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

Judgment reserved on:14.11.2025
Judgment pronounced on:17.03.2026

\+ **ARB. P. 1139/2025**

MOONWALK INFRA PROJECTS PRIVATE LIMITED....Petitioner

Through: Mr. Rajeev Kumar, Advocate

versus

M/A ONSTRUQ INTERLAYER PRIVATE LIMITED ....Respondent

Through: Mr. Anish Maheshwari, Mr. Aayushmaan Vatsyayana, Mr. Manas Tripathi, Mr. Vijay Kumar Maurya, Mr. Harsha Vinoy, Advocates

\+ **ARB. P. 1335/2025 & I.A. 26923/2025**

MOONWALK INFRA PROJECTS PRIVATE LIMITED....Petitioner

Through: Mr. Rajeev Kumar, Advocate

versus

M/A ONSTRUQ INTERLAYER PRIVATE LIMITED ....Respondent

Through: Mr. Anish Maheshwari, Mr. Aayushmaan Vatsyayana, Mr. Manas Tripathi, Mr. Vijay Kumar Maurya, Mr. Harsha Vinoy, Advocates

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. These are petitions filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("***1996 Act***"), seeking appointment of a Sole Arbitrator for adjudication of disputes between the parties arising out of a Techno Commercial Offer dated 08.11.2023 and Work Orders dated 12.02.2024 being subject matter of ARB. P. 1139/2025 and Techno Commercial Offer dated 25.09.2023 and Work Orders dated 16.10.2023 being subject matter of ARB. P. 1335/2025.

FACTUAL BACKGROUND

2. The petitioner is a private limited company dealing in the supply, design and erection of prefabricated buildings.

3. The respondent was awarded the contract for the civil, supply and erection of a pre-fabricated building at two separate projects namely:

a. Sri City, Chittoor, Andhra Pradesh ("***project I***") by M/s NX Logistics Pvt. Ltd. (ARB. P. 1139/2025)

b. Logos Luhari Logistics Estate Block Nos. 0311, 0312 and 0313, VPO Luhari, Pataudi, Kulana Road, Luhari Haryana ("***project II***") (ARB. P. 1335/2025)

4. In relation to project I, pursuant to an inquiry by the respondent, the petitioner submitted a proposal bearing reference No. QN2300986, being Techno Commercial Offer dated 08.11.2023, containing the necessary building layout, dimensions and design loads as per the respondent's inquiry to award a sub contract for the project. Similarly, in relation to project II, pursuant to an inquiry by the respondent, the petitioner

submitted a proposal bearing No. QN2300864, being Techno Commercial Offer dated 25.09.2023, in accordance with building layouts overall dimensions and design loads provided by the respondent.

5. After detailed discussions on the proposals submitted by the petitioner, the parties agreed to the terms and conditions of the respective Techno-Commercial Offers ("***TCOs***") dated 08.11.2023 and 25.09.2023 In furtherance thereof, the respondent issued Work Orders for supply and erection namely:

a. Two Work Orders dated 12.02.2024 in respect of project I

b. Two Work Orders dated 16.10.2023 in respect of project II

6. The TCO for Project I contained an Arbitration clause under the heading of Governing Law, which reads as under:

> *"GOVERNING LAW*
>
> *This Agreement shall be construed and enforced in accordance with and under the laws of the Government of India. Both parties agree that in case of any difference or dispute arising between the MOONWALK INFRAPROJECTS PVT. LTD. and the BUYER will be resolved by mutual discussions and agreement. However, unresolved issues, if any, will be settled by arbitration as per the Indian Arbitration and Conciliation Act, and the venue of the arbitration will be Delhi, India. Further for any change in the venue of arbitration, BUYER need to ensure that Moonwalk Infraprojects Pvt. Ltd. had accepted the same in writing that too explicitly mentioning the same clearly. In case, if it is not available then the venue of*

arbitration shall remain New Delhi only."

