the Respondent might sell his 50% share in the partnership firm, there is already a statement recorded of the Respondent that there is no question of his selling any share in the partnership firm by the name "Integration 2020 Developers", particularly when he denies that the Respondent has no such partnership with the Petitioner.

10. The Petitioner has relied upon an affidavit dated 15th October 2014 sworn to by the Respondent, a photocopy of which has been placed on record with an application IA No. 21446 of 2014. She states that the said affidavit was executed on the very date, i.e., 15th October 2014 when the matter was heard in Court. On that day, the Court passed an order that records that "the parties have settled their disputes, therefore, the time was sought for filing the affidavit to this effect." The matter was passed over to be taken up post lunch. After lunch none was present and the case was listed on 5th November 2014. It appears now that the original of the said affidavit of the Respondent has not been produced. Ms. Pal claims that the original is with the Respondent. However, this is denied by Mr. Vijay Sharma, learned counsel for the Respondent. Only a photocopy of the said affidavit has been enclosed with the Petitioner's application, IA No. 21446 of 2014. Mr. Sharma was not the counsel who appeared for the Respondent on 15th October 2014. He denies that the said affidavit was voluntarily given by the Respondent.

11. Considering that the original of the Respondent's aforesaid affidavit dated 15th October 2014 is not on record, the Court does not propose to examine whether such affidavit was at all given by the Respondent. With the Respondent resiling from the statements made in the said affidavit, it cannot be acted upon by the Court. The execution of the said affidavit is itself a matter of dispute between the

parties.

12. In response to a query whether the Petitioner has taken steps to have an Arbitrator appointed, Ms. Pal states that the Petitioner has already issued a notice to the Respondent invoking the arbitration clause and suggesting the name of the arbitrator. Mr. Sharma, learned counsel for the Respondent hands over in Court a copy of the reply of the Respondent to the said notice. The same is taken on record. The Respondent's stand is that there is no partnership deed executed by the Respondent and therefore there is no arbitration clause.

13. In that view of the matter, the order dated 5th November 2014 recording the statement of the Respondent that he cannot sell any share in the partnership since he is not a partner is reiterated and will continue during the pendency of the arbitral proceedings. No further orders are required in this petition and it is disposed of. The pending application also stands disposed of."

2.11. After the disposal of the said petition, the Petitioner did not approach this Court under Section 11 of the Act seeking appointment of an Arbitrator.

2.12. It is claimed that Respondent No. 1 approached the Petitioner with a request to not proceed further with the litigation and both the parties should settle the disputes amicably. Both parties decided to develop the suit premises as Respondent No. 1 was unable to repay the outstanding loan amount. It was further decided that once the suit property becomes habitable and is put on rent, both the parties shall enjoy rental income, as per their 50% share envisaged in the supplementary partnership deed dated 9th July, 2012.

2.13. In July, 2017, the Petitioner learned that Respondent No. 1 was merging the property with another property, namely, H-5/6 to H-5/10 Kalka Das Marg, Mehrauli, New Delhi and in August, 2017, a complaint in this regard was made to the SHO, Mehrauli.

2.14. On 10th October, 2017, the Petitioner sent a second notice invoking arbitration clause under the supplementary partnership deed dated 9th July, 2012. The Respondents sent a reply to the aforesaid notice through their

advocate on 6th November, 2017. It was asserted in the said reply that the Respondents had never executed the documents referred to by the Petitioner, namely, the supplementary partnership deed dated 9th July, 2012 or any irrevocable power of attorney dated 4th June, 2012.

2.15. Thereafter, on 4th January, 2018, the Petitioner filed a petition under Section 9 of the Act, being O.M.P.(I)(COMM) 74/2018, seeking *inter alia*, the following reliefs:

> *"The Petitioner seeks to invoke the jurisdiction of this Hon'ble Court by virtue of Section 9 of the Arbitration and Conciliation Act, 1996 for interim protection to safeguard the subject matter of the lis arbitration, being invoked by the Petitioner. The subject matter of the present dispute are that in violations of the Order dated 05.02.2015 in OMP No. 1198 of 2014 the Respondent No. 1 has been misrepresenting and has been creating third party rights in the property of the partnership firm "Integration 20:20 Developers" comprising of land admeasuring 1,038 square yards alongwith construction thereon bearing municipal number H-5/6 to H-5/10. Municipal Ward No.1, situated opposite Qutub Minar, Mehrauli, New Delhi and some adjoining land (popularly known as "Qutub Colonnade" and hereinafter referred to as "Partnership Property") without obtaining the consent of the Petitioner."*

