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

+ **ARB.P. 1118/2025 & I.A. 18383/2025**

Date of Decision: **07.08.2025**

IN THE MATTERS OF:

TATA 1MG HEALTHCARE SOLUTIONS PRIVATE LIMITED

.....Petitioner

Through: Mr. Rajshekhar Rao, Sr. Adv. with
Mr. Ankur Khandelwal, Ms.
Meherunnisha Anand Jaitley, Ms.
Morvi Singla and Mr. Mahender
Kumar Arya, Advs.

versus

MARENGO ASIA HEALTHCARE PRIVATE LIMITED

.....Respondent

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Sidharth Sethi, Ms. Shreya Sircar and
Mr. Deepank Anand, Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The instant petition under Section 11 of the Arbitration and Conciliation Act, 1996 (*"the Act"*) forms part of a batch of six interconnected petitions arising from three agreements, comprising three petitions seeking the appointment of an arbitrator under Section 11 of the Act and three corresponding petitions praying for interim measures under Section 9 of the Act thereof.

2. The factual matrix delineates that the respondent herein, i.e., Marengo Asia Healthcare Private Limited, is a part of a group of entities



engaged in the operation of multi-location hospitals across diverse regions. The respondent had entered into a Collaboration Agreement dated 31.07.2024 with the petitioner herein, namely, Tata 1Mg Healthcare Solutions Pvt. Ltd., whereby, the latter was appointed as the exclusive vendor and supplier for an extensive range of critical healthcare equipments, including but not limited to, pharmaceuticals, medical implants, surgical consumables, and ancillary healthcare products indispensable to the functioning of the respondent's medical establishments.

3. Furthermore, the petitioner also entered into such exclusive supply arrangements with all constituent entities comprising the respondent Group, for the supply of medicines and ancillary medical items to hospitals operated by three distinct corporate entities under the ownership and control of the respondent.

4. It emerges from the record that consequent to certain alleged operational discrepancies, breaches, and instances of non-compliance with the stipulations envisaged in the governing collaboration agreement, the petitioner, exercising its contractual prerogative, proceeded to terminate the said agreements by issuance of a formal intimation through electronic correspondence dated 12.01.2025. Subsequent thereto, the petitioner, in strict adherence to the dispute resolution mechanism envisaged under Clause 11 of the respective collaboration agreements, invoked the arbitration proceedings *vide* notice dated 18.06.2025.

5. At this stage, it is of relevance to note that the respondent in its reply, did not impugn or otherwise object to the validity or propriety of such invocation of the arbitral proceedings.

6. Instead, as also contended by Mr Sandeep Sethi and Rajshekhar Rao,



learned senior counsel, appearing for the respective parties, their stance was confined to advocating for the appointment of an independent arbitrator and the constitution of separate arbitral tribunals corresponding to each agreement.

7. For purposes of elucidation, a chart of pending petitions under Section 9 and Section 11 of the Act, each emanating from a distinct collaboration agreement(s) entered into between the parties, is set forth herein below for ready reference:-

Section 9 Petition/ Section 11 Petition	Collaboration Agreements	Parties to Collaboration Agreement	
O.M.P. (I) (Comm.) No. 298 of 2025	Ahmedabad Collaboration Agreement dated 31.07.2024.	Tata Healthcare Solutions Private Limited	1mg Marengo Asia Healthcare Private Limited
Arbitration Petition No. 1118 of 2025			
O.M.P. (I) (Comm.) No. 299 of 2025	Gurgaon Collaboration Agreement dated 31.07.2024.	Tata Healthcare Solutions Private Limited	1mg North East Health Care Private Limited
Arbitration Petition No. 1119 of 2025			
O.M.P. (I) (Comm.) No. 297 of 2025	Faridabad Collaboration Agreement dated 31.07.2024.	Tata Healthcare Solutions Private Limited	1mg QRG Medicare Private Limited
Arbitration Petition No. 1120 of 2025			

8. It is of further significance to note that Clause 11 of the Ahmedabad Collaboration Agreement, executed on 31.07.2024, and forming the subject matter of the present petition, is reproduced hereinbelow:-

“11. DISPUTE RESOLUTION AND GOVERNING LAW

Any dispute which arises between the Parties shall be resolved by good faith discussions between the Parties hereto. Where the Parties are unable to resolve such disputes within 30 (thirty) days from the date of written notice by either Party notifying existence of such dispute, either Party shall be free to refer the dispute to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Arbitration shall be conducted by one arbitrator to be jointly appointed by the Parties.



In case the Parties fail to appoint an arbitrator, within 30 (thirty) days from the date of submission of dispute for settlement through arbitration, the arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The seat of arbitration shall be New Delhi and the arbitration proceedings shall be conducted in English language.

This Agreement shall be governed by and construed in accordance with the laws of India and the Parties hereby submit to the exclusive jurisdiction of the courts of New Delhi.”

9. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the Act has been fairly well settled. This Court, as well, in **Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd**¹ has extensively dealt with the scope of scrutiny 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 Spinning**², 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 re**³ 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.**⁴, and adopted in **NTPC Ltd. v. SPML Infra Ltd.**⁵ 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

¹ 2025: DHC: 3260

² 2024 SCC OnLine SC 1754

³ 2023 SCC OnLine SC 1666.

⁴ (2021) 2 SCC 1.

⁵ (2023) 9 SCC 385.



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 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.**⁶, 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 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**⁷.

10. Thus, in light of the subsistence of disputes *inter se* the parties, and the presence of an arbitration clause, this Court deems it appropriate to invoke its jurisdiction under Section 11 of Act and appoints Hon’ble Mr. Justice Sanjiv Khanna, former Chief Justice of India (Mobile No. +91 9818123334, e-mail id: sanjiv.khanna@hotmail.com) as the Sole Arbitrator.



11. 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 Act.
12. The Sole Arbitrator shall be entitled to a fee in accordance with the IVth Schedule of the Arbitration and Conciliation Act, or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
13. The parties shall share the arbitrator's fee and arbitral cost, equally.
14. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.
15. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy.
16. Let a copy of the said order be sent to the Sole Arbitrator through electronic mode as well.
17. So far as petitions under Section 9 of the Act are concerned, let they be treated to have been filed under Section 17 of the Act. Let they be dealt with accordingly.
18. Accordingly, the instant petition, along with the pending application, stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 7, 2025/P/SP