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Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION (L) NO.15672 OF 2026

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Shivkumar Enterprises

... Applicant

V/s.

TATA Projects Limited

... Respondent

Mr. Hamid Ansari a/w Ms. Madhusmita Sahoo i/b
Prashant D. Jadhav, for Applicant

Ms. Aushi Doshi a/w Ms. Surbhi Ahuja i/b India Law
LLP for Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 3, 2026.

PRONOUNCED ON : SEPTEMBER 7, 2026.

1. By the present Application, the Applicants are raising the issue of non-payment of arrears arising from four Work Orders, which are more particularly described in the Petition. The Applicants state that they gave several reminders to the Respondent for payment. However, the Respondent did not release the outstanding amount in favour of the Applicants. Therefore, the Applicants have invoked the Arbitration Clause contained in the General Conditions for Contract Services (for short, "GCC"), bearing Ref. No. TPL/SCM/GCC/C4-HV/R3, by their letter dated 17th December 2025.

2. The facts which have resulted in filing of the present Application are as follows. The Applicant was given four Work

Orders by the Respondent, which are more particularly described in the Petition. The said Work Orders were to be read along with the General Conditions for Contract Services bearing Ref. No. TPL/SCM/GCC/C4-HV/R3. The Applicant states that the work was completed by him and the RA Bills were submitted to the Respondent. The said RA Bills were settled by the Respondent. Thereafter, the Respondent issued Virtual Completion Certificates in favour of the Applicant. However, even after completion of the work, the Respondent did not release the payment claimed by the Applicant. The Applicant thereafter issued Final Demand Notices dated 03rd October 2025 and 18th October 2025 to the Respondent at its address. The Respondent replied to the said Final Demand Letters by its letters dated 10th October 2025 and 06th January 2026. In those replies, the Respondent denied the allegations and statements made by the Applicant. After this, the Applicant issued an Arbitration Invocation Notice dated 17th December 2025 to the Respondent. The Respondent, by its Reply Letter dated 24th January 2026, refused to accept the Arbitration Invocation Notice dated 17th December 2025 issued by the Applicant.

3. Learned Advocate for the Applicant submits that the Applicant was awarded four Work Orders by the Respondent in the years 2021 and 2023. The said four Work Orders are as follows: (i) Work Order dated 21st June 2023 bearing Ref. No. SBU-URBAN UNFRA/CHEMBUR SRA PROJECT/670023/56475; (ii) Work Order dated 21st June 2023 bearing Ref. No. SBU-URBAN INFRA/CHEMBUR SRA PROJECT/670023/38053; (iii) Work

Order dated 12th November 2021 bearing Ref. No. SBU-URBAN INFRA/CHEMBUR SRA PROJECT/670023/39469; and (iv) Work Order dated 13th October 2021 bearing Ref. No. SBU-URBAN INFRA/CHEMBUR SRA PROJECT/670023/38553. According to the learned Advocate, all these Work Orders were governed by and were to be read with the General Conditions for Contract Services (for short, “GCC”) bearing Ref. No. TPL/SCM/GCC/C4-HV/R3.

4. Learned Advocate for the Applicant submits that, on reading the aforesaid documents together, it becomes clear that the Applicant was required to carry out the work mentioned in the four Work Orders in accordance with the GCC bearing Ref. No. TPL/SCM/GCC/C4-HV/R3. Learned Advocate for the Applicant submits that the four Virtual Completion Certificates show that the Respondent accepted that the Applicant had completed the work on the respective dates mentioned in those Certificates. It is submitted that thereafter the Respondent issued a Debit Note in favour of the Applicant. According to the Applicant, these documents show that the work had been completed and that the Respondent had agreed to make payment to the Applicant. Learned Advocate for the Applicants submits that Clause 41 of the GCC clearly provides that a dispute between the parties is required to be referred to arbitration. Learned Advocate for the Applicant submits that, as the dispute between the parties could not be resolved, the Applicant invoked Clause 41 of the GCC and issued the Arbitration Invocation Notice dated 17th December 2025. In the said Invocation Notice, the Applicant repeated the facts which were already stated in the earlier Notices and invoked the

Arbitration Clause contained in Clause 41 of the GCC.

5. Learned Advocate for the Applicant submits that the Respondent replied to the Arbitration Invocation Notice on 24th January 2026. By the said reply, the Respondent denied the allegations and statements made in the Invocation Notice. Learned Advocate for the Applicant relied upon the judgments in *Hirani Developers v. Nehru Nagar Samruddhi CHS Ltd. & Anr.*, 2026 INSC 484; *NBCC (India) Limited v. Zillion Infra Projects Private Limited*, (2024) 7 SCC 174.

