



Reserved On : 01/05/2026
Pronounced On : 27/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/PETN. UNDER ARBITRATION ACT NO. 43 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✓	
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ENVISION SCIENTIFIC PRIVATE LIMITED
Versus
RELISYS MEDICAL DEVICES LIMITED

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Appearance:
P M BUCH(7383) for the Petitioner(s) No. 1
MR. A.SRINATH, ADVOCATE WITH MR.SAGAR J SHAH(9447) for the
Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT

1. Heard Mr. P. M. Buch, learned advocate for the petitioner and Mr. A. Srinath, learned advocate assisted by Mr. Sagar J. Shah, learned advocate for the respondent.

2. The present petition has been preferred under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "**the Act, 1996**"), seeking appointment of an arbitrator for adjudication of disputes arising out of the



Commercial Agreement dated 01.01.2022.

3. Brief facts leading to this petition are as under:-

3.1. The petitioner herein is engaged in the business of research, development and manufacture of Drug Eluting Stents (DES) and Drug Coated Balloons (DCB), while the respondent, a Public Limited Company, is engaged in the manufacture of medical products, including bare metal/coronary stents. The parties entered into a commercial agreement effective from 01.01.2022, under which the respondent was engaged to supply products to the petitioner.

3.2. It is the case of the petitioner that pursuant to purchase orders placed upon the respondent, certain products supplied were found, upon the petitioner's standard inspection process, to be defective and non-compliant with the contractually stipulated specifications. The petitioner states that such defects were communicated to the respondent through correspondence commencing April 2024, within the shelf life of the products, in terms of Clause 5.3 of the Agreement.



3.3. The petitioner further submits that vide e-mail dated 23.06.2025, the respondent's representative declined to accept the rejected products on the ground that the rejection had not been intimated within thirty days of receipt, the petitioner disputed this position vide its e-mail dated 26.06.2025, asserting that the rejection was well within the shelf-life period contemplated under Clause 5.3. It is averred that despite the petitioner having returned the defective products to the respondent on 08.08.2025, the respondent declined to issue credit notes, allegedly in breach of the obligation under Clause 5.3, and also allegedly failed to reimburse return-related costs purportedly payable under Clause 5.4.

3.4. It is the petitioner's case that the respondent, vide e-mail dated 14.08.2025, raised a retrospective debit note of Rs. 1,36,29,599/- towards interest on unpaid invoices, which the petitioner contests on the ground that any such right, if existing, stood waived by the respondent. The petitioner additionally alleges that supply of 9,181 defective products resulted in shortages necessitating procurement from third-party sources at higher prices, and that the respondent failed



to supply products against confirmed orders without cancellation or modification of delivery schedules, allegedly in breach of Clause 4.4, causing consequential loss and disruption to the petitioner's business, with the petitioner reserving its right to claim damages in arbitration.

3.5. On account of the aforesaid disputes concerning credit notes and the retrospective interest debit note, the petitioner issued a Legal Notice dated 23.01.2026 invoking arbitration in terms of Clause 15.1 of the agreement and calling upon the respondent to pay Rs.1,08,20,806/-, comprising Rs. 96,40,050/- towards defective products and Rs. 11,80,756/- towards return-related costs, together with interest. Clause 15.1 states as under :-

“15.1 Jurisdiction and governing law :-

All disputes, controversies, or differences which may arise between the Parties hereto, out of, in relation, or in connection with this Agreement or the breach thereof, shall be finally settled by Arbitration Law and Rules in India in accordance with its rules. This Agreement shall be governed by the laws of India in all aspects. “

3.6 The respondent, through its letter dated 30.01.2026, denied the assertions, disputed the invocation of arbitration, declined the petitioner's nominee arbitrator, and proposed an



alternate name, which proposal was not acceptable to the petitioner. On 10.02.2026, the respondent filed Section 11 application before the Hon'ble Telangana High Court bearing Arbitration Petition No. 74 of 2026. Thereafter, on 13.02.2026, the petitioner herein has presented its Section 11 petition before this Court which was registered on 18.02.2026. On 19.02.2026, the Hon'ble Telangana High Court returned respondent's Section 11 application citing minor defects, and then it was registered on 25.02.2026, and subsequently, the Hon'ble Telangana High Court issued notice in the Arbitration Petition No. 74 of 2026 on 27.02.2026