7. The TCO for Project II also contained an Arbitration Clause under the same heading Governing Law:

> *"GOVERNING LAW*
>
> *This Agreement shall be construed and enforced in accordance with and under the laws of the Government of India. Both parties agree that in case of any difference or dispute arising between the MOONWALK INFRAPROJECTS PVT. LTD. and the BUYER will be resolved by mutual discussions and agreement. However, unresolved issues, if any, will be settled by arbitration as per the Indian Arbitration and Conciliation Act, and the venue, of the arbitration will be Delhi, India."*

8. In respect of Project I, as per the Work Orders the total cost of supply was agreed to be Rs. 11,65,74,071/- and total cost of erection was agreed to be Rs. 73,25,928.52/-, exclusive of GST. Further the terms of the payment and total tonnage for supply were agreed between the parties. Similarly, in respect of Project II, as per the Work Orders, the value of supply contract was Rs. 7,60,50,378/- and the value of erection contract was Rs. 1,13,55,307/-. The payment terms were also agreed between the parties.

9. In the project I, as per the contractual arrangement, the petitioner undertook supply and erection works in respect of the project and constructed a building/warehouse. Certain snag points were recorded during the course of completion. It is the case of the petitioner that that the snag points raised by the Project Management Consultant were rectified. Even if any minor snag items remained, the cost of rectification

would not exceed Rs. 50,000/-. Yet the respondent withheld an amount of Rs. 1,49,16,574/- on account of the alleged snag points. Furthermore, the payments released during the execution and completion of project were not so done in accordance with the agreed terms.

10. As for the Project II, it is the petitioner's case that the supply and erection work was completed and certain strengthening work remained. However, due to non-payment of the outstanding dues to the tune of Rs.1.47 crores, the work could not be carried out any further. The respondent did not make the required payment and thereafter, terminated the contract on 18.06.2025 while withholding the above said amount.

11. Since there were disputes between the parties, the petitioner invoked arbitration *vide* legal notices namely:

a. Notice dated 12.03.2025 in relation to project I

b. Notice dated 02.07.2025 in relation to project II.

The respondent replied to the said legal notices raising objections. The respondent further failed suggest any name for appointment of Sole Arbitrator. Hence, the present petitions.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. Mr. Rajeev Kumar, learned counsel for the petitioner, submits that the respondent does not dispute the TCOs or the existence of the arbitration clause contained under the heading Governing Laws thereof. Thus, the petition satisfies the "prima facie" or "first look" test with regard to the existence of a valid arbitration agreement.

13. He states that the TCOs and the subsequent Work Orders constitute a series of written communications between the parties, thereby satisfying the requirement under Section 7(4)(b) of the 1996 Act, which recognises

an arbitration agreement arising through an exchange of letters or other documents providing a record of the agreement. Further, the Work Orders expressly record that they are based on the TCOs dated 08.11.2023and 25.09.2023. Thus, by virtue of Section 7(5) of the 1996 Act, the arbitration clauses contained in the said TCOs stand incorporated by reference into the Work Orders. Since, the parties acted upon the Work Orders, such performance amounts to acceptance by conduct. Consequently, the arbitration clause contained in the TCOs form part of the contractual agreement between the parties and is binding upon them.

14. He relies on the judgment of this Court in ***Sanghvi Movers Ltd. v. Vivid Solaire Energy Pvt Ltd, ARB. P. 859/2022*** and states that where a principal contract contains an arbitration clause, subsequent purchase orders issued on the basis of such contract would be governed by the arbitration clause, even if the clause is not reproduced verbatim in the purchase orders. When purchase orders are issued based on the underlying contract, the terms and conditions of the principal contract, including the arbitration clause, would apply to the parties.

