



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

MISC. CIVIL APPLICATION (ARBITRATION) NO. 913 OF 2025

M/s A. S. Iyer Constructions Pvt. Ltd.
Having its registered office at Plot
No.8, Old Verma Layout, Near
Hanuman Mandir, Ambazari,
Nagpur-440033, through its Director
Shri A. S. Iyer.

... APPLICANT

V E R S U S

Nikita Pharmaceutical Specialties Pvt.
Ltd., having its office at 101, Fortune
Ritz, opposite HDFC House, Civil Lines,
Nagpur-440001, through its Managing
Director Shri Ravleen Singh Khurana.

... NON-APPLICANT

Mr. C. S. Dharmadhikari, Advocate a/w Mr. Shail D. Pagay, Advocate
for Applicant.

Mr. Anand Jaiswal, Senior Advocate assisted by Ms. R. G. Bajaj,
Advocate for Non-applicant.

CORAM

ARGUMENTS HEARD ON
PRONOUNCED ON

: PRAVIN S. PATIL, J.
: FEBRUARY 24, 2026
: MARCH 17, 2026.

JUDGMENT

. Heard. **Rule.** Rule made returnable forthwith. Heard
finally with consent of the learned Counsel for both sides.

2. The present Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996, thereby seeking appointment of an Arbitral Tribunal for adjudication of the disputes alleged to have arisen between the Applicant and Non-applicant in relation to the Agreement dated 16/11/2023 executed between the parties for construction of Industrial Building at MIDC, Buttibori, Nagpur.

3. The Applicant herein is a Company incorporated under the provisions of Companies Act, 2013 and is engaged in the business of undertaking construction activities relating to residential, commercial and private infrastructure project.

4. The Non-applicant is global manufacturer of premium pharmaceutical excipient. The Non-applicant has invited the offer for construction of Pharma Excipient Plant at MIDC Buttibori, Nagpur. Pursuant to the invitation of offer, the Applicant submitted its offer on 27/10/2023 along with Bar Chart dated 31/10/2023 indicating the proposed timeline for completion of work. While tendering the offer, the Applicant has incorporated one condition that, "the Agreement shall contain the prevailing arbitration clause".

5. The offer made by the Applicant was accepted by the Non-applicant and in pursuance of the same, the Agreement of construction was executed between them on 16/11/2023 along with the certain tender conditions. In the said tender condition again the Applicant has stated that Agreement shall contain the prevailing arbitration clause.

6. It is the case of Applicant that during execution of the contract, the Non-applicant caused delay in supplying working drawings necessary for execution of the work. Delayed in releasing payment against running account bill and other contractual dues, resulting in disruption of execution of the project. Owing to delay the project could not get completed within stipulated time-line. The Applicant states that he has vacated the site with effect from 31/5/2025 and till that time completed the work amounting to Rs.6,36,33,634/-.

7. The Applicant, in view of this dispute, has issued the legal notice to the Non-applicant for termination of Agreement for construction of Industrial Building at MIDC, Buttibori, Nagpur and

claimed Rs.2,30,78,866/- only towards loss of profit, loss incurred on account of several breaches of contracts on the part of Non-applicant. It is further informed that on failure to pay the amount, the arbitration proceeding will be initiated against the Non-applicant.

8. The Non-applicant replied to the notice on 24/10/2025 and specifically stated that there is no arbitration clause and any initiation of arbitration proceeding shall be at the risk of the Applicant.

9. After receipt of the reply from the Non-applicant, Applicant has issued the arbitration notice under Section 21 of the Arbitration and Conciliation Act, 1996 for resolution of dispute arisen in terms of the Agreement dated 16/11/2023. He has stated that as per the said Agreement there was a clause inserted in the tender conditions that the Agreement shall contain the prevailing arbitration clause, and therefore, invoking the said clause, he proposed to appoint Shri Justice A. P. Deshpande (Retd.) as sole Arbitrator for adjudication of the dispute arisen between the parties

or Non-applicant can propose any other Arbitrator from the panel of the Arbitrators.

10. The Non-applicant again replied to the notice of the Applicant on 10/11/2025 and reiterated that no arbitration clause was existing in the Agreement dated 16/11/2023 for construction of a Pharmaceutical Excipient Plant entered between the parties. Hence, denied the notice issued by the Applicant.

11. In the light of this controversy between the parties, the issue before this Court, which arose for consideration is, as to whether the condition inserted in the Agreement dated 16/11/2023 that Agreement shall contain the prevailing arbitration clause is valid and substantial condition for invoking the arbitration proceeding or not.

12. In the present Petition both the Applicant as well as Non-applicant has relied upon the Judgments of the Hon'ble Supreme Court of India. The Applicant has relied upon the

Judgments of the Hon'ble Supreme Court of India in the cases as follows :

- (I) Mahanagar Telephone Nigam Limited V/s Canara Bank and others, (2020) 12 Supreme Court Cases 767; and**
- (II) Babanrao Rajaram Pund V/s Samarth Builders and Developers and Another, (2022) 9 Supreme Court Cases 691.**

Per contra, the Non-applicant has relied upon the Judgments of the Hon'ble Supreme Court of India in the cases as follows :

- (I) NBCC (India) Limited V/s Zillion Infraprojects Private Limited, (2024) 7 Supreme Court Cases 174; and**
- (II) M. R. Engineers and Contractors Private Limited V/s Som Datt Builders Limited, (2009) 7 Supreme Court Cases 696.**

13. After hearing the learned Counsel for both sides at

length, in my opinion, it will be relevant to refer Section 7 of the Arbitration and Conciliation Act, which reads thus :

“7. Arbitration agreement

(1) In this Part “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in —

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the

contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

14. In the present matter, in order to decide the controversy, it will be relevant to refer and discuss the Judgment of the Hon’ble Supreme Court of India.