4. In the above circumstances, the present petition has been filed under Section 11 of the Act, 1996, with the following prayers:-

"A. That this Hon'ble Court be pleased to appoint a sole Arbitrator for the purpose of resolving all disputes and differences arisen between the Applicant and Respondent under Clause 15.1 of the Agreement.

B. That this Hon'ble Court be pleased to grant such other and further reliefs, as may be deemed fit by this Hon'ble Court, in the interest of justice; and

C. The costs of this Application be provided for."

5. Mr. P. M. Buch, learned advocate for the petitioner



submitted that the arbitration clause governing the parties does not stipulate a seat of arbitration, and in the absence thereof, both parties are agreeable that either this Court or the High Court of Telangana would have jurisdiction to entertain an application for appointment of an arbitrator, the cause of action having arisen within both jurisdictions. It was submitted that this circumstance led to the filing of two separate applications under Section 11 of the Act, 1996; one before this Court and one before the Hon'ble High Court of Telangana. It was asserted that although the petitioner had first invoked arbitration and proposed the name of a sole arbitrator, stipulating that an application would be filed before this Court in the event the parties failed to agree upon the proposed name within thirty days, the respondent nevertheless proceeded to file its Section 11 application before the High Court of Telangana prior to the expiry of the statutory period of thirty days, allegedly with a view to bringing the dispute within the jurisdiction of that Court.

5.1. It was next contended that the petitioner's application under Section 11 came to be registered as Arbitration Petition



No. 43 of 2026 on 18.02.2026, pursuant to which notice was ordered to be issued on 20.02.2026, and that the petitioner, on the same date, intimated the respondent of the issuance of such notice. It was contended that notwithstanding this intimation, the respondent proceeded to register its own Section 11 application before the High Court of Telangana on 25.02.2026, as Arbitration Petition No. 74 of 2026, whereupon notice was issued to the petitioner. It was submitted that the respondent had failed to bring to the notice of the High Court of Telangana the fact that notice in the present proceedings had already been ordered to be issued by this Court on 20.02.2026.

5.2. It was further the case of the petitioner that the issuance of a valid request invoking arbitration, and the expiry of the statutory period of thirty days therefrom, is not a mere formality but constitutes a condition precedent embedded within the statutory scheme itself. It was contended that once the Act, 1996 prescribes a specific procedure for appointment of an arbitrator, no alternate or truncated procedure can be resorted to by either party. In this context, it was submitted



that the respondent, having granted only seven days to the petitioner to respond to its counter-proposed name, proceeded to file its Section 11 application on the 19th day, without awaiting the petitioner's response, which action was submitted to be impermissible under Section 11(5) of the Act, 1996.

5.3. In support of the aforesaid contention, Mr. Buch placed reliance upon the decision of the High Court of Bombay in ***Municipal Corporation of the City of Pune v. Bombay Cable Car Co. Pvt. Ltd.***, reported in **2005 SCC OnLine Bom 252**, wherein it was held as under:-

"7... In my opinion, the parties will lose their power to agree on appointment of the arbitrator and that power will get vested on expiry of period of 30 days in the Chief Justice of this court or a nominee of the Chief Justice. The parties thereafter, will have no power even to agree on the name of the arbitrator. Even if the parties agreed subsequently, after the expiry of the 30 days, to the name of any arbitrator, they will have to approach the Chief Justice for appointment of the sole arbitrator. A valid appointment of the sole arbitrator can be made by an agreement of the parties within a period of 30 days from the date of issuance of the notice by one party to the other suggesting the name of the sole arbitrator."