15. He further relies on ***Balasore Alloys Ltd. v. Medima LLC (2020) 9 SCC 136*** and states that the said decision is squarely applicable on the present case. The Hon'ble Supreme Court, while adjudicating legal issue with respect to the arbitration clauses in a principal agreement and subsequent purchase orders, held that in such circumstances the Court must harmonise the parallel clauses and give effect to the arbitration clause contained in the comprehensive and governing document that regulates the transaction as a whole. In the present case the TCOs constitutes the comprehensive and foundational document setting out all material terms

and conditions of the project, including the arbitration clause. The subsequent Work Orders are merely derivative instruments issued for execution of the works and are expressly based upon the said TCOs. Accordingly, the arbitration clause contained in the TCOs would prevail and govern the disputes between the parties.

16. Learned counsel for the petitioner states the respondent, having accepted the supplies, released payments thereunder, and having derived benefits under the same contractual framework, cannot now be permitted to deny the applicability of the arbitration clause forming part of that very framework. The conduct of the respondent clearly demonstrates affirmation and acceptance of the TCOs and its terms, including the arbitration clause. Having acted upon the TCOs and enjoyed its benefits, the respondent is estopped from repudiating the arbitration clause in the TCOs at this stage.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

17. Mr. Anish Maheshwari, learned counsel for the respondent, states in the facts and circumstances of the present case, the disputes are not liable to be referred to arbitration inasmuch as there exists no valid and binding arbitration clause between the parties, as contemplated under the provisions of the 1996 Act. Neither there is any concluded arbitration clause nor even a promise between the parties to refer disputes to arbitration, as mandatorily required under the 1996 Act. In the absence of such an agreement, the present petition seeking reference to arbitration is therefore, misconceived and not maintainable.

18. He states that, in the facts and circumstances of the present case, the purported TCOs dated 08.11.2023 and 25.09.2023 of the petitioner,

which is stated to contain an arbitration clause, do not constitute an "agreement" under the fundamental principles of the Indian Contract Act, 1872 ("***ICA***"). The said proposals, i.e. the TCOs, never received any assent/acceptance from the respondent and, therefore, does not constitute "promise" or "agreement" as contemplated under Section 2 of the ICA. A conjoint reading of Sections 2(a), 2(b), and 2(e) ICA makes it abundantly clear that unless a proposal is accepted, it does not become a promise; and in the absence of a promise, there can be no agreement in the eyes of law.

19. It is submitted that in the present case, the purported proposals remained at preliminary stage and never crystallised into a promise, much less an agreement. The respondent has never conveyed its acceptance to the said proposals. There is no document on record evidencing such acceptance. The purported proposals do not bear the signature of any authorised representative of the respondent, nor is there any exchange of document evidencing acceptance so as to constitute binding agreements. Consequently, the requirements of Section 7 of the 1996 Act are not satisfied.

20. He further states that Section 7(1) of the 1996 Act defines an arbitration agreement to mean an agreement by the parties to submit disputes to arbitration. Thus, the foundational requirement is the existence of a valid and concluded agreement between the parties. In the absence of a concluded contract, there can be no valid arbitration agreement. In the present case, since the purported proposals do not even attain the status of a promise under the ICA, the arbitration clauses contained therein cannot be treated as a binding arbitration agreement within the meaning of Section 7 of the 1996 Act.

21. Without prejudice to the above submissions, the learned counsel for the respondent states that Section 7 of the ICA mandates that, in order to convert a proposal into a promise, the acceptance must be absolute and unqualified. Any conditional or qualified response does not amount to a valid acceptance in the eyes of law. Thus, even assuming, arguendo, that the petitioner seeks to rely upon any alleged acceptance by the respondent of the purported proposals, which containthe alleged arbitration clauses, the same cannot be construed as an absolute and unqualified acceptance as required under law. There are no specific averments in the petitions demonstrating that the respondent conveyed an unequivocal and unconditional acceptance of the said proposals. In the absence of such absolute acceptance, the proposals could not have become a promise. In this regard, reliance is placed upon the judgment of the Hon'ble Supreme Court of India in ***Padia Timber Company Private Limited v. Board of Trustees of Visakhapatnam Port Trust (2021) 3 SCC 24***.