6. Learned Advocate for the Respondent submits that while the GCC governs the terms and conditions of the relationship at large, the Work Orders contain no more than a general reference to the GCC. It is submitted that a mere general reference to a document or standard form of contract does not, by, operate to incorporate an arbitration clause contained in that document into the substantive contract between the parties. For an arbitration clause to bind the parties, there must be a specific reference to the arbitration clause, or language in the Work Order evincing a clear intention to incorporate the arbitration clause, as required under Section 7(5) of the Arbitration and Conciliation Act, 1996. In the present case, the Work Orders, being the primary and self-contained documents governing the parties' relationship, are silent on the mechanism for resolution of disputes, and the general reference to the GCC is insufficient in law to incorporate the arbitration clause under Clause 41 thereof. It is accordingly submitted that there is no concluded arbitration agreement between the parties within the meaning of Section 7 of the Act.

7. Learned Advocate for the Respondent submits that the Applicant has failed to establish a valid and concluded arbitration agreement between the parties. The Applicant has not placed on record a signed and executed copy of the Work Orders or the GCC demonstrating consensus ad idem on the alleged arbitration agreement. It is submitted that the existence of a valid arbitration agreement is a jurisdictional pre-condition to the exercise of jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996. Having failed to establish such an agreement in a clear, unambiguous and duly accepted form, the Applicant is not entitled to the appointment of an arbitrator.

8. He submits that Clause 41 mandates that the parties must first endeavour to settle their disputes amicably, and it is only upon the failure of such efforts that the arbitration clause may be invoked. In the present case, according to the Respondent, the Applicant has made no genuine or bona fide attempt to settle the matter with the Respondent prior to invoking arbitration. The Respondent reiterates that the Applicant has even failed to provide GST-related documentation till date to the Respondent in order to process his final bill. It is therefore submitted that the invocation is premature and contrary to the agreed mechanism, and that the present Application is liable to be dismissed on this ground alone.

9. Learned Advocate for the Respondent submits that the four Work Orders are four distinct, separate and self-contained contracts, each specifying its own scope of work, applicable annexures, Specific Conditions of Contract and separate payment terms. Each Work Order therefore constitutes an independent

arrangement giving rise to its own distinct rights, obligations and cause of action. It is submitted that the disputes, if any, arising under each Work Order are separate and severable and cannot in law be consolidated into a single composite reference to arbitration. However, the Applicant has sought to invoke arbitration in respect of all four Work Orders under a single invocation, as though the same arose from one single cause of action. According to the Respondent, such a course is impermissible, particularly in the absence of any agreement between the parties permitting consolidation of disputes arising under separate and distinct contracts. The Respondent therefore submits that the invocation of arbitration is bad in law and liable to be rejected.

10. Learned Advocate for the Respondent relied upon the judgment of this Court in *Apurvakriti Infrastructure Private Limited v. Tata Projects Limited & Anr.*, Commercial Arbitration Application No. 23 of 2026, he relied upon the judgments of the Supreme Court in *Maharashtra State Electricity Distribution Company Limited (MSEDCL) and Ors. v. R Z Malpani*, 2026 SCC OnLine SC 553; *Elite Engineering and Construction (Huderabad) Private Limited, Represented by Its Managing Director v. Techtrans Construction India Private Limited, Represented by Its Managing Director*, (2018) 4 SCC 281; *NBCC (India) Limited v. Zillion Infraprojects Private Limited*, (2024) 7 SCC 174; *Inox Wind Limited v. Thermocables Limited*, (2018) 2 SCC 519; *M. R. Engineers and Contractors Private Limited v. Som Datt Builders Limited*, (2009) 7 SCC 696; and *Dascon Sourav Commercial*

Private Limited v. CLE Private Limited, 2024 SCC OnLine Cal 3590.

REASONS AND FINDINGS:

11. I have considered the submissions made by the learned Advocates appearing for the Applicant and the Respondents. The question which arises is whether, from the documents and terms relied upon by the parties, it can be seen, at least prima facie, that there is an arbitration agreement between the Applicant and the Respondents. If such agreement is found, the request for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 will have to be considered.

