AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION APPLICATION (L) NO.27761 OF 2026
WITH
COMM ARBITRATION PETITION NO. 915 OF 2025

Atul Projects India Private Limited … Petitioner

V/s.

1. Taksha Spaces Private Limited
2. Kinner Kanu Nayak
3. Rita Kinner Nayak … Respondents

ATUL GANESH KULKARNI

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Date: 2026.09.01 15:12:02 +0530

Mr. Dinyar Madon, Senior Advocate with Mr. Rohaan Cama with Mr. Karan Bhide, and Mr. Akshit Dedhia, i/b Vardhaman Juris, for the Petitioner.

Mr. Aseem Naphade with Ms. Deepanjali, and Ms. Mayuri Thakker i/by R.V. & Co., for the Respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 27, 2026

PRONOUNCED ON : SEPTEMBER 1, 2026

JUDGMENT:

1. By the present Applications filed under Sections 9 and 11(6) of the Arbitration and Conciliation Act, 1996, the Applicant seeks interim reliefs as prayed for. The Applicant seeks appointment of a Sole Arbitrator to decide the disputes and differences between the Applicant and the Respondents arising out of and in connection

with the Development Management Agreement dated 30 January 2018 ("DMA"), in terms of the arbitration agreement contained in Clause 18.7 thereof. The Applicant has sought condonation of delay in filing the present Application by invoking Section 5 of the Limitation Act, 1963.

2. The facts which have led to filing of the present Applications, as stated by the Applicant, are as follows. On 30 January 2018, the Applicant and Respondent No. 1 entered into a Development Management Agreement, which was executed by Respondent No. 2 on behalf of Respondent No. 1. Under the said DMA, the Applicant was appointed as Development Manager to provide services in relation to the free sale component of the project. Some of the relevant terms of the DMA are as follows. Clause 3.1.7 provides that Respondent Nos. 2 and 3, who were the only shareholders of Respondent No. 1, accepted that until all the dues payable to the Applicant were paid, they would keep their shareholding in Respondent No. 1 in an escrow account. Clause 8.1 read with Clause 9 provides that the Applicant was required to bring in amounts towards the "DM Fund" up to a maximum of Rs. 6 Crores, by making payments to Respondent No. 1 or to its lenders, including ICICI Bank, towards repayment of loans or other liabilities. The Applicant was entitled to interest at the rate of 15% per annum. Clause 18.7 provides that any dispute arising out of or in connection with the DMA would be referred to and finally decided by arbitration and that the seat of arbitration would be Mumbai.

3. On the same day, namely 30 January 2018, Respondent No. 1 executed a Power of Attorney in favour of the Director of the Applicant. The said Power of Attorney was executed by Respondent No. 2 on behalf of Respondent No. 1. By this Power of Attorney, the Director of the Applicant was authorised to act on behalf of Respondent No. 1 and to do the necessary acts in relation to providing management services for the project. Pursuant to the DMA, Respondent No. 3 executed an Agreement in favour of the Applicant on 6 March 2018. Under this Agreement, Respondent No. 3 agreed to sell Office Nos. 201 and 202, having a total built-up area of 600 square feet, situated at "Dheeraj Plaza", to the Applicant. It was agreed that if Respondent No. 1 breached any of the terms and conditions of the DMA, the said Agreement would operate as a conveyance in favour of the Applicant. Recital 2 of the Agreement refers to the DMA. Respondent No. 3 agreed to perform the conditions of the DMA and it was provided that if she failed to perform her obligations under the DMA, the Applicant would become entitled to the said premises. Clause 3 provides that if Respondent No. 3 failed to perform any right or obligation under the DMA, the Applicant would be entitled to enforce the Agreement for Sale and the consequences mentioned therein would follow. Clause 5 provides that in the event of failure by Respondent No. 3 to perform the DMA, the Applicant would be entitled to the premises. Clause 7 provides that Respondent No. 3 would be personally liable and responsible for complying with the obligations under the DMA. Similarly, pursuant to the DMA, Respondent No. 2 executed an Agreement in favour of the