2.16. The said petition was followed by the petition under Section 11 of the Act, [Arb. P. 143/2018] which was listed for the first time on 23rd February, 2018, on which notice was issued to the Respondents. On 19th March, 2018, the Court directed the Respondents to file an affidavit affirming whether the signatures on the partnership deed, as set up by the Petitioner, belonged to the Respondents. In compliance with the aforesaid directions, Respondent No. 1 filed an affidavit, *inter alia,* affirming that the signatures on the supplementary partnership deed dated 9th July, 2012 were indeed that of Respondent No. 1, but the contents contained therein were denied. It was claimed that the signatures were obtained by the Managing Director of the Petitioner on certain blank papers, which were misused for creating certain documents, and that the supplementary partnership deed as set up by the Petitioner is one such document.

2.17. On 19th March, 2018, the Petitioner withdraw the Section 9 petition [OMP(I)(COMM.) 74/2018] with a liberty to file appropriate proceedings. The said order reads as under:

> *"1. The learned counsel appearing for the petitioner states that he does not wish to press this petition at this stage reserving its rights to seek remedies before an appropriate forum.*
> *2. The petition and the pending application are dismissed as withdrawn with the aforesaid liberty."*

2.18. Thereafter, on 23rd July, 2018, this Court dismissed ARB. P. 143/2018 finding the same to be, *inter alia,* barred by limitation.

2.19. The Petitioner challenged the aforesaid judgment before the Supreme Court by way of a Special Leave Petition [being SLP (C.) No. 3658/2019]. The same was dismissed *vide* order dated 31st January, 2019.

2.20. On 25th May, 2019, the Petitioner filed a complaint before the Economic Offences Wing, pursuant to which, an FIR No. 0229 of 2019 was registered on 20th November, 2019 against Respondent No. 1. This criminal action was premised on Respondent No. 1 leasing out the suit premises without the consent of the Petitioner and not releasing 50% share of rental income from February/March 2018 till date.

2.21. The Petitioner alleges that it came to know that Respondent No. 1, in his capacity as a partner in the Firm, had been selling properties to third parties contrary to the stand taken in the Section 9 proceedings, as noted in the rder dated 5th February, 2015 passed in OMP 1198/2014.

2.22. The Petitioner, yet again, on 12th September, 2020, for the third time invoked the arbitration clause under the supplementary partnership deed dated

9th July, 2012. This notice was replied to by the Respondent on 10th October, 2020.

2.23. On 21st September, 2020, a Section 9 petition [being O.M.P.(I) (COMM.) 295/2020] was filed by the Petitioner.

2.24. On 7th November, 2020, the petition under Section 11 of the Act came to be filed.

Contentions of the Petitioner:

3. The Respondents, at the outset, oppose the maintainability of the present petition on several grounds, primarily on limitation and *res judicata*. Responding to the aforesaid objections and on merits of the case, Mr. Rajat Aneja, learned counsel for the Petitioner, argued as follows:

3.1. There is no bar under law to seek reference of a fresh dispute, based on a fresh cause of action, sourced from the same arbitration agreement. Parties are free to invoke arbitration agreement more than once by, way of separate references and at different points of time, arising out of disputes under the same contract. The present petitions are premised on a cause of action which has recently arisen and is subsequent to the dismissal of Arb. P. 143/2018. Thus, the petition is within time and the Petitioner is entitled to invoke arbitration.

3.2. In the year 2014, when the Petitioner approached this Court under Section 9 of the Act, Respondent was attempting to sell the share in the Firm. During the pendency of the petition, the arbitration clause was invoked *vide* notice dated 14th November, 2014. However, since the Respondent made a submission before this Court that he cannot sell the property owned by the

partnership firm, the Court disposed of the Section 9 petition on 5th February, 2015 and thus, there was no need or reason to seek appointment of an Arbitrator.

3.3. The Respondents have acted contrary to the undertaking given before this Court as recorded in the order dated 5th February, 2015. They have sold part of the suit property owned by the partnership firm by way of various transactions. The cause of action is a continuing one and the Petitioner seeks an order for preservation of the property in question by restraining the Respondent from creating third party interest therein. This cause of action has allowed the Petitioner to invoke the arbitration clause once again and seek adjudication of the fresh claims arising out of a fresh cause of action.