22. He states that Section 6(2) of ICA expressly provides that a proposal stands revoked by the lapse of the time prescribed therein for its acceptance. Without prejudice to the earlier submissions, it is contended that the purported TCOs dated 08.11.2023 and 25.09.2023, contained specific clauses being Proposal Validity, stipulating that the proposal would remain valid for a period of three days from the date thereof, unless extended in writing. No such extension was ever granted. Accordingly, the time for acceptance of the proposals expired on 11.11.2023 and 28.09.2023 respectively. Since the respondent did not accept the proposals within the stipulated period, the proposals stood revoked by operation of law in terms of Section 6(2) of the ICA.

23. Once the proposals lapsed and stood revoked by the operation of law, it became a dead and unenforceable offer in the eyes of law. A revoked proposal cannot subsequently be converted into a promise or an agreement. Consequently, the said proposals cannot be relied upon as constituting binding agreements within the meaning of Section 7 of the 1996 Act. The Work Orders are the only concluded contracts between the parties and the said Work Orders do not contain any arbitration clause, nor do they reflect any intention to submit disputes to arbitration. A mere general reference to the purported Proposal in the Work Orders does not amount to incorporation of the arbitration clause. In terms of Section 7(5) of the 1996 Act, incorporation by reference requires a clear and specific intention to incorporate the arbitration clause. Reliance is placed on the judgment of the Hon'ble Supreme Court of India in ***NBCC (India) Limited v. Zillion Infraprojects Private Limited (2024) 7 SCC 174***.

ANALYSIS AND FINDINGS

24. I have heard the learned counsel for the parties and perused the material on record.

25. The question that arises for consideration is whether the arbitration clause in the said TCOs are incorporated by reference in the Work Orders.

26. Before examining the question in hand, it is important to set out the scope of Section 11 of the 1996 Act. In ***Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1,*** the Hon'ble Supreme Court categorically held that the scope of examination at the stage of appointment of an Arbitrator is limited to a *prima facie* assessment of the existence of a valid arbitration agreement:

"81. One of the main objectives of the Arbitration Act is to

minimise the supervisory role of Courts in the arbitral process. Party autonomy and settlement of disputes by an Arbitral Tribunal are the hallmarks of arbitration law. Section 5 gives effect to the true intention of the parties to have their disputes resolved through arbitration in a quick, efficient and effective manner by minimising judicial interference in the arbitral proceedings. [Food Corpn. of India v. Indian Council of Arbitration, (2003) 6 SCC 564.] Parliament enacted Section 5 to minimise the supervisory role of Courts in the arbitral process to the bare minimum, and only to the extent "so provided" under the Part I of the Arbitration Act. In doing so, the legislature did not altogether exclude the role of Courts or judicial authorities in arbitral proceedings, but limited it to circumstances where the support of judicial authorities is required for the successful implementation and enforcement of the arbitral process. [Union of India v. Popular Construction Co., (2001) 8 SCC 470; P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539] The Arbitration Act envisages the role of Courts to "support arbitration process" [Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee, (2014) 6 SCC 677 : (2014) 3 SCC (Civ) 642] by providing necessary aid and assistance when required by law in certain situations."

27. A similar position was reiterated in ***SBI General Insurance Co. Ltd.v. Krish Spinning, 2024 SCC OnLine SC 1754*** and ***Goqii Technologies***

Private Limited v. Sokrati Technologies Private Limited, (2025) 2 SCC 192 where the Hon'ble Supreme Court observed that the Arbitrator should be the preferred first authority to look into the questions of arbitrability and jurisdiction, and the courts at the referral stage should not get into contested questions involving complex facts.

28. In the context of the present case, it also becomes necessary to delineate the contours of the doctrine of incorporation of arbitration clause by reference in contractual documents. The law regarding incorporation of arbitration clause through reference is well settled in ***Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519*** and the relevant paragraphs read as under:

> *"8. This Court also discussed the scope of Section 7(5) of the Act and summarised as follows: (M.R. Engineers case [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] , SCC p. 707, para 24)*
>
> > *"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.

