2026:DHC:9245

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

% ***Judgment pronounced on: 16.10.2026***

\# **CNR No. DLHC010267192026**

\+ **ARB.P. 1010/2026**

PUERTO LIFE SCIENCES PVT. LTD. .....Petitioner
Through: Mr. Preetam Singh, Mr. Utkarsh, Advs.

versus

MR. ENGINEERS INDUSTRIES .....Respondent
Through: Mr. Dilpreet Singh Gandhi, Adv.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'A&C Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties, arising out of and in connection with the Agreement for Purchase of Machinery made effective from 26.08.2023 (hereinafter 'the Agreement') along with Purchase Order No. PLS/MIS/23-24/846 dated 26.08.2023 and Purchase Order No. PLS/MIS/23-24/735 dated 15.02.2024.

2. The petitioner is a company incorporated on 04.10.2018 under the Companies Act, 2013, having its registered office at Saini Enclave, Delhi, and is engaged in the manufacture of Small Volume Parenterals ('SVP') and Large Volume Parenterals ('LVP') . The respondent is a sole proprietorship concern, engaged in the business of manufacture and supply of machinery.

3. On 26.08.2023, the petitioner issued Purchase Order No.

PLS/MIS/23-24/846 for the supply of a Double Station FFS Respule/SVP Machine (80 cavities), for a total consideration of Rs. 3,52,82,000/- (i.e., Rs. 2,99,00,000/- together with GST of Rs. 53,82,000/-). The parties also entered into the Agreement, made effective from 26.08.2023, which abides by the aforesaid quotation and contains an arbitration clause at Clause 17 thereof.

4. Subsequently, the respondent having informed the petitioner that a fresh set of moulds and a de-flesher would be required for manufacture of 2 ml respules, the petitioner issued Purchase Order No. PLS/MIS/23-24/735 dated 15.02.2024 for supply of a 2 ml Mould and De-flesher Assembly.

5. It is the case of the petitioner that it has paid a sum of Rs. 2,93,50,000/- to the respondent, comprising advances aggregating to Rs. 2,56,15,000/- paid in tranches as on 20.02.2024, and a further sum of Rs. 37,35,000/- paid on 28.08.2024. It is stated that although the machine was to be delivered in January 2024, the same was supplied belatedly under invoices dated 28.08.2024 and was received on 29.08.2024; that certain components were found to have been damaged in transit while others were found missing, which was notified to the respondent by e-mail on 29.08.2024; that installation commenced at the petitioner's factory in December 2024; and that the Site Acceptance Test was completed only on 22.04.2025.

6. It is further the case of the petitioner that the machine has failed to achieve the assured output of approximately 4,00,000 respules per day and has delivered an output of only about 1,50,000 respules per day, with a rejection rate of about 30%. The petitioner states that it took up the aforesaid grievances with the respondent on several occasions, *inter alia*, vide





communications dated 27.02.2025, 20.03.2025, 26.12.2025, 15.01.2026 and 23.02.2026, calling upon the respondent to take back the machine and the moulds at its own cost and to refund the entire consideration paid, along with interest and damages. It is also the petitioner's case that the respondent, vide its e-mail dated 26.02.2025, expressed its willingness to take back the machine and sought time to process the return, but that no concrete steps were taken in that behalf.

7. The disputes between the parties having remained unresolved, the petitioner issued a notice dated 19.03.2026 under Section 21 of the A&C Act invoking arbitration in terms of Clause 17 of the Agreement, and calling upon the respondent to propose the name of an independent and impartial Sole Arbitrator for appointment by mutual agreement. The said notice was transmitted to the respondent by e-mail on 26.03.2026 and was received by it by speed post on 28.03.2026.

8. The respondent responded vide its e-mail dated 31.03.2026, whereupon the petitioner reiterated its invocation vide e-mail dated 01.04.2026. Thereafter, the respondent, through its counsel, issued a reply dated 19.04.2026 controverting the claims of the petitioner, and asserting, *inter alia*, that the machine stood accepted upon completion of the Factory Acceptance Test and the Site Acceptance Test; that no written grievance was raised during the warranty period; that the delays, if any, were occasioned by the petitioner's own payment defaults and post-contractual design changes; and that a sum of approximately Rs. 83,00,000/- has been wrongfully withheld by the petitioner. While taking the stand that the invocation of arbitration was premature, the respondent also reserved liberty to raise counter-claims.

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9. Since no consensus could be arrived at between the parties as regards the appointment of a Sole Arbitrator pursuant to the notice under Section 21 of the A&C Act, the present petition came to be filed in May 2026.

