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

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Judgment reserved on: 13.11.2025
Judgment pronounced on : 11.12.2025

+ **FAO (COMM) 232/2024, CM APPL. 70971/2024 (Stay) & CM APPL. 70973/2024 (Delay of 66 days in re-filing the petition)**

ELECTRO MECH ENGINEERSAppellant

Through: **Mr. Sanjay Gupta, Mr. Sanyam Jain, Mr. Devi Das Verma and Mr. Surya Pratap Singh Chauhan, Advocates.**

versus

NISHANT PROMOTERS PVT. LTD.Respondent

Through: **Mr. KM Vignesh Ram and Ms. Akshita Agrawal, Advocates.**

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR J.

1. The present appeal under Section 37 of the **Arbitration and Conciliation Act, 1996**¹ read with Section 13 of the Commercial Courts Act, 2015 challenges the **Order dated 20.07.2024**² passed by the **learned District Judge (Comm), South East, Saket Courts**³, Delhi, in CS (Comm) No.166/2024 titled as '*M/s Nishant Promoters Pvt. Ltd. vs. M/s Electro Mech Engineer and Ors. '*

¹ The Act

² Impugned Order

³ learned District Judge

Signature Not Verified

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By: HARVINDER KAUR BHATIA
Signing Date: 12.12.2025
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FAO (COMM) 232/2024



BRIEF FACTS:

2. The Appellant herein is a partnership firm and engaged in fabrication and erection work. The Respondent herein is a company incorporated under the Companies Act, 2013, and is engaged in a similar line of business.

3. The parties came into contact through their involvement in the execution of certain structural works at Jamuria Industrial Area, Bardhaman, West Bengal, for which the Appellant had received a work order dated 15.11.2022 from one **M/s Gridhan Metal Pvt. Ltd.**⁴. In furtherance of the same, vide e-mail dated 20.12.2022, the Appellant-contractor, engaged the Respondent as a sub-contractor for undertaking the specified on-site activities forming part of the said work order.

4. During the subsistence of this arrangement, various e-mail communications were exchanged as between the parties and, on occasion, with GMPL, with regard to the said work order and the terms and conditions that governed such work between the Appellant and GMPL, and the parties herein. Of particular significance are e-mails dated 19.10.2022 and 19.12.2022, as it is alleged by the Appellant that they disclose the terms and conditions which regulate the contract between the parties herein, which is disputed by the Respondent.

5. The Respondent executed the works and raised invoices against the Appellant totalling to Rs. 72,47,805/-, of which Rs. 44,77,939/- was paid. The balance of Rs. 29,82,953/- remained unpaid. In view of the non-payment, the Appellant issued a legal notice dated 16.09.2023 to the Respondent, claiming the outstanding sum. The Respondent

⁴ GMPL



acknowledged receipt of the said notice with a reply dated 10.10.2023 through WhatsApp, but did not make payment of the said dues.

6. Subsequently, the Respondent filed a commercial suit being CS (COMM) No. 166/2024, seeking recovery of Rs. 29,82,953/- along with *pendente lite* and interest. In the said suit, the Appellant filed an application under Section 8 of the Act, seeking reference of the dispute to arbitration, along with a written statement, an application for condonation of delay under Order VIII Rule 10 **Code of Civil Procedure, 1908**⁵, and reply under Order XXXVIII Rule 5 CPC. However, by order dated 01.06.2024, the learned District Judge dismissed the application under Order VIII Rule 10 CPC as the same was not pressed for by the Appellant herein.

7. With reference to application filed under Section 8 of the Act, by the order impugned herein, the learned District Judge rejected the Appellant's application, on the ground that the arbitration clause sought to be invoked in the present case is enshrined in a contract as between GMPL and the Appellant, and since there is no privity of the terms in the said contract with the Respondent herein, therefore, the said clause could not be extended for the purpose of resolution of a dispute between the Appellant and the Respondent herein.

8. Aggrieved by the said impugned order, the Appellant has preferred the present appeal before this Court.

CONTENTIONS OF THE APPELLANT:

9. The learned counsel for the Appellant would draw our attention to the communication dated 06.07.2023, from the Respondent to the said GMPL, which states as under:

⁵ CPC



“We would like to bring to your notice that we have been working at your organisation M/s Gridhan Metal Pvt. Ltd. (GMPL). Jamuriasite on your 900 TPD DRI project under sub-contract of M/s Electro Mech Engineers according to GMPL terms and conditions.”

10. He would also seek to rely upon an e-mail dated 15.03.2023 addressed to the Respondent from the Appellant stating therein that the terms and conditions were on a back to back basis as per GMPL Work Order No. WJ22D12-002 dated 12.12.2022. He would thus contend that since there is an express acknowledgement of work being performed by the Respondent on “GMPL Terms and Conditions”, the same would operate as a clear indication of the understanding that the arbitration clause in the agreement as between GMPL and the Appellant herein would also extend to the relationship as between the parties herein.