3.4. The order of this Court dated 23rd July, 2018 dismissing the earlier petition under Section 11 of the Act, holding the same to be barred by limitation, does not preclude the Petitioner from filing the present petition. In the earlier petition under Section 9 of the Act, the Petitioner had averred that the Respondent No. 1 was attempting to sell his share of the Firm and attempting to create third party rights in the property owned by the Firm. However, now in July 2020, the Respondent has gone ahead and actually sold the property. This is a fresh cause of action. In this regard, reliance is placed on para 26 of the order dated 23rd July, 2018, which reads as under:

> *"26. However, the petitioner did not take any steps for constitution of the Arbitral Tribunal. Mukesh had denied the existence of any arbitration agreement, as on 22.12.2014, in the reply filed to OMP 1198/2014. In any event, the petitioner had received the said reply to its notice by 05.02.2015. However, the petitioner did not take any steps for constitution of the Arbitral Tribunal. The petitioner once again sent a notice on 10.10.2017 invoking the arbitration clause. It is relevant to note that in its notice, the petitioner made a similar allegation to the effect that Mukesh is attempting to dilute the assets of the Firm – the immovable properties in question."*

3.5. To buttress the submissions, reliance was also placed upon the judgments

of this Court in ***Gammon India Ltd. and Ors. v. National Highways Authority of India***,[2] and ***Parsvnath Developers Limited and Ors. v. Rail Land Development Authority***.[3] In ***Gammon India*** *(supra),* this Court made an observation, on a reading of Sections 7 and 8 of the Act, that if multiple disputes exist, they may need to be referred to arbitration at different times. In ***Parsvnath Developers*** *(supra)*, this Court, following the judgments of the Supreme Court, came to the conclusion that limitation, being a mixed question of fact and law, is a jurisdictional issue and would have to be determined by the Arbitral Tribunal as the scope of examination at the stage of Section 11 of the Act, especially post the legislative Amendment of 2015 introducing sub-clause (6A) to Section 11, is extremely narrow.

3.6. The stand of the Respondent before the court is contrary to their earlier stance. As recorded in the order dated 23rd July, 2018, Respondents have affirmed their signatures and the execution of the partnership deed in question, and have only denied the contents thereof. As the execution of the partnership deed is not denied, it contradicts their stand that no partnership deed exists between the parties. Respondents have admitted and acknowledged that in the affidavit dated 15th October, 2014, they had stated that they had entered into a partnership deed dated 9th July, 2012 and were a 50% partner in the Firm. This admission also constitutes as a fresh cause of action.

3.7. The proposed claim of the Petitioner also includes, *inter alia*, declaration without possession and mandatory injunction, both of which fall under Article 113 of Limitation Act, 1963. In this regard, the case of ***Shakti Bhog Industries Ltd. v. The Central Bank of India.***[4] was cited, whereunder the Court distinguished between the expression "*when the right to sue accrues*" provided

[2] AIR 2020 Delhi 132.
[3] 2020 (3) ARB LR 536 (Delhi).

in the residual Article 113 from the expression "*when the right to sue first accrues*" which is found in other articles of the Limitation Act, 1963.

3.8. Lastly, reliance was placed upon the judgment in ***Rathnavathi v. Kavita Ganashamdas***,[5] to explain the distinction between the cause of action for two different proceedings. It was argued that the Supreme Court has observed that it is not the pleadings alone that determine the cause of action; rather the Court has to take a complete and holistic view to take note of the actual cause of action to determine whether the bar under Order II Rule 2 of the CPC would be attracted or not. In this regard, he relies upon paragraphs 29 and 36 of the said judgment.

Respondents' contentions:

4. Mr. Vijay Sharma, learned counsel for the Respondent, on the other hand, contends as under:

4.1. The petition is *ex-facie* barred by limitation. This Court has delved into and answered this very question by way of a detailed judgment in Arb. P. 143/2018. The observations made therein would prevail and the Petitioner cannot be permitted to seek adjudication of disputes which are *ex-facie* barred by limitation.

4.2. Successive notices of invocation do not give rise to fresh cause of action to maintain a petition under Section 11 of the Act. The cause of action stood crystalized at the stage of first invocation notice dated 14th November, 2014. The Petitioner was required to file the present application within a period of three years from the expiry of 30 days of the said notice. Not having done the

[4] 2020 SCC OnLine SC 482.
[5] (2015) 5 SCC 223.

same, the first petition under section 11 of the Act was held to be non-maintainable. The same principle would apply to the present petition.

4.3 The petition is barred by *res-judicata*. The issue of limitation stands decided against the Petitioner by virtue of the decision of this Court in Arb. P. 143/2018.