6. Mr. A. Srinath, learned advocate for the respondent, *per contra*, submitted that the words employed under Section 11 (11) of the Act, 1996 make it crystal clear that priority has to



be given to such “request”/application which is made first in time and not the one which is first numbered/registered or heard. It was contended that section 11 application before the Hon’ble Telangana High Court was made on 10.12.2026 which was three days prior in time to the present petition which is made on 13.02.2026.

6.1 It was then stressed that the delay of 10 days in notifying defects or whatsoever by the Registry is not attributable to the respondent herein. Thereafter, in the shadow of the legal maxim “*actus curiae neminem gravabit*”, Mr. Srinath submitted that the defects clearly evidence that they were only procedural and not substantial. It was the overall submission of the learned Counsel for the respondent that the operative date for priority must therefore remain the original presentation date “date of filing”, and not the later date on which the Registry completed the process and the application/petition is registered or numbered.

Analysis & Findings:-

7. For the purposes of the present discussion, it would be necessary to take a close look at sub-sections (4), (5), (6) &



sub-section (11) of Section 11 of the Act, 1996 which are quoted hereinbelow for ready reference:

“(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court];

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court].

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.



***(11)** Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, [different High Courts or their designates, the High Court or its designate to whom the request has been first made] under the relevant sub-section shall alone be competent to decide on the request."*

8. The petitioner has claimed that once there is an invocation under Section 21 of the Act, 1996, then the process of appointment of an Arbitrator is triggered and it is mandatory to wait for a period of 30 days as referred to in sub-section (5). It is the specific case of the petitioner that by not adhering to the request of the petitioner, the respondent has actually triggered sub-section (6)(a) of the Act, 1996, and therefore, the application made by the petitioner alone, is the competent application within the meaning of sub-section (6) which can be processed further. In other words, because the respondent has filed its own application within a period of 30 days from the notice invoking the arbitration clause, the respondent should be held to be incompetent to pursue his own application.

9. The respondent on the other-hand claims that sub-



section (11) does not make any distinction between prior dates of invocation of the arbitration clause. Rather, sub-section (11) gives primacy to a “request” made under sub-section (4) or sub-section (5) or sub-section (6) and mandates that whichever “request” has been made at an earlier point of time shall be held to be the competent “request” and the later “request” shall have to be deemed to be incompetent.

10. I am of the clear opinion that “request” within meaning of Section 11 has to be understood as the act of “filing” of the necessary Arbitration Petition/Application within the meaning of sub-section 6 of Section 11 of the Act, 1996.

11. In the facts of the present case, it is undisputed that the “request” being Arbitration Petition No. 74 of 2026 filed before the Hon’ble Telangana High Court is first in point of time. It is not the concern of this Court whether and for what reason the said application came to be numbered/registered at a later point of time than the present arbitration petition. It is for the Hon’ble Telangana High Court to consider those issues including the contention on merits, which would form the probable defence of the present petitioner (as respondent



before the Hon'ble Telangana High Court) as to whether the prior invocation of the arbitration clause under Section 21 of the Act, 1996 would override the mandatory provisions of sub-section (11) of Section 11 of the Act, 1996.

12. For the purposes of this Court, I am of the clear opinion that once the application for appointment of an arbitrator has been ***filed*** before the Hon'ble Telangana High Court first in point of time then the said application alone would be the competent application to be adjudicated under section 11(6) of the Act. The merits of such an application including maintainability on all grounds other than that of sub-section 11 of section 11 of the Act, 1996 shall also fall within the competence of the Hon'ble Telangana High Court.

13. In view of my aforesaid findings, I am also of the clear opinion that the decision in the case of ***Bombay Cable Car*** (Supra) has no applicability whatsoever in the facts of the present case.

14. In such view of the matter, the present Arbitration Petition is dismissed as not maintainable. Liberty, however,



rests with the petitioner to revive this petition in case the Hon'ble Telangana High Court is of the opinion that Arbitration Petition No.74 of 2026 is not maintainable and/or incompetent on any of the grounds other than under Section 11(11) of the Act, 1996. No costs.

BINA SHAH

(D.N.RAY,J)