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13. The dispute that arose in that case was whether general words mentioned above were capable of incorporating an arbitration clause. The difference in approach between cases in which the parties incorporate the terms of a contract between the other parties or between one of them with a third party on the one hand and those in which they incorporate the standard terms on the other hand, was noticed. The following broad categories in which the parties attempt to incorporate an arbitration clause were recognised by the Court, which are as follows: (Habas case

[Habas Sinai Ve Tibbi Gazlar Isthisal Endustri AS v. Sometal SAL, 2010 Bus LR 880 : 2010 EWHC 29 (Comm)] , Bus LR p. 886, para 13)

"(1) A and B make a contract in which they incorporate standard terms. These may be the standard terms of one party set out on the back of an offer letter or an order, or contained in another document to which reference is made; or terms embodied in the rules of an organisation of which A or B or both are members; or they may be terms standard in a particular trade or industry.

(2) A and B make a contract incorporating terms previously agreed between A and B in another contract or contracts to which they were both parties.

(3) A and B make a contract incorporating terms agreed between A (or B) and C. Common examples are a bill of lading incorporating the terms of a charter to which A is a party; reinsurance contracts incorporating the terms of an underlying insurance; excess insurance contracts incorporating the terms of the primary layer of insurance; and building or engineering sub-contracts incorporating the terms of a main contract or sub-sub-contracts incorporating the terms of a sub-contract.

(4) A and B make a contract incorporating terms agreed between C and D. Bills of lading, reinsurance and insurance contracts and building contracts may fall into this category."

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14. In Habas case [Habas Sinai Ve Tibbi Gazlar Isthisal Endustri AS v. Sometal SAL, 2010 Bus LR 880 : 2010 EWHC 29 (Comm)] , Christopher Clarke, J. followed the ratio in The Athena [Sea Trade Maritime Corpn. v. Hellenic Mutual War Risks Assn. (Bermuda) Ltd. No. 2, 2007 Bus LR D 5 : 2006 EWHC 2530 (Comm)] and held that in single-contract cases (Categories 1 and 2), a general reference would be sufficient for incorporation of an arbitration clause from a standard form of contract. In cases falling under Categories 3 and 4 mentioned above which are two-contract cases, it was held that a stricter rule has to be followed by insisting on a specific reference to the arbitration clause from an earlier contract…."

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17. "….The development of law regarding incorporation after the judgment in M.R. Engineers [M.R. Engineers & Contractors (P) Ltd. v. SomDatt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] requires careful consideration. It has been held in Habas Sinai Ve Tibbi Gazlar Isthisal Endustri AS v. Sometal SAL [Habas Sinai Ve Tibbi Gazlar Isthisal Endustri AS v. Sometal SAL, 2010 Bus LR 880 : 2010 EWHC 29 (Comm)] that a standard form of one party is also recognised as a "single contract" case. In the said case, it was also held that in single-contract cases general reference is enough for incorporation of an

arbitration clause from a standard form of contract. There is no distinction that is drawn between standard forms by recognised trade associations or professional institutions on one hand and standard terms of one party on the other. Russell on Arbitration, 24th Edn. (2015) also takes note of Habas case [Habas Sinai Ve Tibbi Gazlar Isthisal Endustri AS v. Sometal SAL, 2010 Bus LR 880 : 2010 EWHC 29 (Comm)].

18. We are of the opinion 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. In M.R. Engineers [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] this Court restricted the exceptions to standard form of contract of trade associations and professional institutions. In view of the development of law after the judgment in M.R. Engineers [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] case, we are of the opinion that a general reference to a consensual standard form is sufficient for incorporation of an arbitration clause. In other words, general reference to a standard form of contract of one party will be enough for incorporation of arbitration clause. A perusal of the passage from Russell on Arbitration, 24th Edn. (2015)

would demonstrate the change in position of law pertaining to incorporation when read in conjunction with the earlier edition relied upon by this Court in M.R. Engineers case [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] . We are in agreement with the judgment in M.R. Engineers case [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] with a modification that a 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."