4.4 In support of his submissions, Mr. Sharma has relied upon the judgments of the Supreme Court in ***Bharat Sanchar Nigam Limited v. M/s Nortel Networks India Pvt. Ltd.***,[6] ***Secundrabad Cantonment Board v. B. Ramachandraiah and Sons***,[7] and ***S. Nagraj (Dead) by LRs. v. B.R. Vasudeva Murthy***.[8]

Analysis:

5. The Court has considered the contentions of both the sides. This is the fifth round of litigation between the same parties. The principal controversy to be addressed in the present petition is the same as was the case in Arb. P. 143/2018, i.e., '*whether the application is barred by limitation*'. In fact, this question can be narrowed down in view of the findings of the court in the above-noted judgment, as, '*whether any new cause of action has occurred after the dismissal of Arb. P. 143/2018 that enables the Petitioner to file this application*'.

6. In Arb. P. 143/2018, the coordinate bench of this Court *vide* its judgment and order dated 23rd July, 2018, conclusively observed that the Section 11 petition had been filed after more than 3 years from the expiry of the 30-day period post the notice of invocation dated 14th November, 2014. The SLP before the Supreme Court against the said order was dismissed. It was further observed by this court that when the arbitration agreement was unequivocally denied by the

[6] AIR 2021 SC 2849.
[7] AIR 2021 SC 1391.

Respondents *vide* their reply dated 22nd December, 2014, the disputes were crystallized, and it was imperative for the petitioner to file an application under Section 11 of the Act. The relevant findings of the Court are extracted hereinbelow:

> *"31. In view of the above, the petitioner was required to file the present application within a period of three years from the expiry of 30 days of its notice dated 14.11.2014. The contention that the response to the said notice gave a fresh cause of action to issue a fresh notice invoking the arbitration is wholly unmerited. The petitioner had raised a dispute and had accordingly, invoked the arbitration clause. The respondents had unequivocally denied that the parties had entered into a Partnership Deed or that any arbitration agreement existed between the parties. Disputes were crystallized at that stage. There was no requirement for the petitioner to issue a fresh notice for resolution of the said disputes. It was open for the petitioner to file an application for appointment of an arbitrator at that stage. However, the present application has been filed more than three years after this Court had disposed of the petitioner's petition under Section 9 of the Act. In view of the above, the present application is barred under the provisions of Limitation Act, 1963."* (Emphasis Supplied)

7. The disputes stood crystallized in light of Respondent's categorical and unequivocal stand regarding the partnership deed in question, *vide* its reply dated 22nd December, 2014, as was also observed in the judgment referred above. The limitation period for making an arbitral claim or instituting proceeding in relation thereof is three years from the date of accrual of the cause of action. For the purpose of limitation, an arbitral proceeding is deemed to have commenced on the date a request/notice for arbitration is received by the other party. It was, thus, requisite for the Petitioner to have approached this Court within a period of three years from the expiry of thirty days from the date of service of the first invocation notice, which is the starting point of limitation. The declaration of disputes by the Respondent was without any loophole or exception; and was undeniably communicated to the Petitioner, giving rise to dispute between the parties. Did the cause of action inhere in this denial with certainty? The answer is in the affirmative. The Petitioner could not avoid resolution of this dispute arising from contract and claim the cause to be continuing one.

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[8] (2010) 3 SCC 353.

8. The Petitioner's contention that the aforesaid judgment would not have a bearing on the present petition, on the ground that it has been premised on a fresh cause of action, is fallacious. The distinction between the causes of action for the two petitions *viz.* the attempt to sell and the actual sale, is nothing but an attempt to creation an illusion of a fresh cause of action. This so-called 'fresh' cause of action would not extend the limitation period. At the cost of repeating *ad nauseum*, the cause of action for arbitration, being the flash point for the purpose of reckoning the period of limitation, has already accrued by way of the stand of Respondent denying the arbitration agreement *vide* its reply dated 22nd December, 2014. Limitation is to be calculated as three years from the expiry of thirty days from the date of service of the first invocation notice. Therefore, in the present *lis*, the third invocation notice dated 12th September, 2020, based on the same partnership deed and arbitration agreement, but alleging subsequent actions of the Respondents, cannot infuse fresh life into a dead claim. In fact, this very contention also stands rejected by this Court by way of the earlier judgment of a coordinate bench, as extracted above. Besides on facts, this court finds no difference between the causes of action urged by the Petitioner in the two petitions. In both, the petitioner had made an averment that the Respondent is selling the suit premises. No superficial change in the circumstances would amount to a fresh cause of action that would extend the period of limitation.

