

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

ARBITRATION PETITION NO. 35 OF 2025

FINECURE PHARMACEUTICAL LIMITED

PETITIONER(S)

VERSUS

SPIRIT PHARMACEUTICAL LLC & ANR.

RESPONDENT(S)

O R D E R

1. This petition under Section 11(9) of the Arbitration and Conciliation Act, 1996 (1996 Act), seeks the appointment of a sole arbitrator to adjudicate disputes arising from a Manufacturing and Supply Agreement (MSA) dated 11.03.2022 read with Exclusive Relation Agreement (ERA) dated 11.03.2022 (collectively referred to as 'Agreements'), executed between the Petitioner and the Respondent No. 1.

2. Briefly stated, the Petitioner is a public limited company having its registered office in India, engaged in the business of manufacturing and marketing of pharmaceutical formulations and nutraceuticals in the dosage form of tablets, syrups, powders, injections etc. Respondent No. 1 is a limited liability company incorporated under the laws of the United States of America, engaged in the business of marketing, promotion, and distribution of a wide range of pharmaceutical products. Respondent No. 2 is also a company incorporated under the laws of the United States of America, involved in the business of manufacturing, marketing and distribution of drugs.

3. The Petitioner and Respondent No. 1 entered into the Agreements for the manufacturing of specified products on a principal-to-principal basis; and the same were to be marketed, sold, and distributed by Respondent No. 1 within the territory of the United States of America. Under the Agreements, the parties agreed that all disputes arising out of or in connection with the Agreements shall be referred to arbitration in accordance with Clause 16 of the MSA read with Clause 17 of the ERA. The said clauses, which are governed by the laws of India, provide that a dispute not resolved through amicable consultations within sixty days may be referred to arbitration, which is to be conducted in the English language in accordance with the 1996 Act, with New Delhi as the place of arbitration.

4. It appears that a dispute arose in the year 2024 when Respondent No. 1 allegedly defaulted on its payment obligations towards the consignments manufactured and supplied by the Petitioner. According to the Petitioner, a sum of USD 1,583,567.53 (excluding interest and other consequential reliefs) remains outstanding against invoices raised between March 2024 and October 2024. Under these circumstances, the Petitioner issued a notice of default dated 03.10.2024 followed by a notice of termination dated 14.10.2024 calling upon Respondent No. 1 to clear the outstanding dues. Upon the alleged failure of Respondent No. 1 to do so, the Petitioner sought to initiate arbitral proceedings in terms of the dispute resolution clause contained in the Agreements.

5. Consequently, the Petitioner issued a notice dated 18.10.2024 to Respondent No. 1, invoking the arbitration clause for appointment of a Sole Arbitrator.

6. During this period, Respondent No. 2 purportedly acquired the assets and business operations of Respondent No. 1 through a sale process initiated by a secured lender of Respondent No. 1. The Petitioner contends that since Respondent No. 2 has stepped into the shoes of Respondent No. 1, it is liable for its dues, whereas Respondent No. 2 is stated to contest this, claiming to have acquired the assets free of liabilities.

7. As Respondent No. 1 failed to respond to the said notice, the Petitioner has filed the instant Petition under Section 11 of the 1996 Act. The Petitioner impleaded Respondent No. 2 stating it to be a necessary party as it is jointly and severally liable for the debt.

8. The Petitioner has also instituted petitions under Section 9 of the 1996 Act before the High Court of Delhi, being O.M.P.(I) (Comm.) No. 366 of 2024 and O.M.P.(I) (Comm.) No. 420 of 2024. In the former, by order dated 24.10.2024, Respondent No. 1 was restrained, till the next date of hearing, from selling, transferring or alienating its assets to the extent of USD 1,583,567.53. Both petitions are stated to be pending.

9. We have heard learned Counsel for the parties, and perused the material placed on record.

10. The existence of the arbitration agreements contained in Clause 16 of the MSA and Clause 17 of the ERA is evident from the record, and the notice invoking arbitration dated 18.10.2024 is stated to have remained unanswered. Since the Petitioner is incorporated in India while the Respondents are incorporated in the United States of America, the arbitration is an international commercial arbitration within the meaning of Section 2(1)(f) of the 1996 Act, for which this Court is the designated forum under Section 11. The scope of our enquiry at this stage being confined to the *prima facie* existence of an arbitration agreement, all other issues are for determination by the Arbitral Tribunal.

11. Keeping in view the facts and circumstances recorded above and the relevant provision(s) under the Agreements, we deem it just and appropriate to allow the instant Arbitration Petition and appoint Justice Siddharth Mridul, former Chief Justice of the High Court of Manipur, as the Sole Arbitrator to resolve the subsisting disputes between the parties arising out of and in connection with the Agreements. The seat and venue of arbitration, in accordance with the arbitration agreements, shall be New Delhi, India. The arbitration shall be conducted in the English language in accordance with the 1996 Act.

12. The Petitioner has alleged that Respondent No. 2, though not a signatory to the Agreements, has stepped into the shoes of Respondent No. 1 and is jointly and severally liable for its dues, and has also reserved the right to implead other entities. Whether Respondent No. 2 or any other person is bound by the arbitration agreements, and whether any other party can be joined to the arbitral proceedings, shall be decided by the learned Arbitrator in accordance with law, including the issues under Section 16 of the 1996 Act, uninfluenced by anything stated herein.

13. All the objections raised by the parties are left open to be urged before the learned Arbitrator, including, without limitation, objections as to jurisdiction, arbitrability, limitation, compliance with the pre-arbitral consultation requirement under Clauses 16.2 and 16.3 of the MSA and Clauses 17.2 and 17.3 of the ERA, and the effect of the sale of the assets of Respondent No. 1 on the claims raised. It is made clear that we have not made any observations on the merits of the dispute(s). The petitions pending before the High Court of Delhi under Section 9 of the 1996 Act shall be decided by that Court independently, in accordance with law, uninfluenced by this order.

14. The Arbitrator shall have the liberty to fix his/her own remuneration/fees in consultation with the parties. The fees and expenses of the arbitration shall be borne in accordance with the arbitration agreements, subject to the final determination of costs in the award.

15. The Registry is directed to communicate a copy of this order to the learned Arbitrator, and to the parties, within one week. Ordered accordingly.

16. Pending interlocutory applications, if any, also stand disposed of.

.....CJI.
(SURYA KANT)

.....J.
(JOYMALYA BAGCHI)

.....J.
(V. MOHANA)

NEW DELHI;
SEPTEMBER 30, 2026.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSPetition(s) for Arbitration No(s). 35/2025

FINECURE PHARMACEUTICAL LIMITED

Petitioner(s)

VERSUS

SPIRIT PHARMACEUTICAL LLC & ANR.

Respondent(s)

Date : 30-09-2026 This petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JOYMALYA BAGCHI
HON'BLE MRS. JUSTICE V. MOHANA

For Petitioner(s) : Mr. Ashutosh Nagar, AOR

For Respondent(s) : Mr. Aseem Chaturvedi, Adv.
Mr. Milind Jain, Adv.
Mr. Arsh Alok, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Arbitration Petition is allowed in terms of the signed order.

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS(PREETHI DILEEP KUMAR)
DY. REGISTRAR

(Signed order is placed on the file)