10. Clause 17 of the Agreement, which embodies the arbitration agreement between the parties, reads as under:

> "*17. Arbitration*
>
> *17.1 In case of any dispute arising upon or in relation or in connection with this Agreement between the Buyer and the Seller, which has not been settled amicably, any Party can refer the dispute for arbitration under the Arbitration and Conciliation Act, 1996 ('the 1996 Act').*
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> *17.2 The arbitration proceedings shall be conducted by the sole arbitrator who shall be appointed by agreement of the Parties. If the Buyer or the Seller does not agree on the appointment of a sole arbitrator within thirty days of the respondent's receipt of a notice of arbitration, then, at the request of one of the Parties, the arbitrator shall be appointed in accordance with the 1996 Act and the Rules made thereunder.*
>
> *17.3 The seat and venue of arbitration shall be Delhi. The language of the arbitration proceedings and that of all documents and communications between the Parties shall be English. The arbitration award shall be final and binding on the parties.*"

11. Clause 6 of the terms and conditions contained in the aforesaid Purchase Orders dated 26.08.2023 and 15.02.2024 likewise provides as under:

> "*In case of any disputes / differences arising in respect of this P.O. shall be subject to jurisdiction of Delhi & place of arbitration at New Delhi. Selection of arbitrator will be Puerto prerogative.*"

12. Pertinently, the existence of the arbitration agreement between the parties is not in dispute. In its reply dated 19.04.2026, the respondent has itself stated that "*disputes (if any) may be resolved through arbitration in accordance with the Agreement*", and that "*any arbitration must include our client's counter-claims*". The seat of arbitration having been designated as

Delhi in terms of Clause 17.3 of the Agreement, this Court is possessed of the requisite jurisdiction to entertain the present petition.

13. The scope of enquiry at the stage of Section 11 of the A&C Act is a limited one. In terms of Section 11(6A) of the A&C Act, as expounded by a seven-Judge Bench of the Supreme Court in ***In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***, (2024) 6 SCC 1, and as reiterated in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, (2024) 4 SCC 695, the referral court is required only to satisfy itself as to the *prima facie* existence of an arbitration agreement; all other issues, including the maintainability and merits of the claims and of the defences raised thereto, are to be left for adjudication by the arbitral tribunal, which is competent to rule upon its own jurisdiction in terms of Section 16 of the A&C Act.

14. As regards the plea taken in the reply dated 19.04.2026, that the invocation of arbitration is premature inasmuch as the disputes were not crystallised through reconciliation and the technical issues were not jointly assessed, suffice it to observe that Clause 17.1 of the Agreement does not postulate any mandatory pre-arbitral procedure, and contemplates only that the dispute has not been settled amicably. The record discloses a sustained exchange of communications between the parties from February 2025 culminating in no resolution of disputes. In any event, the said plea isone which remains available to be urged before the arbitral tribunal.

15. The disputes relating to the 2 ml Mould and De-flesher Assembly supplied under the Purchase Order dated 15.02.2024 are, *prima facie*, closely connected with and in pursuance of the supply, installation and performance of the machine supplied under the Agreement. The said moulds





were procured for use with the very same machine, were supplied under invoices of even date, and form part of the petitioner's claim for return and refund; the counter-claims proposed by the respondent likewise include the costs stated to have been incurred towards mould redesign. The notice dated 19.03.2026 also adverts to the said Purchase Order and seeks reference of the disputes concerning the return of the "*Machine and Molds*". Both stipulations provide for arbitration at Delhi. In the circumstances, it is appropriate that the said disputes be adjudicated in a composite arbitral proceeding, so as to obviate multiplicity of proceedings and the possibility of conflicting findings. Any objection as regards the scope of the reference shall, however, remain open to be raised before, and decided by, the learned Sole Arbitrator.

16. Insofar as Clause 6 of the Purchase Orders stipulates that the "*selection of arbitrator will be Puerto prerogative*", it is well settled that a party having an interest in the outcome of the dispute cannot be conferred with the unilateral power to appoint a sole arbitrator; (see ***TRF Ltd. v. Energo Engineering Projects Ltd.***, (2017) 8 SCC 377 and ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, (2020) 20 SCC 760, as also the judgment of the Constitution Bench in ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)***, (2025) 4 SCC 641, holding that a unilateral appointment mechanism is contrary to the principle of equal treatment of parties. In any event, the petitioner has not sought to invoke the said stipulation, and has prayed for the appointment of an independent Sole Arbitrator by this Court, which accords with Clause 17.2 of the Agreement.

17. In the aforesaid circumstances, the existence of the arbitration agreement being undisputed, arbitration having been duly invoked in terms

thereof, and no consensus having been arrived at between the parties as regards the appointment of a Sole Arbitrator, it is incumbent upon this Court to Appoint an Arbitrator.

18. Accordingly, Ms. Gayatri Verma, Advocate (Mobile No. +91 9971786665), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties arising out of and in connection with the Agreement made effective from 26.08.2023, read with the Purchase Orders dated 26.08.2023 and 15.02.2024.

19. The learned Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing the requisite disclosure as mandated under Section 12 of the A&C Act, and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this Court.

20. It is agreed between the parties that the arbitration shall take place under the aegis of and as per the rules of Delhi International Arbitration Centre (DIAC).

21. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the learned Arbitrator on merits, in accordance with law.

22. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the contentions of the parties.

23. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 16, 2026/*nbh*