12. The first objection of the Respondents is that there is no arbitration agreement between the parties. According to the Respondents, the Applicant is trying to take the arbitration clause from the GCC and apply the same to the four Work Orders only because the Work Orders contain a general reference to the GCC. It is submitted that such general reference is not sufficient for the purpose of Section 7(5) of the Arbitration and Conciliation Act, 1996. The basic principle stated by the Respondents cannot be disputed. There is a difference between only referring to another document and making that document part of the contract. In *M. R. Engineers*, the Supreme Court has held that where another document is referred to only for a particular or limited purpose, the entire document does not become part of the contract. But where the contract provides that the terms and conditions of another document shall form part of the contract, or shall be read along with it, this can show that the parties intended those terms

to apply to their contract. The principle was stated in the following words:

“16. There is a difference between reference to another document in a contract and incorporation of another document in a contract, by reference. In the first case, the parties intend to adopt only specific portions or part of the referred document for the purposes of the contract. In the second case, the parties intend to incorporate the referred document in entirety, into the contract.”

13. The Supreme Court has held that if another document is made part of the contract, its terms can apply, unless there is something inconsistent with the main contract. Therefore, what has to be seen in the present case is the language used in the Work Orders. It is not enough to merely say that the reference is general or that it is an incorporation. The words of the contract have to be looked at.

14. Section 7(5) requires that the reference made in a contract should be such that the arbitration clause becomes part of that contract. Therefore, the four Work Orders have to be considered for this purpose. The Applicant is not relying upon the GCC only for one particular technical matter. The Applicant's case is that the Work Orders were issued subject to the GCC bearing the above reference and that the GCC governs the relationship between the parties. The documents relied upon show that the GCC is referred to as part of the arrangement and that the work was to be carried out under the conditions contained in the GCC. Therefore, the issue is not whether the words "arbitration agreement" are separately written in the Work Orders. The issue is whether the

manner in which the Work Orders were made shows that the GCC was made part of the contract. If the GCC was made part of the contract, then it has to be seen whether the dispute resolution clause contained in the GCC became applicable.

15. The Respondents have placed reliance on the fact that the arbitration clause is not separately written in each Work Order. In my view, this fact by does not decide the issue. Section 7(5) permits an arbitration agreement to be incorporated by reference to another document. Therefore, in every case it is not necessary that the arbitration clause should be copied separately into the Work Order. What has to be seen is whether the reference to the GCC was made only for some limited purpose or whether the terms of the GCC were intended to apply to the Work Orders. In the present case, there is no material to show that the GCC was referred to only for technical specifications, measurements, rates, drawings or any other one particular purpose. The Applicant's case, supported by the Work Orders and the other documents, is that the GCC governs the obligations between the parties. It is relevant that the Respondents refer to the GCC while saying that some of its conditions have not been complied with. Therefore, if the GCC is being relied upon for the conditions applicable between the parties, then it has to be seen whether the arbitration clause contained in the same GCC can be left out. The Work Orders and the GCC have therefore to be read together.

16. The judgment in *Hirani Developers* does not say that an arbitration clause can be incorporated only if the words "arbitration clause" are separately written in the later contract. The

requirement is that there should be a clear reference and the reference should show an intention to incorporate. In that case, the Supreme Court considered the language by which the terms and conditions of the earlier agreement were made part of the later agreement and held that the earlier agreement had been incorporated.

17. Therefore, the principle stated in *M. R. Engineers* has to be applied to the Work Orders in the present case. The intention of the parties has to be understood from the language used in the Work Orders. If the GCC has been made part of the terms, then the GCC has to be considered for deciding the rights and obligations of the parties and for seeing how disputes between them are to be settled.

18. The Respondents have relied upon *NBCC (India) Limited* and *MSEDCL*. These judgments make it clear that a mere general reference to another contract does not bring the arbitration clause from that contract into the later contract. This principle is important where the contract only says that the work or performance has to be carried out according to another contract. In such a situation, the reference may be only for the purpose of performance of the work and may not include the arbitration clause. However, these judgments have to be considered with reference to the wording of the documents in those cases. In *MSEDCL*, the Supreme Court found that the Letter of Intent made a general reference to the tender documents and did not specifically incorporate the arbitration clause. The Court therefore treated the case as one of "reference" and not "incorporation".

19. The present case, according to the Applicant, is different. The Applicant relies upon the Work Orders as making the GCC applicable to the relationship and not only to some technical or performance provisions. Therefore, the wording and effect of the Work Orders becomes important.