Applicant. Under this Agreement, Respondent No. 2 agreed to sell Office Nos. 203 and 204, having a total built-up area of 600 square feet, situated at “Dheeraj Plaza”, to the Applicant. It was agreed that the said Agreement would be treated as a conveyance if Respondent No. 1 breached any of the terms and conditions of the DMA. Recital 2 refers to the DMA. Respondent No. 2 agreed to perform all the conditions of the DMA and it was provided that if Respondent No. 2 failed to perform her obligations under the DMA, the Applicant would become entitled to the premises. Clause 3 provides that if Respondent No. 2 failed to perform any right or obligation under the DMA, the Applicant would be entitled to enforce the Agreement for Sale and the consequences mentioned therein would follow. Clause 5 provides that if Respondent No. 2 failed to perform the DMA, the Applicant would be entitled to the premises. Clause 7 provides that Respondent No. 2 would be personally liable and responsible for complying with the obligations under the DMA.Pursuant to the DMA, Respondent Nos. 2 and 3 executed a Deed of Conveyance in favour of the Applicant on 14 November 2019. Under the said Conveyance, the Erangal Land was transferred to the Applicant for a consideration of Rs. 8,45,00,000/-. According to the Applicant, this amount represented part of the amount payable by Respondent No. 1 under the DMA. The habendum clause of the Conveyance refers to the DMA and records that the land was being sold towards settlement of the dues under the DMA and as part settlement of accounts. The Applicant states that the said Deed of Conveyance was executed by Respondent No. 3 even after her purported

resignation as a director.

4. On 5 December 2020, the Applicant deposited 19 post-dated cheques for an amount of Rs. 18,59,57,103/-, after informing Respondent No. 2 about the same. The cheques were dishonoured on 7 December 2020. Thereafter, proceedings under Section 138 of the Negotiable Instruments Act were initiated. On 9 March 2026, the learned Judicial Magistrate First Class passed an order directing Respondent Nos. 1 and 2 to deposit 20% of the cheque amount within 60 days. According to the Applicant, the said amount has not been deposited till date.

5. On 2 February 2021, the Applicant issued a notice to the Respondents seeking recovery of the balance principal amount of Rs. 19,12,64,411/- (Rupees Nineteen Crore Twelve Lakh Sixty-Four Thousand Four Hundred and Eleven Only), together with interest. By the same notice, the Applicant invoked the arbitration agreement contained in Clause 18.7 of the DMA. Thereafter, on 8 March 2021, the Applicant filed the present Petition under Section 9 of the Arbitration and Conciliation Act, seeking an order restraining the Respondents from creating any third-party rights in respect of the mortgaged properties.

6. On 14 June 2021, this Court passed an order in the said Petition. By that order, the Respondents were directed to file Affidavits disclosing their immovable properties, movable properties, tax returns and financial returns. The Court accepted the statement made on behalf of the Respondents that they would not create any third-party rights in respect of their assets. In July

2021, Respondent No. 2, as director of Respondent No. 1, filed an Affidavit in Reply. It was stated therein that Respondent No. 1 did not own any immovable property in its own name and did not have any financial assets. Respondent No. 2, however, disclosed the bank accounts of Respondent No. 1. Respondent No. 2 filed an Affidavit disclosing various immovable and movable properties standing in her name. According to the Applicant, it came to know for the first time on 3 July 2026 that its then Advocates had not filed any Application under Section 14 of the Arbitration and Conciliation Act, 1996, despite instructions having been given to them on 21 July 2021. Thereafter, Respondent No. 1 filed an Affidavit in Reply, affirmed by Respondent No. 2 on 22 July 2026. In the said Affidavit, for the first time, and after more than five years from the filing of the present Petition, an objection was raised that the Applicant's right to seek appointment of an Arbitrator had come to an end by lapse of time. The said Affidavit admits that Respondent No. 2 remained in incarceration from 8 March 2022 to 2 May 2025.

7. On 22 July 2026, Respondent No. 3 filed an Affidavit in Reply and annexed her earlier Affidavit in Reply filed in the present Petition. In these circumstances, the Applicant has filed the present Application under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator. The Applicant has sought condonation of delay in filing the said Application.

8. Mr. Madon, learned Senior Advocate appearing for the Applicant, submits that by notice dated 2 February 2021,

addressed to the Respondents, the Applicant invoked the arbitration agreement contained in Clause 18.7 of the Development Management Agreement dated 30 January 2018. By the said notice, the Applicant suggested the name of its nominee Arbitrator and called upon the Respondents to take necessary steps for constitution of the Arbitral Tribunal. According to him, the Respondents neither took any steps in this regard nor gave any reply to the said notice.

9. Mr. Madon submits that under Article 137 of the First Schedule to the Limitation Act, 1963, the period for filing an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is three years from the date of the notice invoking arbitration. In support of this submission, he relies upon the judgment of the Supreme Court in *Arif Azim Company Lta. vs. Aptech Ltd., (2024) 5 SCC 313*.

10. Mr. Madon submits that, in the present case, while calculating the limitation period for filing the Application under Section 11(6), the period from 15 March 2020 to 28 February 2022 has to be excluded on account of the COVID-19 pandemic. He submits that the period of 30 days contemplated under Section 11(5) of the said Act expired on 4 March 2021, which was during the period excluded on account of the pandemic., according to him, the applicable limitation period started from 1 March 2022 and expired on or about 1 March 2025. The present Application was filed on 10 August 2026. Thus, according to the Applicant, there is a delay of 527 days in filing the Application.