11. In support of his contentions, the learned counsel appearing for the Appellant would rely upon the Judgment of the learned Single Judge of this Court in *Ms. G. Kapoor vs. M/S Reacon Engineers Pvt. Ltd.*⁶. Relying upon this Judgment, he would state that since the arrangement as between the parties was a back to back arrangement with the primary understanding being as between GMPL and the Appellant, the terms of the Appellant’s contract with GMPL and, in particular, the Arbitration Clause thereof would also be applicable as between the parties herein. He would further rely upon the Judgment of the Hon’ble Supreme Court in *NBCC (India) Limited vs. Zillion Infraprojects Pvt. Ltd.*⁷ to contend that the Arbitration Clause, by reference, would have to necessarily be made applicable as between the parties herein.

⁶ 2019 SCC OnLine Del 10667

⁷ (2024) 7 SCC 174



CONTENTIONS OF THE RESPONDENT:

12. **Per contra**, learned counsel for the Respondent would submit that there was no privity of the contract as between the parties and mere general reference to the terms and conditions between the Appellant and GMPL would not *per se* bind or even be applicable to the relationship between the Appellant and the Respondent.

13. It is further submitted that the Appellant's reliance on the alleged Work Order dated 12.12.2022 (WJ22D12-002), purportedly issued by GMPL to the Appellant, is untenable, as the existence of such a document is specifically denied. It is urged that even assuming such a document to exist, the arbitration clause therein governs only the relationship between GMPL and the Appellant, and cannot bind the Respondent, who is neither a signatory nor has ever consented to arbitrate disputes with the Appellant.

14. It is contended that there was never any intention on the part of the Respondent to submit to arbitration, and in the absence of any signed, executed, or otherwise accepted arbitration agreement *inter se* the parties, the Appellant cannot compel the Respondent to arbitrate. The Respondent emphasises that no document has been produced to demonstrate a conscious acceptance by the Respondent of arbitration as the dispute resolution mechanism.

15. Learned counsel for the Respondent would contend that the Appellant has failed to comply with Section 8(2) of the Act, which requires production of the original arbitration agreement or a duly certified copy. The documents relied upon by the Appellant are stated to be mere photocopies, lacking signatures or authentication, and therefore insufficient to meet the statutory requirement.



16. It is further submitted by the learned counsel for the Respondent that the Appellant's conduct indicates that the application filed under Section 8 of the Act was an afterthought. Reference is made to the recall of the order dated 01.06.2024, and the Legal Notice dated 16.09.2023 and the Appellant's Reply to the same dated 10.10.2023, wherein no arbitration agreement was asserted, to contend that the plea was introduced belatedly only to avoid the jurisdiction of the commercial court.

ANALYSIS:

17. We have considered the rival submissions of the parties and, with their able assistance, perused the relevant records, as well as the law that has been referred to and relied upon by the parties.

18. At the outset, it would be appropriate to reproduce the analysis and findings of the learned Commercial Court in the Impugned Order with respect to the application as under Section 8 of the Act. The relevant excerpts of the Impugned Order are set out as below:

“The page '45' of the Written Statement is the workorder between the plaintiff and GMPL and no privity of contract between plaintiff and defendant is shown. The defendant intends to argue that by "back to back" application suggested in email at page 34 (referred above), the intent must be dragged to arbitration clause also. However, this is a mis-placed submission as no clear consensus for referring the dispute to an arbitrator can be raised as natural or obvious inference from the reading. The defendant cannot make the Court to read between the lines of a contract to seek imposition upon plaintiff.

The defendant hence has failed to satisfy any of the requisites of the provision, no ground is reflected in the application under Section 8 of Arbitration and Conciliation Act, which stands rejected.”

19. The short question, therefore, that arises for this Court's consideration is whether in the facts and circumstances of the present case, the Arbitration Clause that forms part of the Commercial



Agreement/Work Order as between the said GMPL and the Appellant can, by reference, also be extended to the commercial arrangement as between the parties herein, meaning thereby that the parties herein would stand governed by the Arbitration Clause as contained in the agreement between the GMPL and the Appellant.

20. We are afraid we cannot agree with the contentions of the Appellant herein. As is apparent, there is absolutely no privity of the contract as between GMPL and the Respondent herein. In fact, by their communication dated 07.07.2023, GMPL has clearly disallowed any subcontractor performing any work and has termed the Respondent as a third party/sub-contractor.

