IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISC. CIVIL APPLICATION (ARBITRATION) No. 591/2025

P.N. Gawande Ginning, Pressing & Oil Mill Pvt. Ltd., Through its Director Subash Gawande,
Aged about 65 years, Occ. Business,
R/o Plot No. 47, Kothari Layout, Kachimet, Amravati Road,
Nagpur 440033 : **APPLICANT**

Vs.

1. The Maharashtra State Co-operative Cotton Grower's Marketing Federation Ltd. Through The Managing Director, Head Office at Cotton Complex Building, Ajni Chowk, Wardha Road, Nagpur-15 Administrative Office at 201, Jolly Bhavan-2, Vitthaldas Thakerasey Marg, New Marine Lines, Church Gate, Mumbai : **RESPONDENTS**

2. The Zonal Manager, The Maharashtra State Co-operative Cotton Grower's Marketing Federation Ltd. Cotton Complex Building, Ajni Chowk, Wardha Road, Nagpur, Pin - 440015

Mr. A.G. Joshi with Mr. Ram D. Heda & Mr. Vaiman Chatap, Counsel for Applicant,
Mr. M.V. Samarth, Senior Counsel a/b. Mr. A.S. Ponkshe, Counsel for Respondent Nos.1 and 2

CORAM : NIVEDITA P. MEHTA, J.

Date of reserving the order : 22.12.2025

Date of pronouncing the order : 06-01-2026

P.C. :

The applicant has filed the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (In short, "the Act of 1996"), seeking appointment of sole Arbitrator in terms of clause 15 of the agreement dated 13.01.2020. Clause 15 of the said agreement reads thus:

> *"15. In case of any dispute or difference arising out of or in relation to this agreement the same will be referred to arbitration of sole Arbitrator (other than an employee of the MAHACOT) to be appointed by the Managing Director of the MAHACOT and whose decision shall be final and binding upon the parties hereto. The arbitration will be governed by the provisions of the Arbitration & Conciliation Act, 1996."*

2. The facts of the case succinctly is that the applicant is the owner of the cotton ginning and pressing factory and the respondent No.1 is the body registered under the Maharashtra Co-operative Societies Act, 1960 (in short, the Act of 1960). The establishment of the respondent No.1 was to implement the Cotton Monopoly Scheme and is involved in procurement, processing, storage and sale of cotton under the scheme which is guided by the policies of the State Government. The respondent No.2 is the Zonal Manager of the respondent No.1 Society. The applicant and the respondents had entered into the agreement dated 13.01.2020, wherein the applicant offered the work of ginning and pressing of the cotton for the respondents during cotton year 2019-20 on job basis. The said offer

was accepted by the respondents on certain terms and conditions as mentioned in the agreement.

3. The respondents vide notice dated 25.02.2021, informed the applicant about deductions from the amount payable by the respondents to the applicant due to the losses suffered by the respondents. The applicant vide letter/email dated 01.03.2021 approached the respondent No.2 stating that no such loss was incurred at the applicant's ginning factory and that the respondents had not communicated any details regarding such alleged loss and requested to release the payment of Rs.21,84,073/-. The applicant vide letter dated 03.04.2021 has categorically acknowledged the receipt of payment of Rs.10,12,993/- and requested the respondents to release the remaining amount. The respondent No.2 vide communication dated 15.04.2021 had clearly informed the applicant that as per the calculation, the security deposit of Rs. 10,12,993/- has been refunded.

4. The applicant has preferred the present application contending that, in the absence of transparency and proper documentation, the respondents unilaterally deducted amounts legitimately payable to the applicant. The applicant reiterated its demand on 02.06.2022; however, the same elicited no response.

Despite repeated representations, the respondents failed to address the grievance. Consequently, the applicant was constrained to issue a notice dated 05.03.2025 invoking arbitration in terms of Clauses 15 and 16 of Part 'E' of the agreement dated 13.01.2020. As no arbitrator was appointed in pursuance thereof, the present application seeking appointment of an arbitrator has been filed by the applicant.

5. Heard the learned Counsel Mr. A.G. Joshi for the applicant and Mr. M.V. Samarth, learned Senior Counsel for the non-applicants.

6. SUBMISSIONS ON BEHALF OF THE APPLICANT:

6.1. Mr. A.G. Joshi, learned Counsel appearing for the applicant, submitted that the deductions made by the respondents were arbitrary, illegal, and unsupported by any documentary material. It was contended that the notices issued by the respondents were not accompanied by any panchanama, laboratory reports, or other evidence to establish the alleged losses.