11. Mr. Madon submits that it is settled law that this Court has power to condone the delay in filing an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 by applying Section 5 of the Limitation Act, 1963. In support of this submission, he relies upon the judgment in *HPCL Bio-Fuels Ltd. vs. Shahaji Bhanudas Bhad,* 2024 SCC OnLine SC 319.

12. It is submitted that the Applicant has shown sufficient cause for not filing the present Application within the period of limitation. According to Mr. Madon, the reasons stated by the Applicant are independent grounds and are taken without prejudice to each other and in the alternative.

13. The first ground relied upon is that the Applicant had been bona fide, actively and continuously pursuing its claims against the Respondents. Mr. Madon submits that after commencement of arbitration under Section 21 of the said Act on 2 February 2021, the Applicant promptly filed a Petition under Section 9 of the Act on 1 March 2021, being Commercial Arbitration Petition No. 915 of 2025, seeking interim and ad-interim reliefs. Thereafter, this Court passed an Order dated 14 June 2021 in the Section 9 Petition. By that Order, the statement made on behalf of the Respondents was recorded that they would disclose their assets and would not create any third-party rights in respect of their assets. According to the Applicant, the Respondents did not give complete disclosure as directed by the Court. The Court passed Orders dated 19 June 2026 and 8 July 2026 directing the Respondents to comply with the earlier directions. Mr. Madon submits that the Applicant was diligently pursuing the Section 9

Petition during this period. At the same time, the Applicant was pursuing its other legal remedies. On 4 January 2021, the Applicant filed a complaint under Sections 138 and 141 of the Negotiable Instruments Act, 1881, concerning the same subject matter, namely its monetary claim of approximately Rs.19.12 Crores against the Respondents. By Order dated 9 March 2026, the learned Judicial Magistrate, First Class directed Respondent Nos. 1 and 2 to deposit 20% of the said amount as interim compensation under Section 143A of the Negotiable Instruments Act, 1881. It is submitted that the Director of the Applicant lodged an FIR dated 5 September 2022, registered as C.R. No. 135 of 2022, against Respondent Nos. 2 and 3. Pursuant to the said FIR, Respondent No. 2 remained in custody at Taloja Central Prison from 8 March 2022 to 2 May 2025. Mr. Madon submits that the conduct of the Applicant clearly shows that it was continuously pursuing its claims. According to him, the Applicant never abandoned or ignored its rights and had acted with due diligence.

14. The second ground relied upon is the failure of the Respondents to make complete and effective disclosure of their assets pursuant to the Order dated 14 June 2021. Mr. Madon submits that the disclosure directed by this Court was directly connected with the Applicant's claim against the Respondents. According to him, in order to obtain effective relief in the arbitration, it was necessary for the Applicant to know the complete details of the assets of the Respondents. This was particularly necessary because the Applicant apprehended that the Respondents might transfer, encumber or otherwise deal with their

assets and thereby make any future arbitral award difficult to enforce. It is submitted that the Respondents considerably delayed furnishing complete disclosure of their assets. Respondent No. 3, according to the Applicant, filed her disclosure affidavit only on 29 July 2026. The disclosure earlier given by Respondent Nos. 1 and 2 was stated to be incomplete. The Applicant did not have an updated and complete picture of the assets. According to Mr. Madon, it was only after the Orders dated 19 June 2026 and 8 July 2026 passed by this Court that the Respondents finally furnished updated disclosures. The Applicant believed that it would be necessary to pursue its prayers in the Section 9 Petition, including the prayer for appointment of the Court Receiver, High Court, Bombay, in respect of the assets of the Respondents. Mr. Madon submits that from the affidavits filed by the Respondents in 2026, the Applicant learnt that the properties which had been disclosed in 2021 and which were earlier available as security for the Applicant's claim had subsequently become impaired or were no longer available for securing the Applicant's claim, having allegedly been diverted or made available to other lenders of the Respondents.

15. The third ground relied upon is the failure of the Applicant's then Advocates to file the present Application within time. Mr. Madon submits that the Applicant had expressly instructed its then Advocates by email dated 21 July 2021 to file an Application under Section 11(6) of the Act. Despite these instructions, the then Advocates did not file the Application. According to the Applicant, it came to know about this omission only on or about 3 July 2026.

