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C.M.A. (CAD) No.1638 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

C.M.A. (CAD) No.1638 of 2025

and

C.M.P. No.14427 of 2025 in C.M.A. (CAD) No.1638 of 2025

M/s.Jindal Stainless Limited,
Jindal Centre,
12, Bhikaji Cama Place,
New Delhi – 110 066.

... Appellant

Vs.

M/s.ABCD Technology
rep. By its Proprietor M.Bharat Chandan,
Suite No.27, VGP Hall No.17, Anna Salai,
Chennai – 600 002.

... Respondent

Civil Miscellaneous Appeal filed under Section 13(1)(A) of The Commercial Courts Act, 2015 read with Order XLIII Rule 1 of Code of Civil Procedure to set aside the impugned order dated 27.02.2025 passed in I.A.No.3 of 2024 in C.O.S.No.274 of 2024 passed by the Principal Commercial Court at Egmore, Chennai.

For Appellant : Mr.Kishore Balasubramanian

For Respondent : No appearance



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JUDGMENT

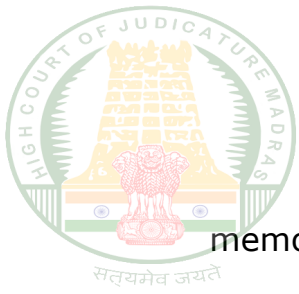
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[Judgement of the Court was delivered by **M.SUNDAR, J.,**]

Captioned Appeal is one under Section 37 (1)(a) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' (hereinafter 'A and C Act' for the sake of convenience and clarity). The 'Principal Commercial Court, Egmore, Chennai' (hereinafter 'said Commercial Court' for the sake of convenience and clarity) in and vide an 'order dated 27.02.2025 made in I.A.No.3 of 2024 in C.O.S. No.274 of 2024' (hereinafter 'impugned order' for the sake of convenience and clarity) refused to refer the parties to arbitration under Section 8 of A and C Act. In other words, impugned order is one by which said Commercial Court has dismissed an application under Section 8 of A and C Act taken out by the sole defendant in the suit.

2. The sole defendant in the suit who took out Section 8 application is on appeal and Mr.Kishore Balasubramanian, learned counsel for appellant is before us. As regards respondent in the captioned appeal (plaintiff before said Commercial Court), sole respondent has been duly served, name and full/complete address of sole respondent as in the short and long cause titles of the

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memorandum of grounds of appeal has been shown in the cause list but none appears. We are informed by the Registry that sole respondent has not chosen to enter appearance through counsel.

3. From hereon and henceforth in this order, we shall refer to the parties by their respective ranks in the said Commercial Court for convenience. We may also refer to 'plaintiff' as 'ABCD' and 'defendant' as 'JSL' denoting 'ABCD Technology' and 'Jindal Stainless Limited' respectively.

4. Factual Matrix in a nutshell is that there is a 'Memorandum of Understanding dated 17.07.2020' (hereinafter 'said MoU' for the sake of brevity, convenience and clarity) between JSL and ABCD; that at the time of execution of said MoU, Jindal Stainless Corporate Management Service Private Limited (JSCMS) was authorised representative of JSL but subsequently there has been amalgamation which has been approved by the National Company Law Tribunal, Chandigarh vide order dated 02.02.2023; that therefore said MoU, now is one between JSL and ABCD; that said MoU was valid for a period of nine months from 01.07.2020 to 31.03.2021; that said MoU was for the purpose of supply of products as per market demand; that said MoU refers to

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general terms and conditions vide Clause C (g) thereof which makes it clear that said MoU shall be implemented as per general terms and conditions of order acceptance and other guidelines issued by JSL and suppliers from time to time on aspects like order booking, pending order position (PoP) payment terms etc., ; that pursuant to said MoU, an order acceptance dated 29.07.2020 vide Sales Order No.558025453 was made; that this order acceptance specifically refers to system code 1010017434; that the arrangement between parties i.e., between JSL and ABCD ran into rough weather; that therefore ABCD filed a suit in COS No.274 of 2024 inter-alia claiming a sum of little over Rs.36.95 lakhs towards bill outstanding amount; that there is no arbitration clause in said MoU but there is certainly an arbitration clause in the order acceptance dated 29.07.2020; that JSL took out an application under Section 8 of A and C Act predicated its plea to refer to arbitration on the arbitration clause in the order acceptance; that the said Commercial Court made the impugned order inter-alia on the ground that suit is one that seeks turn over discount, consistency bonus, continuity bonus, relationship bonus etc., whereas the order acceptance does not pertain to the same; that the aggrieved defendant is on appeal before us under Section 37(1)(a) of A and C Act as already alluded to supra.

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5. Mr.Kishore Balasubramanian, learned counsel for appellant contended that in the said MoU, vide Clause C(g), there is a clear reference to order acceptance and therefore arbitration clause in order acceptance should be construed as arbitration agreement between the parties qua said MoU too. It was also contended that in paragraph 3 of the plaint, there is a specific reference to said MoU dated 17.07.2020 and that the same was accepted vide system code 1010017434 which is reflected in the order acceptance and therefore, the order acceptance and said MoU cannot be read disjunctively or independent of one another.

6. As already alluded to supra, plaintiff, though duly served and name shown in the cause list, has not chosen to come before this Court and oppose the appeal.