20. I have considered the judgment in *Apurvakriti Infrastructure Private Limited*. That case related to a Work Order where an arbitration clause contained in another document was sought to be made applicable. The judgment records that the documents forming part of the Work Order included the CIDCO tender, the CIDCO Special Conditions of Contract and the CIDCO General Conditions of Contract. The Work Order stated that the terms and conditions and the reference documents would form an integral part of the Work Order. Even after considering these documents, the Court found that there was no specific clause incorporating the arbitration clause. The Court therefore applied the stricter rule for a two-contract case and held that the arbitration clause had not become part of the Work Order. However, this judgment cannot mean that whenever a GCC is referred to, the arbitration clause contained in it can never apply. The documents and the nature of the arrangement have to be considered. In *Apurvakriti*, the GCC relied upon was the GCC between Tata Projects and CIDCO. The Applicant in that case was a sub-contractor seeking to rely upon that arrangement. The Court treated the matter as falling under category (3), where the later contract sought to incorporate terms agreed between one of the parties and a third party. This is a material distinction in the present case. Here, the Applicant relies

upon the GCC which is identified in the Work Orders as the conditions governing the Work Orders. The case is therefore not one where the Applicant is taking an arbitration clause from a separate contract between the Respondent and an independent third party. The GCC is relied upon as the document governing the Work Orders. Therefore, the factual position is different from the two-contract situation considered in *Apurvakriti*.

21. I now consider the submission that the Applicant and the Respondents never consciously accepted the arbitration clause. It is correct that arbitration is based on consent. There has to be a basis for sending a dispute to arbitration. The Court cannot create an arbitration agreement merely because it may be convenient to send the dispute to arbitration. But conscious acceptance does not necessarily mean that the arbitration clause has to be separately signed by the parties under a separate heading. Section 7(5) permits incorporation by reference. If the parties enter into a Work Order and make General Conditions applicable to that Work Order, and those General Conditions contain a procedure for settlement of disputes, then the consent to that procedure can come from the incorporation, provided the language of the Work Order shows such intention. The conduct of the parties gives some support to the relationship. The Applicant completed the work, submitted running account bills and the Respondents processed and settled those bills. Virtual Completion Certificates were issued. Thus, this is not a case where there was no relationship between the parties. The contract was acted upon. The dispute is regarding the result of that contract and the amount which the Applicant says is still

payable.

22. I am unable to accept the submission that merely because the Applicant did not separately sign the GCC, the application must fail. The Respondents submit that the GCC was signed by another entity and therefore cannot bind the Applicant. This submission would have force if the Applicant was relying upon a completely outside document which was never referred to or made part of the Work Order. But that is not the case of the Applicant. The Applicant relies upon the GCC because the Work Orders make the GCC part of the arrangement. Once the GCC is incorporated by reference, the question is not only as to who physically signed the GCC. The question is whether the parties to the Work Orders agreed that the GCC would govern their relationship. Therefore, if incorporation is otherwise established from the Work Orders, the absence of a separate signature of the Applicant on the GCC cannot defeat such incorporation.

23. The Respondents next submit that Clause 41 of the GCC could be invoked only after amicable settlement had failed and that the Applicant did not make the required genuine effort for amicable settlement. In my view, this objection does not show that there was no arbitration agreement. The amicable settlement requirement is a step which has to be followed before arbitration under the arrangement. It does not remove the arbitration clause. The Applicant sent demand notices and thereafter issued the notice invoking arbitration. The correspondence shows that the payment dispute had been brought to the notice of the Respondents and that the Respondents had taken their position on

the Applicant's demands. The Respondents did not say that there was no dispute. Their case was that arbitration was not available and that certain requirements had not been completed. Therefore, it cannot be said that arbitration was invoked when there was no dispute or without previous communication between the parties. The dispute had arisen, demands had been made and the parties had exchanged their positions. Whether every requirement before commencement of arbitration was strictly complied with and what effect any alleged non-compliance may have are matters which can be considered by the arbitral tribunal, if required. This objection by does not remove the arbitration agreement.

24. The Respondents have relied upon the fact that GST documents are still outstanding. Their submission is that the final bill could not be processed because the Applicant had not supplied the required documents. This submission does not make the arbitration agreement disappear. It relates to the final bill and to the defence of the Respondents against the Applicant's claim. It does not show that the parties had agreed that a dispute of this nature would not be referred to arbitration. The Applicant says that the work was completed, the relevant bills were processed, Virtual Completion Certificates were issued and amounts are still unpaid. The Respondents dispute the entitlement of the Applicant and refer to the outstanding documents. These are matters relating to the claim. They may require evidence and examination of the documents. But they do not decide the existence of the arbitration agreement. Whether the Applicant complied with the tax and documentation requirements, whether the final amount became

payable, whether the debit note is payable and what amount can be recovered are matters which can be decided on merits. They do not remove the arbitration clause.