The Applicant changed its Advocates with effect from 4 July 2026. It is submitted that this was not the only lapse on the part of the then Advocates. They had failed to remove the office objections raised by the Registry of this Court within time. As a result, the Applicant's Section 9 Petition came to be rejected for non-removal of office objections under Rule 986 of the High Court (Original Side) Rules, 1980. The rejection took place without the knowledge or intimation of the Applicant or, according to the Applicant, even its then Advocates. The rejection of the Section 9 Petition came to the knowledge of the then Advocates only in August 2025. The Petition was restored by an Order dated 7 October 2025 passed by this Court. Mr. Madon submits that the Applicant was under a bona fide belief that its case was being properly attended to by its Advocates. According to him, the Applicant was entitled to rely upon its Advocates, particularly in relation to procedural steps. Since the Applicant had instructed its Advocates to file the Section 11(6) Application, the Applicant cannot be said to have deliberately remained inactive. It is submitted that the Applicant had acted bona fide and with due diligence.

16. The fourth ground relied upon is the incarceration of Respondent No. 2 from 8 March 2022 to 2 May 2025. Mr. Madon submits that pursuant to the FIR dated 5 September 2022, registered as C.R. No. 135 of 2022 against Respondent Nos. 2 and 3, Respondent No. 2 remained incarcerated from 8 March 2022 to 2 May 2025, for more than three years. It is submitted that Respondent No. 2 has stated on oath that during this period the office premises of the Respondents at Bandra (West) and Juhu

were sold in auction by the respective banks. The entire records of the Respondents were shifted to godowns and, according to the Respondents, could not be retrieved. It is the case of Respondent No. 3 that she had resigned as a director of Respondent No. 1 with effect from 9 August 2019. Mr. Madon submits that the period during which Respondent No. 2 remained incarcerated substantially overlaps with the period available to the Applicant for filing the present Application. According to him, Respondent No. 2 was the only person who could represent Respondent No. 1, receive legal process on its behalf, instruct Advocates, nominate an Arbitrator, file a statement of defence and produce the records of Respondent No. 1. In these circumstances, it is submitted that the Applicant bona fide believed that constitution of an Arbitral Tribunal during that period would not have resulted in any effective adjudication of its claims. According to the Applicant, the arbitration could have remained stalled at the initial stage, while causing costs and expenses.

17. Mr. Madon submits that the Applicant has a substantial claim on merits against the Respondents. He submits that the limitation period applicable to the substantive claims of the Applicant against the Respondents stood stopped with effect from 2 February 2021., according to him, the substantive claims of the Applicant are not barred by limitation. The Applicant has, according to him, a good case on merits against the Respondents. In support of this submission, Mr. Madon relies upon the judgment of the Supreme Court in *State of Goa vs. Praveen Enterprises, (2012) 12 SCC 581*. It is submitted that the expression "sufficient cause" appearing in

Section 5 of the Limitation Act, 1963 should be given a liberal meaning so that substantial justice is advanced. Mr. Madon submits that the delay in the present case was not caused by any deliberate delay, lack of bona fides, intentional inaction or negligence on the part of the Applicant. He relies upon the judgments in *GMG Engineering Industries vs. Issa Green Power Solution, AIR 2001 SC 2497* and *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649*.

18. Mr. Madon submits that in cases having similar circumstances, this Court has condoned delay in filing an application under Section 11(6) of the Arbitration and Conciliation Act within the applicable period of limitation. He relies upon the judgments in *INFRA Poonam Developers LLP vs. Jasbir Singh & Ors.,* 2026 SCC OnLine Bom 2431 and *Tata Motors Passenger Vehicles Ltd. & Anr. vs. Ghosh Brothers Automobiles & Ors.,* 2026 SCC OnLine Bom 1100. It is submitted that it is a settled principle that a litigant should not suffer because of the fault or default of the Advocate whom the litigant has entrusted with the case. Mr. Madon relies upon the judgments in *Rafiq & Anr. vs. Munshilal & Anr.,* (1981) 2 SCC 788 and *Metal Rolling Works Ltd. vs. Haresh Kapadia & Ors.,* 2023 SCC OnLine Bom 504.

19. Mr. Madon, learned Senior Advocate, relies upon the judgment of the Supreme Court in *Cognizance for Extension of Limitation, In Re*, (2022) 3 SCC 117, in support of his submissions concerning exclusion and extension of the period of limitation during the COVID-19 pandemic.

20. On these grounds, Mr. Madon submits that the Applicant has shown sufficient cause for the delay in filing the present Application under Section 11(6) of the Arbitration and Conciliation Act, 1996. He prays that the delay in filing the Application be condoned.

