



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

Misc. Civil Application (MCA) No. 913 of 2025

M/s A.S. Iyer Construction Pvt. Ltd., Nagpur through Director Shri
A.S.Iyer

Versus

Nikita Pharmacheutical Specialities Pvt. Ltd., Nagpur through Managing
Director, Ravleen Singh Khurana

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.S.Dharmadhikari, Advocate for the applicant.

CORAM : NIVEDITA P. MEHTA, J.
DATED : 18th DECEMBER, 2025.

The present application is filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator for adjudication of the disputes arising between the parties.

2. Learned counsel for the applicant invites the attention of this Court to Clause 20 of the tender document pertaining to the construction of the proposed Industrial Building at MIDC, Butibori, Nagpur, which reads thus:

“The agreement shall contain the prevailing Arbitration Clause.”

3. Learned counsel further submits that the agreement for construction dated 16.11.2023 incorporates the tender conditions in toto and reiterates the same recital as contained in Clause 20 of the tender, thereby reflecting the intention of the parties to resolve disputes through arbitration.

4. It is further brought to the notice of this Court that a notice invoking arbitration was issued to the non-applicant on 02.11.2025. The non-applicant, by its reply dated 10.11.2025, has disputed the arbitrability of the disputes.

5. Shri Dharmadhikari, learned counsel appearing for the applicant, places reliance on the judgment of the Hon'ble Supreme Court in *Mahanagar Telephone Nigam Limited v. Canara Bank and Others*, reported in (2020) 12 SCC 767, particularly paragraphs 9.5 and 9.7, which are reproduced hereunder:

“9.5. A commercial document has to be interpreted in such a manner so as to give effect to the agreement, rather than to invalidate it. An “arbitration agreement” is a commercial document inter partes, and must be interpreted so as to give effect to the intention of the parties, rather than to invalidate it on technicalities.

9.7. In interpreting or construing an arbitration agreement or arbitration clause, it would be the

duty of the court to make the same workable within the permissible limits of the law. This Court in Enercon (India) Ltd. and Ors. v. Enercon GmbH, held that a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate the disputes between them. Being a commercial contract, the arbitration clause cannot be construed with a purely legalistic mindset, as in the case of a statute.”

The said observation clearly emphasize that an arbitration agreement, being a commercial document, must be construed so as to give effect to the intention of the parties and that the Court is duty-bound to adopt a pragmatic and common-sense approach to make the arbitration clause workable within the framework of law.

6. In view of the aforesaid submissions and considering the prima facie existence of an arbitration agreement, issue notice to the non-applicant, returnable on **16.01.2026**.

7. The applicant is permitted to serve the non-applicant by all permissible modes of service, including Court service.

[NIVEDITA P. MEHTA, J.]