21. The reliance placed by the Appellant on the communication of the Respondent with GMPL too does not assist the Appellant since the said communication was never addressed to the Appellant or determinative of the relationship as between the parties herein. It is loosely worded communication adverting to the fact that the Respondent was performing the work on the contract entered into between the Appellant and GMPL. This correspondence does not constitute an unambiguous approval and acceptance of the terms and conditions of the agreement as between those parties, nor does it evidence an absolute and concrete acceptance of the settlement of disputes as between the parties herein, by resort to Arbitration.

22. That said, we advert now to the principal issue that requires our attention. We refer to the judgment produced by the learned counsel appearing for the Appellant, namely **NBCC (India) Limited vs. Zillion Infra projects Pvt. Ltd (Surpa)**, and consider it appropriate to extract the relevant paragraphs of the same as follows:



“17. It could thus be seen that this Court has held that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause. It has further been held that where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

18. This Court further held that where the contract provides that the standard form of terms and conditions of an independent trade or professional institution will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. It has been held that sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions. It has also been held that where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract, the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.

19. A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties.

20. It is thus clear that a reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document into the contract.

21. The law laid down in *M.R. Engineers & Contractors [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271]* has been followed by this Court in *Duro Felguera, S.A. v. Gangavaram Port Ltd. [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764]* and *Elite Engg. & Construction (Hyd.) (P) Ltd. v. Techtrans Construction India (P) Ltd. [Elite Engg. & Construction (Hyd.) (P) Ltd. v. Techtrans*



Construction India (P) Ltd., (2018) 4 SCC 281 : (2018) 3 SCC (Civ) 60]

22. No doubt that this Court in *Inox Wind Ltd. v. Thermocables Ltd.* [*Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195*] has distinguished the law laid down in *M.R. Engineers & Contractors [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271]* . In the said case (i.e. *Inox Wind [Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195]*), this Court has held that though general reference to an earlier contract is not sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. Though this Court in *Inox Wind [Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195]* agrees with the judgment in *M.R. Engineers & Contractors [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271]* , it holds that 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 the arbitration clause. In the said case (i.e. *Inox Wind [Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195]*), this Court found that the purchase order was issued by the appellant therein in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. The respondent therein by his letter had confirmed its acceptance. This Court found that the case before it was a case of a single contract and not two-contract case and, therefore, held that the arbitration clause as mentioned in the terms and conditions would be applicable.

23. The present case is a “two-contract” case and not a “single-contract” case.

29. As already discussed hereinabove, when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention/reference thereto.

30. We are of the considered view that the present case is not a case of “incorporation” but a case of “reference”. As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the LoI, which is also a part of the agreement, makes it amply clear that the redressal of the dispute between NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone.”



23. As is apparent from a reading of the paragraphs extracted above, the Hon'ble Supreme Court has, in no uncertain terms, held that a mere general reference to the terms of another contract cannot, of and by itself, lead to the incorporation of the Arbitration Clause from the referred document into the contract/agreement as between other parties. In fact, as has been succinctly set out in Paragraph No. 16 of the afore-extracted judgment, the necessary conditions for coming to a conclusion that the Arbitration Clause would get incorporated are as follows:

“24. The scope and intent of Section 7(5) of the Act may therefore be summarised thus—

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled;

(1) the contract should contain a clear reference to the documents containing arbitration clause,

(2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(3) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent trade or professional institution



(as for example the standard terms and conditions of a trade association or architects association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.”

24. Resultantly, unless and until it is found that there is a specific reference for the purpose of incorporation of the Arbitration Clause into the present agreement/arrangement as between the parties, it cannot be held that the Arbitration Clause from the agreement between GMPL and the Appellant would get extended. This is all the more, given the statutory need for a consensus *ad idem* for the purpose of reference of disputes to arbitration, absent clear expression of which, by mere implication, a reference to resolution of disputes by arbitration cannot be imputed.

25. Furthermore, the said Judgment refers to the existence of two contracts between the same parties and not to a scenario wherein a contract between two parties could be extended to a rank outsider/third party. The Judgment in *Inox Wind Ltd. v. Thermocables Ltd.*⁸ too, is clearly distinguishable as it pertains to a different fact scenario altogether and would not be applicable in the facts of the present case.

26. As has already been extracted hereinabove, the alleged admission on the part of the Respondent herein of the extension of the

⁸ (2018) 2 SCC 519



said Arbitration Clause is clearly nothing but a general reference to the agreement itself without, in any manner, expressly consenting to its application to the contract as between the parties herein and is clearly not in consonance with the scope and intent of Section 7(5) of the Act.

27. In view of the clear judgment of the Hon'ble Supreme Court and in the facts and circumstances of the present matter, we are of the considered view that no interference is required and the present appeal stands dismissed.

28. The present appeal, along with pending application(s), if any, disposed of in the above terms.

29. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
DECEMBER 11, 2025/v/her