6.2. It was further submitted that the deductions were effected in violation of the principles of natural justice, without granting the applicant any opportunity of hearing or inspection. According to the learned Counsel, the communication regarding recovery was issued nearly two years after the cotton season 2019–20, whereas any laboratory testing or trial reports ought to have been promptly disclosed to the applicant.

6.3. The learned Counsel further submitted that the applicant, by letter dated 26.04.2021, specifically sought lot-wise details and laboratory test reports relating to the deductions, but no such information was furnished. Despite repeated requests, the respondents failed to supply laboratory reports or permit inspection of samples, thereby depriving the applicant of an opportunity to verify or challenge the deductions.

6.4. Learned Counsel appearing for the applicant argues that the respondents, without disclosing any basis or maintaining proper records, effected unilateral deductions from the amounts due to the applicant. It is urged that the applicant raised objections and renewed its claim on 02.06.2022, but the respondents remained unresponsive. Despite several follow-ups, no clarification or resolution was forthcoming. Learned Counsel submits that, left with no alternative, the applicant issued a notice dated 05.03.2025 invoking the arbitration mechanism provided under Clauses 15 and

16 of Part 'E' of the agreement dated 13.01.2020. As the respondents failed to act upon the said notice, the applicant has approached this Court seeking appointment of an arbitrator.

6.5. Learned Counsel for the applicant placed reliance on the following decisions to contend that the scope of jurisdiction under Section 11 of the Act is confined to examining the existence of an arbitration agreement and that issues such as limitation fall within the domain of the arbitral tribunal:

(i) M/s. B AND T AG v. Ministry of Defence, (2024) 5 SCC 358;

(ii) M/s. Arif Azim Co. Ltd. v. Aptech Ltd., Arbitration Petition No. 29 of 2023;

(iii) M/s. Andhra Pradesh Power Generation Corporation Ltd. v. M/s. TECPRO Systems Ltd. & Ors., SLP (C) No. 8998 of 2023.

7. SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

7.1. Per contra, Mr. M.V. Samarth, learned Senior Counsel appearing for the respondents, submitted that the present application is barred by limitation. It was contended that the cause of action arose on 15.04.2021, when deductions were communicated and payment of Rs.10,12,993/- was made as full and final settlement.

7.2. Learned Senior Counsel submitted that the applicant invoked arbitration only on 05.03.2025, i.e., after a lapse of more than three years and eleven months, which is beyond the period of limitation prescribed under Article 137 of the Limitation Act, 1963. According to him, the claim is *ex facie* time-barred and amounts to a dead claim.

7.3. It was further submitted that subsequent correspondence or negotiations do not extend or postpone the limitation period. Reliance was placed on the judgments of the Hon'ble Supreme Court in *B & T AG v. Ministry of Defence, (2024) 5 SCC 358,* and *Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705,* to contend that Article 137 applies to arbitration proceedings and that mere exchange of letters or reminders does not save limitation.

CONSIDERATION, REASONS AND FINDINGS

8. I have heard the learned Counsel for the applicant and learned Senior Counsel for the respondents at length and have carefully perused the material placed on record.

9. At the outset, it is required to be noted that the existence of the arbitration agreement contained in Clause 15 of the agreement

dated 13.01.2020 is not in dispute. The said clause clearly provides for reference of disputes arising out of or in relation to the agreement to arbitration. Thus, the foundational requirement for exercise of jurisdiction under Section 11(6) of the Act of 1996 stands satisfied.

10. The principal objection raised by the respondents is with regard to limitation, contending that the claim sought to be referred to arbitration is barred under Article 137 of the Limitation Act, 1963, as the cause of action allegedly arose on 15.04.2021 and the notice invoking arbitration was issued on 05.03.2025.

11. The scope of examination by a referral court under Section 11 of the Act of 1996 is no longer *res-integra*. Post the insertion of Section 11(6A) and the authoritative pronouncements of the Hon’ble Supreme Court, the jurisdiction of the Court at this stage is confined to a *prima facie* examination of the existence of an arbitration agreement, leaving all contentious and disputed issues to be decided by the arbitral tribunal.

12. In **M/s.** ***B & T AG v. Ministry of Defence, (2024) 5 SCC 358***, the Hon’ble Supreme Court has categorically held that the referral court should not enter into a detailed examination of disputed

questions of fact or law, including limitation, unless the claim is *ex facie* and manifestly time-barred, leaving no room for doubt.

13. The Hon'ble Supreme Court has further reiterated the principle of kompetenz-kompetenz, embodied in Section 16 of the Act of 1996, which mandates that the arbitral tribunal is competent to rule on its own jurisdiction, including objections with respect to limitation, accord and satisfaction, or the existence of a concluded contract.