In the case of ***Mahanagar Telephone Nigam Limited*** (*supra*), the Hon’ble Supreme Court, while considering Section 7 of the Act, has held that the arbitration agreement need not be in any particular form. What is required to be ascertained is the intention of the parties to settle their disputes through arbitration. The essential elements or attributes of an arbitration agreement is the agreement to refer their disputes or differences to arbitration, which is expressly or impliedly spelt out from a clause in an agreement, separate agreement, or documents/correspondence exchanged between the parties.

It is further held that the commercial document has to be interpreted in such a manner so as to give effect to the agreement, rather than to invalidate it. An “arbitration agreement” is a

commercial document inter parts, and must be interpreted so as to give effect to the intention of the parties, rather than to invalidate it on technicalities.

The Hon'ble Supreme Court in the case of **Babarrao Pund** (*supra*) has also held that the deficiency of words in agreement which otherwise fortifies the intention of the parties to arbitrate their disputes, cannot legitimise the annulment of arbitration clause. It is thus imperative upon the courts to give greater emphasis to the substance of the clause, predicated upon the evident intent and objectives of the parties to choose a specific form of dispute resolution to manage conflicts between them. The intention of the parties that flows from the substance of the agreement to resolve their dispute by arbitration are to be given due weightage.

It is, however, necessary to note that the Hon'ble Supreme Court in the case of **M. R. Engineers and Contractors Private Limited** (*supra*) has interpreted Section 7(5) of the Act and

summarised the same in paragraph 24 of the Judgment, which reads thus :

“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.”

Then recently the Hon’ble Supreme Court in the case of **NBCC (India) Limited** (*supra*) has confirmed the view taken by the Hon’ble Supreme Court in the case of **M. R. Engineers and Contractors Private Limited** (*supra*) and held in paragraph 17 of the Judgment as under :

“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.”

15. In the light of this legal position pointed out by learned Counsel for both sides in the matter, in my opinion, the Judgments in the case of **M. R. Engineers and Contractors Private Limited** (*supra*) and **NBCC (India) Ltd.** (*supra*) seems to be more specific because in this Judgments Section 7(5) is specifically interpreted and thereby it is held that mere reference to a document would not have effect of making an arbitration clause from that document. There should be special reference indicating a mutual intention to incorporate the arbitration clause.

16. In the light of this position, and on perusal of the fact of the present case, it would be relevant to note that the Non-applicant while inviting the offer from the Applicant, no where disclosed or stated that there would be any arbitration clause. On the contrary, it is the Applicant, who, while submitting his offer has incorporated the clause, "The Agreement shall contain the prevailing arbitration clause". So also in the Agreement of construction, the Applicant has also relied upon the same clause. However, except this clause there is no reference, of which, prevailing clause is referred by the Applicant and how the Non-applicant has mutually understood the said prevailing arbitration clause.

17. In my opinion, two judgments, which Applicant has relied upon, particularly, **Mahanagar Telephone Nigam Limited** (*supra*) and **Babanrao Pund** (*supra*) the observation of the Hon'ble Supreme Court is that, if from the conduct of the parties it can be ascertained that there was an intention to settle their dispute through arbitration clause or the conclusion can be drawn by their mutual understanding or the document can be interpreted in such a manner so as to give the effect to arbitration as claimed by the

Applicant, then express provision is not necessary. However, in the present case, perusal of the offer and the Agreement, except bare clause, there is nothing to clarify the context, in which same is referred by the Applicant, nor any other material is brought on record to demonstrate that the parties have agreed for arbitration. Therefore, the law laid down by the Hon'ble Supreme Court of India in the case of ***Mahanagar Telephone Nigam Limited*** (*supra*) is not applicable in the facts and circumstances of the present case.

18. It is further pertinent to note that the clause, which is relied upon by the Applicant, simply states that the Agreement shall contain the prevailing arbitration clause. However, it is not clarified which prevailing clause is referred in the matter. It is not the case of the Applicant that any other Agreement was executed between them, in which the arbitration clause is already existing, or any other like document to show that any arbitration clause was prevailing between them. As such, this clause is vague in nature. Furthermore, this clause is inserted at the instance of the Applicant. It is nowhere clear that the Non-applicant, at any time, agreed to accept this clause.

19. In the circumstances, in my opinion, the law laid down by the Hon'ble Supreme Court of India in the case of ***M. R. Engineers and Contractors Private Limited*** (*supra*) and ***NBCC (India) Ltd.*** (*supra*) is squarely applicable in the matter.

20. Thus, considering the fact that no specific clause is referred in the Agreement, or agreed between the parties as to reference of the proceeding for arbitration, I find no merit in the present Application. Hence, the same being devoid of merits, stands dismissed with no order as to costs.

[PRAVIN S. PATIL, J.]

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