

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.463 OF 2025**

Dil Exim Commodities Private LimitedApplicant
V/S
Kirti Agrovat Limited & Anr.Respondents

**WITH
ARBITRATION APPLICATION (L) NO.18772 OF 2025**

Dil Exim Commodities Private LimitedApplicant
V/S
Kirti Agrovat Limited & Anr.Respondents

**WITH
ARBITRATION APPLICATION (L) NO.19165 OF 2025**

Dil Exim Commodities Private LimitedApplicant
V/S
Kirti Agrovat Limited & Anr.Respondents

**WITH
COMMERCIAL ARBITRATION APPLICATION (L) NO.19206 OF 2025**

Dil Exim Commodities Private LimitedApplicant
V/S
Kirti Agrovat Limited & Anr.Respondents

Mr. Sanket Tiwari i/b Mr. Miloni A. Sanghvi *for the Applicant.*
Mr. Rameshwar Totala with Mr. Mitesh Jain, Ms. Iqra Qureshi i/b
Mr. Swapnil Lohiya *for Respondent No.1*

**CORAM : SANDEEP V. MARNE, J.
DATE : 23 JANUARY 2026.**

P.C.:

1. These are Applications filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) for appointment of Arbitrator for adjudication of disputes and differences between the

parties which are arisen out of the alleged Contracts for supply of Goods.

2. I have heard Mr. Tiwari, the learned counsel appearing for the Petitioner and Mr. Totala, the learned counsel appearing for the Respondent No.1.

3. Mr. Totala raises three broad objections which are common to all the four Applications. He submits that the alleged contracts are not signed by his client. He further submits that in subsequent invoices and email correspondence, there is no incorporation of arbitration clause and accordingly, in view of judgment of the Apex Court in *NBCC (India) Ltd. vs. Zillian Infraprojects Pvt. Ltd.*¹, there is no agreement to arbitrate between the parties in respect of the transactions covered by the invoices and emails. Thirdly, he submits that the Applicant is claiming interest and storage charges which is not agreed upon in the contract.

4. In my view, all the three objections sought to be raised by Mr. Totala cannot be a reason for not exercising reference jurisdiction of this Court under Section 11 of the Arbitration Act. As of now, the limited remit of inquiry before this Court is to examine existence of arbitration agreement. There is no dispute to the position that though the contracts in question are not signed by Respondent No.1, it has acted in terms of the contract, accepted delivery of goods and has also made part payments. Since parties have acted on the agreement, it cannot be contended that only the underlying contract would survive and the arbitration clause incorporated therein would not exist. *Prima*

¹ (2024) 7 SCC 174

facie therefore, there is agreement to arbitrate between the parties. The second objection of non-incorporation of arbitration clause in subsequent invoices and email correspondence appears to be baseless at this stage. Once parties execute a contract which contains arbitration, it is not necessary that in every subsequent invoice or email correspondence there has to be incorporation of the arbitration clause. In that view of the matter, reliance by Respondent No.1 on judgment of the Apex Court in **NBCC (India) Ltd.** (supra) is inapposite. The third objection of non-existence of liability to pay interest on storage charges touches upon merits of the controversy between the parties and it is outside the ambit of inquiry under Section 11 of the Arbitration Act.

5. Mr. Totala raises an additional objection in Arbitration Petition (L) No.19165 of 2025. According to him, the very contract relied upon by the Applicant is fabricated as two contracts in respect of two distinct periods bearing same contract number are sought to be relied upon. He submits that in respect of contract covered by this application, there is neither acceptance of delivery nor part payment. In my view, Respondent No.1 can raise this objection under Section 16 of the Arbitration Act before the Arbitral Tribunal. Raising of this objection cannot be a ground for this Court not to exercise reference jurisdiction under Section 11 of the Arbitration Act. The bald assertion made by Respondent No.1 that the contract is fabricated cannot be a reason to ignore existence of arbitration clause and not make an order of reference. If indeed the contract is not genuine, the Arbitrator can of course rule on its jurisdiction under Section 16 of the Arbitration Act.

6. In my view therefore, there exists agreement between parties for adjudication of disputes and differences by mechanism of private arbitration. In that view of the matter, it would be just and proper to constitute Arbitral Tribunal as the sole Arbitrator.

7. Accordingly, I proceed to pass the following order:

A) Ms. Chinmayee Pendse, an Advocate of this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the Contracts for supply of Goods. The contact details of the Arbitrator are as under:

Office Address:- 3rd floor, 31 Ambalal Doshi Marg,
Fort, Mumbai – 400 023.

Mobile No:- 9920549726

E-mail ID:- chinmayee@karishmavora.com

B) A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Applicant within a period of one week from the date of uploading of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

C) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12 (1) of the Arbitration Act to the parties within a period of two weeks from receipt of a copy of this order.

D) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by her, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

E) The sole Arbitrator shall be entitled to the fees prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

8. All issues on merits are expressly kept open to be agitated before the Arbitral Tribunal appointed as above.

9. Respondent No.1 would be at liberty to raise objections to arbitrability, jurisdiction etc. before the Arbitral Tribunal under Section 16 of the Arbitration Act.

10. With the above directions, Arbitration Applications are **allowed and disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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