14. In ***Arif Azim Co. Ltd. v. Aptech Ltd.***, Arbitration Petition No. 29 of 2023, the Hon'ble Supreme Court held that the court at the Section 11 stage cannot undertake a mini-trial or evaluate the merits of rival claims and defences. Similarly, in M/s. Andhra Pradesh Power Generation Corporation Ltd. v. M/s. TECPRO Systems Ltd. & Ors., SLP (C) No. 8998 of 2023, it was held that limitation is a mixed question of law and fact, ordinarily requiring evidence, and therefore cannot be conclusively decided at the threshold.

15. In the present case, the applicant has specifically disputed the finality of the alleged settlement communicated by the respondents on 15.04.2021. The applicant has asserted that deductions were effected unilaterally, without furnishing laboratory reports,

panchanamas, or lot-wise details, and without affording an opportunity to inspect samples or contest the alleged losses.

16. The applicant has further contended that repeated representations seeking documents and clarification were ignored, and that denial of such material vitiates the respondents' claim of full and final settlement. Whether the communication dated 15.04.2021 constitutes a concluded settlement, whether the cause of action crystallised on that date, and whether the claim is barred by limitation are all matters which require adjudication on facts and evidence.

17. The objection raised by the respondents, therefore, does not fall within the narrow category of cases where the claim can be said to be hopelessly barred on the face of the record. The limitation issue raised herein is neither pure nor undisputed, but is intertwined with factual controversies which cannot be resolved in proceedings under Section 11 of the Act of 1996.

18. Though reliance has been placed by the respondents on ***Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705,*** the said decision does not dilute the settled principle that adjudication of limitation, where facts are disputed,

lies within the province of the arbitral tribunal and not the referral court.

19. It is pertinent to focus on the timeline in the present matter. It is the case of the applicant that, on several occasions, the applicant requested respondent No. 2 to supply the laboratory test reports by way of letters and emails dated 27th April 2021, 5th May 2021, 17th May 2021, 24th June 2021, and 2nd June 2022. The notice invoking the arbitration clause was issued on 5th March 2025, i.e., prima facie within time. It is apparent that from the last communication dated 2nd June 2022, the notice invoking the arbitration clause was issued within three years, as prescribed under the law of limitation.

20. Therefore, the contention of the respondents that payment was made to the applicant in the month of April 2021 and, therefore, the claim raised for reference to arbitration in the present application is beyond the period of limitation, cannot be accepted, at least prima facie. It is not at all the case of the respondents that suddenly, after April 2021, the applicant woke up from deep slumber and filed the present proceedings.

21. It is not in dispute that a mere exchange of letters or communications does not extend the period of limitation. However, in the present context, the authority cited by the respondents in ***B***

And T AG (supra) would not come to their rescue, as the facts of that case were totally different. In the present case, the applicant had been continuously raising disputes with respect to the laboratory test reports and was consistently demanding the same. As the said reports were not provided even after the last communication dated June 2022, the applicant issued a notice invoking the arbitration clause within a period of three years thereafter.

22. So also, the authority cited in ***B. Ramchandraya and Sons*** (supra) deals with the issue of whether an application for appointment of an arbitrator is time-barred or not. In the present case, the notice invoking the arbitration clause was issued on 5th March 2025, and the present application for appointment of an arbitrator was filed on 14th August 2025, that is to say, within a period of one year from the date of issuance of the notice invoking the arbitration clause. Therefore, at least at the reference stage, it cannot be said that the claim is absolutely barred by limitation.

23. In view of the settled legal position and the binding precedents of the Hon'ble Supreme Court, this Court is of the considered opinion that the objection relating to limitation does not warrant rejection of the present application at the threshold.

24. Once the existence of an arbitration agreement is established and the disputes raised are arbitrable in nature, this Court is obliged to refer the parties to arbitration, leaving all issues on merits, including limitation, accord and satisfaction, and validity of deductions, to be decided by the arbitral tribunal.

CONCLUSION:

25. For the reasons aforesaid, this Court holds that; here exists a valid arbitration agreement between the parties; the disputes raised fall within the scope of the arbitration clause; the objection regarding limitation involves disputed questions of fact and law and cannot be conclusively determined at this stage and this Court find it fit to appoint an arbitrator for resolution of disputes raised by the applicant. The application, therefore, deserves to be allowed. Hence, I proceed to pass following order.

ORDER

The application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is allowed.

List the matter for further consideration on 12-01-2026.

(NIVEDITA P. MEHTA, J.)

MP Deshpande

Signed by: Mr. M.P. Deshpande
Designation: PA To Honourable Judge
Date: 06/01/2026 17:28:27