21. Mr. Naphade, learned Advocate appearing for the Respondents, submits that according to the Applicant, the first breach took place on 2 November 2020. On that day, this Court passed an Order in Arbitration Petition (L) No. 3337 of 2020 confirming the termination of the Development Agreement dated 19 December 2012 between Goverdhangiri Co-operative Housing Society Limited and Respondent No. 1 Company. Under that Development Agreement, Respondent No. 1 Company had been given redevelopment rights in respect of the property of the said Society. The Applicant states that the second breach took place on 7 December 2020 when the cheques given by the Respondents as security were presented for payment and were dishonoured. He submits that the Applicant issued a Notice dated 4 January 2021, inter alia, demanding payment from Respondent Nos. 1 to 3. Thereafter, by Notice dated 2 February 2021, the Applicant invoked the arbitration agreement contained in Clause 18.7 of the DMA and called upon the Respondents to agree to the appointment of an Arbitrator. According to the Respondents, the Respondents did not agree to the appointment of any of the persons proposed by the Applicant as Arbitrator in the said Notice.

22. The Applicant filed Commercial Arbitration Petition No. 6674 of 2021 before this Court under Section 9 of the Act, seeking

interim measures of protection. The said Petition was subsequently rejected by this Court for non-removal of office objections. On an application made by the Applicant, the Petition was restored by an Order dated 7 October 2025. Mr. Naphade submits that the period of three years for filing an Application under Section 11 of the Act had expired. According to him, this period started from the date on which the Respondents failed to appoint an Arbitrator, namely, after expiry of 30 days from the Notice dated 2 February 2021. The said 30-day period expired on 4 March 2021. According to the Respondents, the three-year period expired on or about 4 March 2024. The right of the Applicant to seek appointment of an Arbitrator under Section 11 had come to an end by lapse of time. It is submitted that, as a result, no arbitral proceedings can now be commenced between the parties. On this ground alone, Mr. Naphade submits that the present Application deserves to be dismissed with costs.

23. Without prejudice to the above submission, Mr. Naphade submits that the Petition under Section 9 of the Act is not maintainable because of the Applicant's own conduct. According to him, the conduct of the Applicant shows that there was no real intention to commence arbitration. Section 9(2) of the Act provides that where a Court grants an interim measure under Section 9(1) before commencement of arbitral proceedings, the arbitral proceedings have to be commenced within 90 days from the date of the Court's order. In the present case, the Section 9 Petition was filed in the year 2021 and interim relief was granted by this Court. However, according to Mr. Naphade, the Applicant

has still not filed an Application under Section 11 for appointment of an Arbitrator and no Arbitral Tribunal has been constituted. He submits that such conduct shows that the Applicant had no genuine intention to pursue arbitration. According to him, the Applicant has failed to comply with the requirement of Section 9(2) of the Act. In these circumstances, the continuation of the Section 9 Petition is wholly untenable. Mr. Naphade submits that since the Section 9 Petition was filed without any genuine intention to commence arbitration and the right to commence arbitration has expired, the Petition is not maintainable and deserves to be dismissed with costs.

24. In support of his submissions, Mr. Naphade relies upon the judgments of the Supreme Court in *Sundaram Finance Limited vs. NEPC India Limited,* (1999) 2 SCC 479 and *HPCL Bio-Fuels Limited vs. Shahaji Bhanudas Bhad,* 2024 SCC OnLine SC 3190.

REASONS AND ANALYSIS:

25. I have considered the pleadings, the submissions made by Mr. Madon, learned Senior Advocate for the Applicant, and Mr. Naphade, learned Advocate for the Respondents, and the judgments relied upon by both sides. The question, which arises is whether the Applicant has shown sufficient cause for the delay of 527 days and whether, looking to the facts of the case, an exceptional and strong case is made out for condoning the delay in filing the Application under Section 11(6) of the Arbitration and Conciliation Act, 1996.

26. The basic fact regarding invocation of arbitration is not much in dispute. The Applicant issued notice dated 2 February 2021 invoking Clause 18.7 of the Development Management Agreement dated 30 January 2018. By the said notice, the Applicant suggested its nominee Arbitrator. The Respondents did not agree to the appointment. The Applicant could take steps for appointment of an Arbitrator in accordance with law. However, the present Application under Section 11(6) came to be filed only on 10 August 2026.

27. The submission of Mr. Madon that Article 137 of the Limitation Act applies to an Application under Section 11(6) can be accepted. The benefit of the period excluded by the Supreme Court on account of the COVID-19 pandemic is required to be given to the Applicant. On the calculation placed before the Court, the period under Section 11(5) expired on 4 March 2021. After giving the benefit of the COVID period, the limitation period expired on or about 1 March 2025. Since the Application was filed on 10 August 2026, there is delay of about 527 days.