9. Next, the judgments relied upon by the Petitioner are wholly inapplicable in the facts of the case. In ***Gammon India*** *(supra)*, while this Court has observed that it is possible that subsequent disputes may arise which may require a second reference; however, at the same time the court has also observed that if a party does not raise claims which exist on the date of first invocation, it ought not to be given another chance to raise it subsequently unless there are legally sustainable grounds.

10. In ***Parsvnath Developers*** *(supra)*, this Court stated that limitation was a mixed question of law and fact and had to be determined by the Arbitral Tribunal and not by the Court under Section 11. This is the correct proposition of law and indeed, the principle of "*kompetenz-kompetenz*" is well enshrined in arbitration law with the intent to minimize judicial intervention. There can also be no doubt that ordinarily while exercising jurisdiction under Section 11(6A) of the Act, the Court does not decide disputed question of facts. However, we must note the factual context in ***Parsvnath Developers*** *(supra)*. In the said case there were already two previous references to arbitration and the limited question was whether certain disputes were already covered by those proceedings or a fresh reference was warranted. The Court chose not to answer the question and instead referred the parties to the Arbitral Tribunal after noting that there existed a dispute and there was no disagreement on the aspect of existence of the arbitration clause. This judgment is thus of no avail to the Petitioner as the factual scenario presented herein is completely different. Besides, as discussed here, since the starting point of limitation is not in dispute, the question of limitation does not remain a disputed question of fact requiring determination by the Arbitral Tribunal. Further, the reliance by the Petitioner on the cases of ***Rathnavathi v. Kavita Ganashamdas*** (*supra*) and ***Shakti Bhog*** *(supra)*, which deal with civil proceedings, is wholly misconceived and offers no assistance to the case of the Petitioner.

11. At this juncture it would be profitable to take note of recent judgments of the Supreme Court dealing with the scope of jurisdiction under Section 11(6A) of the Act. In ***Vidya Drolia v. Durga Trading Corporation***,[9] the Court, among other aspects, examines the scope of judicial interference under Section 8 and Section 11 of the Act (post the 2015 Amendment) and emphatical holds that the court

needs to only examine the existence of the arbitration agreement. At the same time, it observes that judicial scrutiny is permissible in cases where court can come to the conclusion that disputes are *ex-facie* non-arbitrable. Some observations made therein by Justice Sanjiv Khanna are reproduced below for the sake of clarity:

> *"87. Prima facie examination is not full review but a primary first review to weed out manifestly and ex facie non-existent and invalid arbitration agreements and nonarbitrable disputes. The prima facie review at the reference stage is to cut the deadwood and trim off the side branches in straight forward cases where dismissal is barefaced and pellucid and when on the facts and law the litigation must stop at the first stage.*
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> *xx xx xx xx*
>
> *96. Discussion under the heading 'Who decides Arbitrability?' can be crystallized as under:*
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> *(a) to (c) xx xx xx xx*
>
> *(d) Rarely as a demurrer the court may interfere at the Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is nonexistent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably 'non-arbitrable' and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the arbitral tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism."*

12. In ***BSNL v. Nortel Networks*** *(supra)* the Court held that the period of limitation for filing an application under Section 11 of the Act would be governed by Article 137 of the First Schedule of the Limitation Act, 1963. The Court further held that in rare and exceptional cases, where the claims are *ex facie* time barred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference. A few observations made therein need mentioning:

> *"36. (...) While exercising jurisdiction under Section 11 as the judicial forum, the court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation. Limited jurisdiction of the Courts*

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[9] MANU/SC/0939/2020.

would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere "only" when it is "manifest" that the claims are ex facie time barred and dead, or there is no subsisting dispute.
37. (...) It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may decline to make the reference. (...)"

13. In the opinion of this Court, the present petition falls in the abovementioned limited category. The petition raises frivolous pleas and is *ex-facie* barred by the provisions of Limitation Act, 1963. The purportedly fresh cause of action is an attempt to cross the hurdle of the findings rendered by this court in Arb. P. 143/2018. There is no merit in the same.

14. Accordingly, the petition is dismissed along with pending applications with a cost of Rs. 50,000/- against the Petitioner, to be paid to the Respondents.

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15. Since the disputes arising between the parties are held to be barred by limitation, there can be no ground to entertain the present petition or grant interim reliefs as stated therein. The petition is dismissed along with pending applications. The interim order dated 5th February, 2015 stands vacated.

SANJEEV NARULA, J

JULY 9, 2021
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(corrected and released on 23rd July, 2021)