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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 706/2025**

Date of Decision: **22.08.2025**

IN THE MATTER OF:

MAY AND BAKER PHARMACEUTICALS LTDPetitioner

Through: Mr. Ishaan S. Sharma, Mr. Ayush and
Ms. Sbhambhavi Sharma, Advs.

versus

RUNOS HEALTH CARES & ORS.Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner, seeking appointment of an Arbitrator to adjudicate upon the disputes that have arisen between the parties.

2. The service affidavit has been placed on record by learned counsel for the petitioner, who contends that notices which were sent to respondent nos. 1 and 2 were refused by the said respondents.

3. However, the notice to respondent no.3 by DTDC Express Ltd. has been delivered on 11.07.2025. He also submitted that notices were sent on the E-mail address as well as on Whatsapp. The said E-mail is also forming



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part of the invoices.

4. Under the aforesaid circumstances, the Court is left with no other option except to decide the instant petition on merit.

5. The facts of the case would reveal that on 30.04.2022, a Distributor Agreement came to be executed between the parties for supply of pharmaceutical products.

6. Learned counsel for the petitioner submits that various supplies were made to respondent no.1 and against such supply, the invoices were raised. It is further contended that respondent no.1 made part payment from time to time, however, the payment for a sum of Rs. 18,82,080/- was outstanding as on 25.01.2023.

7. Learned counsel for the petitioner, therefore, submits that once the amount was not paid to the petitioner, a legal notice dated 25.01.2023 demanding the outstanding amount was sent. Even the same, according to learned counsel, remained unanswered by the respondent. Subsequently thereto, it is stated that the respondent made payment of Rs. 4 lakhs in four equal instalments of Rs. 1 lakh each.

8. Since the remaining outstanding payment was not made, the petitioner then invoked the arbitration clause.

9. Clause 26 of the agreement dated 30.04.2022 is extracted as under:

“26. Any difference or dispute arising out of or in relation to anything contained herein shall be referred to arbitration. The Arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force The place of arbitration shall be Delhi.”

10. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. This Court



as well in the order dated 24.04.2025 in case of ARB.P. 145/2025 titled as ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd.*** has extensively dealt with the scope of interference at the stage of Section 11. The Court held as under:-

“9. *The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. The Supreme Court in the case of SBI General Insurance Co. Ltd. v. Krish Spinning¹, while considering all earlier pronouncements including the Constitutional Bench decision of seven judges in the case of Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re² has held that scope of inquiry at the stage of appointment of an Arbitrator is limited to the extent of prima facie existence of the arbitration agreement and nothing else.*

10. *It has unequivocally been held in paragraph no.114 in the case of SBI General Insurance Co. Ltd that observations made in Vidya Drolia v. Durga Trading Corpn.³, and adopted in NTPC Ltd. v. SPML Infra Ltd.,⁴ that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would not apply after the decision of Re: Interplay. The abovenoted paragraph no.114 in the case of SBI General Insurance Co. Ltd reads as under:-*

“114. *In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).”*

11. *Ex-facie frivolity and dishonesty are the issues, which have been held to be within the scope of the Arbitral Tribunal which is equally*

¹ 2024 SCC OnLine SC 1754

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.



capable of deciding upon the appreciation of evidence adduced by the parties. While considering the aforesaid pronouncements of the Supreme Court, the Supreme Court in the case of **Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd.**⁵, however, has held that the referral Courts under Section 11 must not be misused by one party in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. Few instances have been delineated such as, the adjudication of a non-existent and malafide claim through arbitration. The Court, however, in order to balance the limited scope of judicial interference of the referral Court with the interest of the parties who might be constrained to participate in the arbitration proceedings, has held that the Arbitral Tribunal eventually may direct that the costs of the arbitration shall be borne by the party which the Arbitral Tribunal finds to have abused the process of law and caused unnecessary harassment to the other parties to the arbitration.

12. It is thus seen that the Supreme Court has deferred the adjudication of aspects relating to frivolous, non-existent and malafide claims from the referral stage till the arbitration proceedings eventually come to an end. The relevant extracts of **Goqii Technologies (P) Ltd.** reads as under:-

“20. As observed in *Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532]*, frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.

21. Before we conclude, we must clarify that the limited jurisdiction of the referral courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration.

22. With a view to balance the limited scope of judicial interference of the referral courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of

⁵ (2025) 2 SCC 192



law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine.”

13. *In view of the aforesaid, the scope at the stage of Section 11 proceedings is akin to the eye of the needle test and is limited to the extent of finding a prima facie existence of the arbitration agreement and nothing beyond it. The jurisdictional contours of the referral Court, as meticulously delineated under the 1996 Act and further crystallised through a consistent line of authoritative pronouncements by the Supreme Court, are unequivocally confined to a prima facie examination of the existence of an arbitration agreement. These boundaries are not merely procedural safeguards but fundamental to upholding the autonomy of the arbitral process. Any transgression beyond this limited judicial threshold would not only contravene the legislative intent enshrined in Section 8 and Section 11 of the 1996 Act but also risk undermining the sanctity and efficiency of arbitration as a preferred mode of dispute resolution. The referral Court must, therefore, exercise restraint and refrain from venturing into the merits of the dispute or adjudicating issues that fall squarely within the jurisdictional domain of the arbitral tribunal. It is thus seen that the scope of enquiry at the referral stage is conservative in nature. A similar view has also been expressed by the Supreme Court in the case of **Ajay Madhusudan Patel v. Jyotrindra S. Patel**⁶.*

11. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this Court appoints Mr. Yashraj Bundela, Advocate (Mobile No. +91 9958538567, e-mail id: office.aoryashraj@gmail.com) as the sole Arbitrator.

12. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12 of the 1996 Act.

13. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the 1996 Act or as may otherwise be agreed to between the

⁶ (2025) 2 SCC 147.



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parties and the learned Sole Arbitrator.

14. The parties shall share the arbitrator's fee and arbitral cost, equally.

15. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

16. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. Let a copy of the said order be sent to the newly appointed Arbitrator through electronic mode as well.

17. Accordingly, the instant petitions stand disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 22, 2025

aks/mj