28. The question then is whether this delay can be condoned under Section 5 of the Limitation Act. On this aspect, the legal position relied upon by Mr. Madon is clear. In *HPCL Bio-Fuels Limited*, the Supreme Court has held in paragraph 121 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." The Supreme Court has held that filing a separate application under Section 5 is not an essential requirement for exercising the power to condone delay. However,

this does not mean that every delay in filing an Application under Section 11(6) has to be condoned. The Supreme Court has placed a clear limit on the exercise of this discretion. In paragraph 124 of HPCL Bio-Fuels, it has held:

> "124. The legislative intent of expeditious dispute resolution under the Act, 1996 must 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 strong case is made by the applicant for the condonation of delay in filing a Section 11(6) application."

29. Thus, though Section 5 is available, its exercise in a Section 11(6) proceeding cannot be treated as a routine matter. The Applicant has to show sufficient cause. It must be shown that the facts make out an exceptional case and that there is a strong reason for the delay. The power cannot be exercised merely because the Applicant seeks such relief. The principles stated in *Esha Bhattacharjee* are required to be kept in view. In paragraph 21.1, the Supreme Court has stated that there should be a "liberal, pragmatic, justice-oriented, non-pedantic approach" while considering an application for condonation of delay. At the same time, paragraph 21.7 says that "The concept of liberal approach has to encapsulate the conception of reasonableness, and it cannot be allowed a totally unfettered free play." Paragraph 21.9 requires the Court to consider "The conduct, behaviour, and attitude of a party relating to its inaction or negligence"., the entire conduct of the Applicant has to be considered. Delay cannot be condoned

merely on sympathy.

30. The Applicant relies upon the fact that it was prosecuting the Section 9 Petition. According to the Applicant, after invoking arbitration, it filed the Section 9 Petition and this Court passed an Order dated 14 June 2021 directing disclosure of the assets of the Respondents. The statement of the Respondents that they would not create third-party rights in their assets was recorded., according to the Applicant, it was taking steps for protecting its claim. This submission cannot be rejected. There was a Section 9 proceeding and the Applicant was pursuing that proceeding. The Court had passed orders concerning the assets of the Respondents., it cannot be said that after issuing the arbitration notice, the Applicant stopped taking steps in relation to its dispute.

31. The judgment in *Sundaram Finance Ltd.*, is relevant on this aspect. The Supreme Court held:

> "19. When a party applies under Section 9 of the 1996 Act, it is implicit that it accepts that there is a final and binding arbitration agreement in existence. It is implicit that a dispute must have arisen which is referable to the Arbitral Tribunal."

32. The Supreme Court held that where a Section 9 Application is filed before commencement of arbitration, there has to be "manifest intention on the part of the applicant to take recourse to the arbitral proceedings", a Section 9 proceeding cannot be treated as having no connection with arbitration where the surrounding circumstances show an intention to pursue arbitration.

33. In the present case, the Applicant had invoked arbitration by notice dated 2 February 2021. Thereafter, it filed the Section 9 Petition. The Applicant relies upon its email dated 21 July 2021 by which instructions were given to its then Advocates to file an Application under Section 11(6)., there is material showing that the Applicant had contemplated appointment of an Arbitrator. It is not a case where arbitration was invoked and the Applicant decided not to pursue it. This circumstance distinguishes the present case from the facts considered by the Supreme Court in *HPCL Bio-Fuels*. In that case, the respondent "took a conscious decision to abandon its first Section 11(6) application" and pursued proceedings under Section 9 of the IBC. The Supreme Court treated that conscious decision as circumstance while refusing condonation of delay. In the present case, the Applicant did not withdraw a Section 11 Application and then choose another remedy. The case of the Applicant is that it instructed its Advocates to file the Section 11 Application, but the Advocates did not act upon those instructions. There is a difference between the two situations. If a party abandons arbitration and chooses another proceeding, such conduct can be considered against that party. If the party has given instructions to its Advocate to file the necessary proceedings and the Advocate does not act upon them, the Court has to consider whether such failure can constitute sufficient cause. The surrounding facts will have to be seen for this purpose.

34. The Applicant has pointed out that the Section 9 proceedings themselves faced difficulties. According to the Applicant, the

Petition was rejected because the office objections were not removed in time and it was restored only by Order dated 7 October 2025. The Applicant states that it was not aware of the rejection and that its earlier Advocates came to know about it only in August 2025.This circumstance cannot show that the Applicant was diligent. But it is relevant while considering the overall conduct. If the same Advocates were not properly attending the Section 9 proceedings and had not acted upon the specific instruction to file the Section 11 Application, the explanation of the Applicant cannot be rejected as a mere afterthought without considering the other material. There is material showing that the Applicant continued to pursue other proceedings relating to its monetary claim. Proceedings under Section 138 of the Negotiable Instruments Act were pursued. The learned Judicial Magistrate, First Class, passed an Order dated 9 March 2026 directing Respondent Nos. 1 and 2 to deposit 20% of the cheque amount. The Applicant's Director lodged an FIR against Respondent Nos. 2 and 3. These proceedings do not extend the limitation for filing the Section 11 Application. However, they are relevant for considering whether the Applicant had abandoned its claim.