7. We heard out the matter on merits.

8. After hearing the learned counsel for appellant, perusing the case file and after giving due consideration to the stand taken by the plaintiff/ABCD before said Commercial Court in resisting Section 8

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application, this Court is of the considered view that captioned appeal deserves to be allowed and the reasons are as follows:

8.1 There is no doubt or dispute that there is no arbitration clause in said MoU but there is an arbitration clause in the order acceptance, which reads as follows:

'ARBITRATION:

Any disputes or differences arising between the parties out of or relating to construction, meaning and operating or effect to this offer or breach thereof or the rights and liabilities of the parties hereunder shall unless settled amicably be referred to arbitration in accordance with the arbitration Act 1940 or any statutory modification or reenactment thereof for the time being in force, the venue of such arbitration shall be Hisar, Haryana.'

8.2 Plaintiff averment more particularly paragraph 3 of the plaint in clear and certain term refers to said MoU dated 17.07.2020 and there is a further averment that this was accepted in system code 1010017434 created by defendant on 28.07.2020 which is reflected in the order acceptance. Paragraph 3 of the plaint reads as follows:



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'3. The Plaintiff states that he had entered into Agreement with the Defendant by Memorandum of Understanding as Channel Partners, which was signed and issued by Plaintiff on 17.07.2020. The same was accepted in the system and Code (1010017434) created by Defendant on 28.07.2020.'

8.3 In this view of the matter, applying **Inox** and **Giriraj** principles (about which there will be allusion elsewhere infra in this order) we have no difficulty in holding that there is an arbitration clause between parties even with regard to the plaint claim as arbitration clause clearly stands telescoped qua said MoU;

8.4 Arbitration agreement has been defined in A and C Act vide Section 2(1)(b) which has to be read with Section 7. A careful reading of Section 2 (1)(b) read with Section 7 makes it clear that there is an arbitration agreement *albeit* in the form of arbitration clause in the order acceptance which in turn even according to the plaintiff relates to said MoU;



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8.5 As regards **Inox** principle being ratio in **Inox Wind Limited Vs. Thermocables Limited** reported in **(2018) 2 SCC 519**, it was made clear that the general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate arbitration clause. To be noted, this was modification of **MR Engineers** principle being ratio in **M.R.Engineers & Contractors (P) Ltd. Vs. Som Datt Builders Ltd.,** reported in **(2009) 7 SCC 696** and **Inox** on facts is a case where two purchase orders were issued for supply of cables with a clear mention in the purchase order that standard terms and conditions attached thereto would apply and the standard terms and conditions contained an arbitration clause. **Inox** principle is that a general reference to consensual standard form is sufficient for incorporation of an arbitration clause. On facts, **Giriraj** case being **Giriraj Garg Vs. Coal India Limited and Others** reported in **(2019) 5 SCC 192** is one where there was a 2007 Scheme regarding coal distribution but the sale orders did



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not contain arbitration clause though the Scheme for coal distribution contained one but the sale orders specifically state that they would be governed by guidelines, circulars, office orders, notices, instructions, relevant law etc., issued by the tender floating authority. In this view of the matter, Hon'ble Supreme Court held that the arbitration clause in the Scheme would stand incorporated in the sale order;

8.6 In the light of the **Inox** and **Giriraj** principles, we have no hesitation in holding that the arbitration clause in the order acceptance will stand incorporated in the said MoU;

8.7 In the light of the view which we have taken, there is no difficulty in writing that the distinction made by the said Commercial Court as between payment of turn over discount, consistency bonus, continuity bonus and relationship bonus on one hand and order of acceptance on the other hand pales into insignificance. In the same view of the matter and finding returned by the said



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commercial Court that no arbitration clause has been provided in the said MoU with regard to incentives and discounts payable thereunder also pales into insignificance;

8.8 This Court respectfully draws inspiration from ***Vidya Drolia*** being ***Vidya Drolia and Others Vs. Durga Trading Corporation*** reported in ***(2021) 2 SCC 1***, which was subsequently reiterated by a Seven Member Bench in ***'In Re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899'*** reported in ***(2024) 6 SCC 1*** for the principle 'when in doubt, do refer'. This Court specifically writes that inspiration has been drawn from ***Vidya Drolia*** case as this Court is conscious that ***Vidya Drolia*** 'when in doubt, do refer' is vide Section 11 of A and C Act whereas we are concerned with Section 8. The primary distinction between Sections 11 and 8 can be brought out by advertng to sub-section (6A) of Section 11, while sub-section (6A) of Section 11 refers only to examination of existence of arbitration agreement, Section 8 talks about



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existence of 'valid arbitration agreement'. In this case, there is no doubt or dispute either about existence of arbitration agreement or about existence of valid arbitration agreement. Only point is whether arbitration agreement would govern the said MOU dated 17.07.2020 too or it would be restricted to order acceptance dated 29.07.2020;

8.9 As a sequitur to the above, we find that there is no reason to say that no valid arbitration agreement exists between JSL and ABCD.

9. One other facet is the order acceptance as well as said MoU are not executed in non-judicial stamp paper. As regards stamping, it has been made clear in ***In Re Interplay*** case reported in **(2024) 6 SCC 1** that it is a curable defect. Therefore, this question is left open.

10. In the light of the narrative, discussion and dispositive reasoning thus far, captioned appeal is allowed, impugned order being order dated 27.02.2025 made in I.A.No.3 of 2024 in C.O.S.No.274 of 2024 on the file of the Principal Commercial Court at Egmore, Chennai is set aside and the parties stand referred to arbitration as per

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arbitration clause which has been adverted to supra and held to be an arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. Consequently, captioned Civil Miscellaneous Petition (CMP) thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) **(H.C.,J.)**
13.08.2025

Index : Yes
Neutral Citation : Yes
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To

The Principal Commercial Court,
Egmore, Chennai.



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**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

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