25. The Respondents submit that the four Work Orders are separate contracts and therefore one arbitration notice covering all four Work Orders is not permissible. I am unable to accept this submission in the broad manner in which it is made. It is correct that each Work Order may contain its own scope of work, obligations, payment terms and claim. Therefore, the claim under each Work Order may have to be separately examined. But the fact that there are four Work Orders does not by mean that there is no common arbitration agreement. In the present case, the Applicant relies upon the same GCC as the source of the dispute resolution clause under all the four Work Orders. The parties are the same. The disputes arise from performance of the Work Orders and the alleged non-payment. There is therefore a common basis for the arbitration mechanism. At this stage, the Court is not required to finally decide every monetary claim under every Work Order.

26. The arbitral tribunal can consider each Work Order separately, examine the accounts and decide whether a particular claim is maintainable. Therefore, the mere fact that there are four Work Orders cannot mean that there is no arbitration agreement.

27. The Respondents have relied upon *Dascon Sourav Commercial*, where the Calcutta High Court did not incorporate the arbitration clause because the Work Order referred to different documents for different purposes and the arbitration clause was

not made applicable to the subcontract. The principle from that judgment depends upon what the parties intended by referring to the other documents. It cannot be understood to mean that every reference to a GCC is insufficient. At the same time, every reference to a GCC cannot be treated as sufficient. The real question is whether the words used in the contract show that the GCC was intended to become part of the contract and whether the arbitration clause contained in that GCC is capable of applying to the disputes between the parties.

28. I have considered *Inox Wind Limited*, relied upon by the Respondents. That decision makes a distinction between standard form terms and terms taken from a separate contract between different parties. In a proper standard-form situation, a general reference to the standard terms can be enough for incorporating the arbitration clause. This principle has relevance here. The GCC bearing the specified reference is relied upon as the conditions governing the Work Orders. There is no material shown to me to establish that the GCC was referred to only for some particular technical purpose while all the other terms of the Work Orders remained separate from it. The documents indicate that the GCC was part of the framework under which the Work Orders were to be performed. Therefore, the reference has to be understood in that setting.

29. The Respondents' reliance upon *Elite Engineering* does not change the conclusion. That judgment explains that there must be conscious acceptance and intention to incorporate the arbitration clause. I agree with that principle. But the question is whether

such intention is shown in the present case. In my view, it is shown from the Work Orders read as a whole. The GCC is identified as the document governing the Work Orders. The Work Orders are to be read with the GCC. The rights and obligations of the parties cannot be completely understood without looking at the conditions contained in the GCC. The arbitration clause contained in the same framework provides the method for resolving disputes arising from those obligations. Therefore, the arbitration clause is not being brought into the contract by an artificial process. It forms part of the dispute resolution arrangement which follows from the adoption of the GCC.

30. The Respondents have lastly relied upon *MSEDCL* and submitted that if there is no arbitration agreement even prima facie, this Court should reject the application. There is no disagreement with this principle. An Arbitrator cannot be appointed when there is no arbitration agreement. But the present case is different. The Applicant relies upon the Work Orders under which the GCC forms part of the framework. The dispute arises from those Work Orders. Clause 41 of the GCC provides the agreed mechanism for settlement of disputes after the step. Therefore, from the documents presently before me, I find that the existence of the arbitration agreement is shown at least prima facie. The requirement at this stage is therefore satisfied.

31. I have carefully considered the view in *Apurvakriti Infrastructure Private Limited*. In that case, the Work Order referred to the CIDCO tender documents and GCC. However, the Court found that there was no specific clause incorporating the

arbitration clause. The Court therefore held that the arbitration clause was not incorporated. The Court held that in absence of an arbitration agreement between the parties, the disputes could not be referred to arbitration and the application was dismissed. That decision has to be understood on its own facts. The arbitration clause in that case was contained in the CIDCO contract and the Court treated the matter as a two-contract case where a stricter rule of incorporation was required. In the present case, the GCC is relied upon as the condition governing the Work Orders between the parties before this Court. Therefore, the arbitration clause is not being taken from a separate contract which has no connection with the Applicant and the Respondents. The GCC is relied upon as part of the arrangement of the Work Orders. This makes a material difference.

32. Accordingly, I am satisfied that there is a prima facie arbitration agreement between the parties within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996.

33. In view of the aforesaid, the present Application filed under Section 11 of the Act, is disposed of by passing the following order:

A) Mr.Shadab Jan, an advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and claims arising out of the four Work Orders between the Applicant and the Respondents;

Office Address:- 1701, One Infinity, Cawasji Patel Street, Fort, Mumbai – 400001.

Email ID:shadabsjan@outlook.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with 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 Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the

respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

34. All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

35. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

36. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

37. The Application is accordingly disposed of in the above terms.

38. There shall be no order as to costs.

(AMIT BORKAR, J.)