35. The Applicant has relied upon the failure of the Respondents to make complete disclosure of their assets. This circumstance cannot extend the limitation for filing the Section 11 Application. Preservation of assets and appointment of an Arbitrator are separate matters. The Applicant could not wait indefinitely for complete disclosure of assets and thereby keep the Section 11 remedy alive. At the same time, the Section 9 proceedings had a

connection with the Applicant's claim. This Court had directed disclosure of assets and had recorded the statement that the Respondents would not create third-party rights. If the disclosure was incomplete and orders were required, this gives some explanation as to why the Applicant continued to prosecute the Section 9 proceedings. However, this circumstance does not explain the entire delay of 527 days.

36. The reliance upon *Praveen Enterprises* has to be understood in this limited manner. Section 21 is relevant for determining commencement of arbitral proceedings and for limitation of the claims. The notice dated 2 February 2021 is important because the Applicant had requested the Respondents to refer the dispute to arbitration. But merely because the substantive claim may not be barred by limitation, it does not follow that there can be no delay in filing the Section 11 Application. The limitation applicable to the Section 11 remedy has to be considered separately. The Applicant's explanation regarding its previous Advocates requires consideration. The Applicant says that specific instructions were given by email dated 21 July 2021. The judgment in *Metal Rolling Works Ltd.*, holds that a party should not suffer because of the fault of the Advocate whom it had entrusted with the case. Where the litigant has taken the necessary steps and the default is attributable to the Advocate, the Court can consider condonation so that the dispute can be decided on merits. But this principle has limits. A party cannot give an instruction once and remain unconcerned for several years. The Court has to see whether the party was negligent. This is why the principle in *Esha*

Bhattacharjee becomes important. The conduct of the litigant has to be examined. In the present case, there is undoubtedly a long period during which the Section 11 Application was not filed. The Applicant says that it came to know about this omission only on 3 July 2026. This is a serious circumstance. A person pursuing a claim of this size would normally be expected to follow up regarding appointment of an Arbitrator., I do not find that the Applicant acted with complete diligence throughout. However, the material shows that the Applicant had issued the arbitration notice, filed the Section 9 Petition, pursued proceedings relating to protection of its claim and assets, pursued proceedings under the Negotiable Instruments Act and, importantly, claims to have instructed its Advocates to file the Section 11 Application. The Section 9 Petition suffered procedural problems which were not brought to its knowledge in time. These circumstances show negligence in supervising the litigation. But they do not establish a conscious abandonment of arbitration.

37. The Respondents submit that the conduct of the Applicant shows that it never genuinely intended to arbitrate. This submission cannot be accepted in that broad form. The principle in *Sundaram Finance* is clear that a Section 9 proceeding can show an intention to pursue arbitration. In the present case, there was an arbitration notice dated 2 February 2021. The Section 9 Petition followed. There is material regarding instructions dated 21 July 2021 for filing the Section 11 Application. These facts do not support a finding that there was no intention to arbitrate at all. The Respondents have relied upon Section 9(2). Their submission

is that after interim protection was obtained, the Applicant was required to commence arbitral proceedings within the prescribed period and that failure to do so shows absence of genuine intention to arbitrate. This submission has to be considered along with the chronology. The Applicant had invoked arbitration on 2 February 2021 before filing the Section 9 Petition on 8 March 2021., this is not a case where the Applicant first obtained interim relief without taking any step towards arbitration and remained inactive. Whether the Applicant complied with every statutory requirement is a separate matter. But on the question of intention to arbitrate, the submission of the Respondents is not sufficient to hold that the Applicant had no such intention. The incarceration of Respondent No. 2 from 8 March 2022 to 2 May 2025 has been relied upon by the Applicant. This circumstance cannot stop limitation. The Applicant could not postpone its Section 11 remedy merely because one Respondent was in custody. At the highest, the incarceration may explain some difficulty in obtaining instructions or records. It cannot explain the whole delay.

38. The Applicant has relied upon *Tata Motors Passenger Vehicles Ltd. & Anr.* That decision shows that, even after giving the benefit of the COVID exclusion and Section 14 of the Limitation Act, a delay in filing a Section 11 Application can be condoned in proper circumstances. However, that judgment does not mean that every delay in a Section 11 matter has to be condoned. The facts of each case have to be examined separately. Similarly, in *INFRA Poonam Developers LLP* , this Court condoned a delay of 258 days because the Applicant was continuously taking steps to preserve

the subject matter of arbitration and was required to pursue several proceedings for that purpose. The Applicant in that case was not found to be inactive. The delay was connected with the efforts made to protect the subject matter. But the present case has to be decided on its own facts. The main difficulty for the Applicant is the length of the delay. The power under Section 5 is available. But *HPCL Bio-Fuels* requires something more in a Section 11 matter. The Applicant has to show an exceptional case and a strong reason for the delay.