(emphasis supplied)

29. With that scope in mind, I shall now deal with the facts of the present case.

30. In the present case, in project I, the Work Order dated 12.02.2024 issued by the respondent records the reference to TCO dated 08.11.2023 and reads as under:

"…With reference to your quotation no. 2300986,8-1,R-2 dated 08 November 2023 and final negotiation in last meeting, we are Pleased to intimate you that your final offer to supply of Pre Engineered Building material for 230262.82 sqft @ Rs 429.03/- per Sqft (Rupees Four hundred fifty only) has been accepted and supply order is awarded to you based on the technical specification shared by you and payment terms & conditions as mentioned in

Purchase Order...”

Further,the second Work Order dated 12.02.2024 also records the same reference and reads as under:

“*…With reference to your quotation no. 2300986,B-1,R-2 dated 08 November 2023 and final negotiation in last meeting, we are Pleased to intimate you that your final offer to Erection of Pre Engineered Building material for 230262.82 sqft @ Rs 26.962/- per Sqft (Rupees Four hundred fifty only) has been accepted and supply order is awarded to you based on the technical specification shared by you and payment terms & conditions as mentioned in Purchase Order...*”

31. Similarly, in project II, Work Order dated 16.10.2023 issued by the respondent records the reference to the TCO dated 25.09.2023 also records as follows:

“*…with reference to your quotation no. 2300864, B-1, R-4 dated 25.09.2023 and final negotiations in the last meeting, we are pleased to intimate you that your final offer to supply of Pre-Engineered Building material for 164596.90 sq. ft. @ Rs. 391.56 per sq. ft. for Block-G has been accepted and supply order is awarded to you based on the technical specification shared by you…*”

The second Work Order dated 16.10.2023 also records the same reference and reads as under:

“*…With reference to your quotation no. 2300864, B-1, R-4 dated 25.09.23 and final negotiation in last meeting, we are*

pleased to intimate you that your final to Work order of Pre Engineered Building material for 164596.90 sqft @ Rs 73.27/- per Sq ft for Block-G has been accepted and work order is awarded to you based on the technical specification shared by you and the payment terms & conditions will be as per mentioned in Work Order…."

32. A perusal of the material placed on record indicates that the said TCOs contained the detailed commercial and technical terms governing the proposed transaction between the parties. The said TCOs also incorporated the technical specifications forming part of the offer and further, the said technical specifications contained a clause providing for resolution of disputes through arbitration.

33. Further, the Work Orders themselves record that they were issued with reference to the petitioner's TCOs and supply order was awarded to the petitioner based on the technical specifications shared by the petitioner. It is not in dispute that the technical specifications in the TCOs, containing the arbitration clause, referred to in the Work Order formed part of the said TCOs.

34. The language employed in the Work Orders clearly demonstrates that the respondent was acting upon and accepting the petitioner's TCOs dated 08.11.2023 and 25.09.2023 after the final negotiations between the parties. The Work Orders expressly acknowledged that the respondent was pleased to intimate the petitioner that its "final offer" had been accepted. Thus, the Work Orders do not stand in isolation but are intrinsically linked to and founded upon the petitioner's TCOs. The reference to the quotation is neither incidental nor merely descriptive;

rather, it forms the very foundation upon which the Work Orders have been issued. In such circumstances, the technical specifications contained in the TCOs, including the arbitration clause, *prima facie* stand incorporated into the Work Orders through reference.

