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

Date of decision: 14.11.2025

+ **FAO (COMM) 323/2025, CM APPL. 71201/2025 (stay), CM APPL. 71202/2025 (exp.), CM APPL. 71203/2025 (exp.) & CM APPL. 71204/2025 (8 days delay in filing appeal)**

M/S CHAMUNDESHWARI PHARMACYAppellant
Through: **Mr. Anand Shankar Jha and Mr. Sachin Mintri, Advocates.**

versus

M/S SARASWATI ENTERPRISESRespondent
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

% **JUDGEMENT (ORAL)**

ANIL KSHETARPAL, J.

1. The present Appeal has been filed under Section 37 of the **Arbitration and Conciliation Act, 1996¹**, read with Section 13 of the **Commercial Courts Act, 2015²** against the **Order dated 28.08.2025³** passed by the learned **District Judge (Commercial Court)-02, East District, Karkardooma Courts, Delhi⁴** in CS (COMM) No. 399/2023 titled **“M/s Saraswati Enterprises vs. M/s**

¹ A&C Act

² CC Act

³ Impugned Order



Chamundeshwari Pharmacy/Agency". By way of the Impugned Order, the learned Commercial Court has dismissed the Application preferred by the Appellant under Sections 5 and 8 of the A&C Act, seeking to refer the dispute of the parties for arbitration, instead of continuing the Suit preferred by the Respondent/Defendant.

2. The learned Commercial Court, after interpreting 'Clause C' of the Distribution Agreement 01.02.2019, has come to a conclusion that the parties did not intend to go before an Arbitral Tribunal for resolution of their dispute and if 'Clause C' is comprehensively read, it would be reasonable to conclude that the parties ultimately intended to approach the Competent Court of law for adjudication of their dispute.

3. At this juncture, we deem it apposite to extract the relevant paragraph wherein the Arbitration Clause of the Distribution Agreement dated 01.02.2019 has been reproduced in the Impugned Order, which reads as under:-

"8. The said agreement contains a clause which is as under :

That the present agreement can be cancelled in the following circumstances only:

A. By mutual consent of both the parties in writing.

B. By the complying party, in case of non fulfilment of the obligation of the other party as per the terms and conditions of the present agreement, after giving two months notice in writing to the other party.

C. In the event of distributor or manufacturer stopped their activities or in the case of irregular in carrying out their business. ***In case of any dispute between the parties, the parties firstly will try to***

⁴ Commercial Court



sort out it by way of arbitration, in case of its failure, they can approach the competent court of law.

(emphasis supplied)”

4. Learned counsel for the Appellant contends that once the parties agreed for arbitration, the learned Commercial Court has no other choice but to refer the parties to Arbitration. He submits that the word “Arbitration” used in the agreement is required to be given its full meaning, and the parties intended to get their dispute resolved through arbitration. He submits that thereafter any party aggrieved by the award will always have the remedy to file objections under Section 34 of the A&C Act, so as to give comprehensive meaning to ‘Clause C’. He further submits that such a dispute should be exclusively left to the jurisdiction of the Arbitral Tribunal to interpret the provision.

5. This Court has considered the submissions and heard the arguments of learned counsel for the Appellant. In fact, ‘Clause C’, which has already been extracted hereinabove, makes for an interesting read.

6. Resolution of disputes through arbitration and before the Court are two parallel remedies available to the parties. It is, however, pertinent to note that resolution of disputes through arbitration is not a first stage, whereafter the parties can approach the Court by filing a Civil Suit. It appears that, in the said Clause “C”, the word “Arbitration” has been used in a loose manner, which most likely is a result of a lack of precise legal vocabulary. It is evident that the way the Clause reads, the parties had agreed to first try to resolve their dispute by way of arbitration, and in case of its failure, they can approach the Court of law. Hence, if the word “Arbitration” is



substituted with “mediation” or “re-conciliation”, it would make more sense.

7. Once the parties opt to resolve their dispute through arbitration, then, as per Section 8, they should not go before the Court for adjudication of their dispute. Once the award is passed by the Arbitral Tribunal, the only remedy is under Section 34 of the A&C Act, which gives a very limited scope for the Court to interfere.

8. Hence, ‘Clause C’ of the Agreement is required to be interpreted in order to give effect to the true intent of the parties. It is noted that the agreement does not seem to have been drafted by a legally trained mind.

9. In any case, the parties by the said Clause, intended for a resolution of their dispute. Towards such resolution, the Respondent/Plaintiff has already approached the Commercial Court by way of a Suit, which is pending. Hence, relegation of the parties to arbitration at this stage, and given the absence of the intention of the parties to that effect, would not be appropriate.

10. Consequently, finding no merit in the Appeal, the same is liable to be dismissed.

11. The present Appeal, along with pending application(s), if any, stands dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
NOVEMBER 14, 2025/nd/va