39. On an overall consideration of the material, I find that the Applicant has made out such a case. This conclusion is not because every explanation given by the Applicant is being accepted. Some of the explanations have limited force. The incarceration of Respondent No. 2 cannot stop limitation. The pendency of the Section 9 Petition cannot extend limitation. The fact that the substantive monetary claim may be within limitation does not save the Section 11 Application. The conclusion is based upon the total effect of the circumstances. The Applicant invoked arbitration on 2 February 2021. It filed the Section 9 Petition shortly thereafter. It pursued protection of its claim and the assets of the Respondents. It pursued other proceedings concerning the same monetary claim. There is material showing that on 21 July 2021 the Applicant instructed its then Advocates to file the Section 11(6) Application. There is material showing procedural defaults in the handling of the Section 9 Petition by the same earlier Advocates. These circumstances together make the explanation of the Applicant different from a case of deliberate abandonment or conscious

decision not to arbitrate.

40. I do not accept the submission of Mr. Naphade that the Applicant slept over its right for the entire period. At the same time, I do not find that the Applicant was fully diligent. There was negligence in keeping proper follow-up with the earlier Advocates. But, on the material before me, such negligence has not reached the level of conscious abandonment or want of bona fides.

41. The merits of the underlying monetary claim have been relied upon by Mr. Madon. The Applicant says that it has a substantial claim of about Rs. 19.12 Crores and that its substantive claims are not barred by limitation. At this stage, however, the Court is not required to decide whether the Applicant will ultimately succeed in recovering that amount. That question belongs to the appropriate forum. On the material before the Court, there is no sufficient basis to hold that the claim is frivolous. The principles in *Esha Bhattacharjee* require the Court to balance the position of both sides. The liberal approach cannot become an unrestricted approach. Here, condoning the delay does not mean that the Applicant's claim is accepted. It only permits the Applicant to pursue the contractual mechanism. The Respondents will remain entitled to raise all objections available to them in accordance with law, including objections regarding limitation of individual claims, liability, maintainability, and merits. The prejudice to the Respondents does not appear sufficient to refuse condonation. The Respondents were aware of the Applicant's claim and invocation of arbitration from February 2021. The Section 9 proceedings were initiated in March 2021.The dispute was known

to the Respondents much before the present Application was filed. This is not a case where an entirely new claim has been brought after many years without any earlier notice. The case of *HPCL Bio-Fuels* is distinguishable on facts. There, the respondent "took a conscious decision to abandon its first Section 11(6) application" and pursued another statutory proceeding. Here, there was no such conscious abandonment of a pending Section 11 proceeding. There was an invocation of arbitration, followed by Section 9 proceedings and a specific instruction to the earlier Advocates to file the Section 11 Application.

42. I find that the Applicant has shown sufficient cause for the delay. I find that the present case is an exceptional case in which the discretion under Section 5 of the Limitation Act can be exercised. The delay of 527 days in filing the Section 11(6) Application deserves to be condoned. Accordingly, the delay of 527 days in filing the Application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is condoned. The Application under Section 11(6) shall now be considered on its remaining requirements in accordance with law.

43. In the aforesaid circumstances, the present Applications under Section 11 of the Act, together with the Applications filed under Section 9 thereof, are disposed of by passing the following order:

A) Ms. Gulnar Mistry, Advocate of this court, 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 referred to above;

Office Address: 101, 1st Floor, 1infinity (formerly known as Ramnimi Fort), Cawasji Patel Street, Bombay – 400 001.

Email: gm@mistrychambers.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates 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 Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) 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 two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the

arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

44. All issues on merits, including the respective claims, defences and contentions of the parties, are expressly kept open for consideration and adjudication by the learned Sole Arbitrator.

45. The Application filed before this Court under Section 9 of the Act shall stand converted into Application under Section 17 of the Act and shall be considered by the learned Sole Arbitrator in accordance with law.

46. All actions required to be taken pursuant to this Order may be undertaken upon production of a downloaded copy of this Order available on the official website of this Court.

47. Both the Arbitration Application and Arbitration Petition stand disposed off in above terms.

48. At this stage, Mr. Naphade, learned Advocate for the Respondents seeks stay of this Judgment and Order. However, for the reasons recorded herein above, the request for stay stands rejected.

(AMIT BORKAR, J.)