35. There is no doubt that the technical specifications in the said TCOs were not based on any standard terms and conditions of any trade association or a professional body nor do they constitute a standard form of Contract but the respondent was throughout aware of the technical specifications and the arbitration clauses contained therein, based on which the Work Orders and the Supply Orders were issued by the respondent itself. Inthe present case, the Work Orders, in my view, fall within the category of a 'single-contract' category as recognised in ***Inox Wind Ltd.(Supra)***. In such a case, a general reference to the terms forming part of the offer would also be sufficient to incorporate the arbitration clause contained therein. Therefore, the arbitration clause in the technical specifications of the TCOs stand incorporated in the Work Orders.

36. At the stage it is pertinent to reiterate that while exercising jurisdiction under Section 11 of the 1996 Act, the Court is only required to examine whether there exists *prima facie* an arbitration clause between the parties. The scope of examination at this stage is limited and the Court does not undertake a detailed inquiry into the merits of the disputes or the final contractual rights and obligations between the parties. Once the Court is satisfied that the material on record indicates the existence of an arbitration clause governing the relationship between the parties, the matter ought to be referred to arbitration.Thus, in the present case, based on above analysis, I am satisfied that *prima facie*, there exists a valid and

enforceable arbitration clause that governs the disputes between the parties. Thus, the test of Section 11 of the 1996 Act stands satisfied.

37. The respondent seeks to contend that the TCOs never culminated into a concluded contract between the parties. Whether the TCOs matured into a concluded contract, or whether the Work Orders constituted the final contractual document governing the relationship between the parties, are issues which would require examination of the conduct of the parties and the surrounding circumstances and would also require detailed evidence and analysis. Such questions involve mixed issues of fact and law and are appropriately left to be determined by the Arbitrator. The only inquiry that this Court, at this stage needs to conduct is with regards to the existence of the arbitration clause and as concluded above, I am *prima facie* of the opinion that a concluded arbitration agreement exists between the parties.

38. Even assuming, arguendo, that the TCOs did not by themselves culminate into concluded contracts and the time limit to accept the TCOs expired, the Work Orders unequivocally records that they were issued with reference to the petitioner's TCOs dated 08.11.2023 and 25.09.2023 on the basis of the technical specifications shared by the petitioner. In other words, the Work Orders themselves acknowledge that the petitioner's TCOs formed the foundation of the said Work orders and even a document, though not a concluded contract, executed between the parties is sufficient to incorporate the arbitration clause in terms of the judgment of ***Inox Wind Ltd. (Supra).***

39. At this juncture, it is pertinent to note that the reliance placed on ***NBCC (India) Limited(Supra)*** by the respondent is misconceived, as the factual

matrix of the said judgment is materially distinguishable from the facts of the present case and, therefore, does not govern the controversy at hand. In the said judgment, the Letter of Intent expressly provided that all the terms and conditions contained in the tender issued by the Damodar Valley Corporation to NBCC would apply mutatis mutandis. The Supreme Court was dealing with a situation which fell within the category of a "two-contract case", where the Letter of Intent between the parties made a reference to the terms of a separate contract executed between one of the parties and a third party. In such circumstances, the Court held that for incorporation of an arbitration clause from a contract executed with a third party, a specific reference to the arbitration clause and a clear *consensus ad idem* between the parties on such incorporation would be necessary. The present case, however, stands on a different footing. Here, the parties to the TCOs as well as the Work Orders are the same, the Work Orders expressly incorporates the technical specifications of the TCOs. The case, therefore, falls within the category of a "single-contract case", where a reference to the underlying document containing the arbitration clause would, *prima facie*, be sufficient for incorporation by reference.

40. For the said reasons, and without commenting on the merits of the case, the petitions are allowed and the following directions are issued:-

i) Ms. Maneesha Dhir, Advocate (Mob. No. 9810113325) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the 1996 Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties are left open for adjudication by the Arbitrator.

vi) The parties shall approach the Arbitrator within two weeks from today.

vii) Each petition shall be treated as a separate reference.

41. The petitions are disposed of in aforesaid terms.

JASMEET SINGH, J.

MARCH 17th, 2026/(MU)