2026 SCC OnLine SC 1798

In the Supreme Court of India
(BEFORE P.S. NARASIMHA AND ALOK ARADHE, JJ.)

National Skill Development Corporation ... Appellant;

Versus

Surya Wires Private Limited and Others ... Respondents.

Civil Appeal No. of 2026 (@ S.L.P. (C) No. 10030 of 2026)[§]
Decided on September 8, 2026

Advocates who appeared in this case :

Ms. Shweta Bharti, Adv., Mr. J.k. Chaudhary, Adv., Mr. Ankit Konwar, Adv., Mr. Abhinav Agrawal, AOR, Mr. Piyush Bhardwaj, Adv., Mr. Shivam Sengupta, Adv., For Petitioner(s)

Mr. Sudev Juneja, Adv., Ms. Sugandha Batra, AOR, Mr. Vansh Bhatnagar, Adv., For Respondent(s)

The Judgment of the Court was delivered by

ALOK ARADHE, J.:— Leave granted.

2. The appeal raises a significant question for our consideration, namely, whether, where parties structure a single transaction through several interconnected instruments, an arbitration clause contained in one instrument can bind a party through another instrument, expressly integrated with it but not itself containing an arbitration clause?

3. This appeal is directed against the judgment dated 28.01.2026 rendered by the High Court[1] in an Appeal[2] under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996 (the '1996 Act'), whereby the High Court affirmed the order dated 23.10.2024 passed by the Sole Arbitrator directing the deletion of respondent nos. 2, 3, 5 and 7 from the array of parties to the arbitral proceedings, on the finding that they were non-signatories to the agreements in their personal capacities. The scope of the present appeal is confined to the correctness of the order insofar as it concerns respondent no. 2.

FACTS

4. The facts shorn of unnecessary details, may be stated thus.

5. The Ministry of Skill Development and Entrepreneurship, decided to establish Model Training Centres in every district of the country, to be known as "Pradhan Mantri Kaushal Kendra" ('PMKK'). The appellant namely, National Skill Development Corporation, a not-for-profit company that extends financial assistance to companies and

organisations which provide skill training, was the implementing agency. The appellant issued a 'Request for Proposal' dated 29.07.2016 inviting Technical and Financial proposals for setting up of PMKK from eligible persons.

6. The respondent no. 1, namely, Surya Wires Private Limited (the 'Company') and respondent no. 4, namely, Disha Education Society (the 'Society') submitted the Technical and Financial proposal to the appellant for its consideration for the allotment of clusters/districts for jointly setting up PMKKs. Accordingly, the appellant allotted districts to respondent nos. 1 and 4 to jointly establish Model Training Centres. The respondent no. 6 namely, Shanti Finance and Property Development Private Limited (the 'Finance Company') was the co-borrower providing mortgage security. Respondent nos. 2 and 3 are the Managing Director/Authorised Representative and Director respectively of the Company. Respondent no. 5 is the Authorised Representative of the Society and respondent no. 7 is Authorised Representative of the Finance Company.

7. On 20.12.2016, the parties executed a cluster of contemporaneous agreements: a Service Level Agreement (SLA), a First Loan Agreement for a sum of Rs. 7,17,63,197/-, (Rupees Seven Crores Seventeen Lakhs Sixty-Three Thousand One Hundred Ninety-Seven only) and ancillary "Facility Agreements", namely, a Deed of Assignment, Deed of Hypothecation, Irrevocable Power of Attorney, Undertaking-cum-Declaration, and a Personal Guarantee by respondent no. 2 in favour of the appellant which was executed on 27.12.2016.

8. A second, materially identical set of agreements was executed on 18.08.2017 for an additional loan of Rs. 2,13,83,194/- (Rupees Two Crores Thirteen Lakhs Eighty-Three Thousand One Hundred Ninety-Four only) including a second Personal Guarantee by respondent no. 2.

9. Subsequently, defaults occurred in the repayment of the amounts due under the Loan Agreements which led to issuance of Loan Recall Notices to the respondents on 29.10.2021. Respondent no. 2 was also served as he was a signatory to the Personal Guarantees.

10. On 21.06.2022, the appellant initiated arbitral proceedings before the Indian Council of Arbitration and filed its Statement of Claim against respondent nos. 1 to 7 for recovery of the amounts due under the two Loan Agreements. Respondent nos. 2, 3, 5 and 7 filed an application under Section 16 of the 1996 Act contending that the Arbitral Tribunal lacked jurisdiction *qua* them, they not being signatories to the Loan Agreements in their personal capacities.

11. By order dated 23.10.2024, the Sole Arbitrator allowed the application under Section 16 of the 1996 Act, holding that respondent nos. 2, 3, 5 and 7, being directors and/or authorized representatives of

the borrower companies, are not signatories to the Loan Agreements in the individual and personal capacities and are, therefore, not liable to be retained as parties to the Statement of Claim and accordingly, their deletion from the array of parties was directed.

12. Being aggrieved, the appellant carried the matter in appeal under Section 37(2)(a) of the 1996 Act, confined to deletion of respondent no. 2 from the array of parties. The High Court, by the impugned judgment, held that admittedly the Personal Guarantees dated 27.12.2016 and 18.08.2017 contained no arbitration clause of their own. It was further held that a mere general reference to a document does not automatically import an arbitration clause and there must be conscious acceptance by the parties to make the arbitration clause part of the secondary contract. It was also held that the jurisdiction of the Arbitral Tribunal cannot be founded on proximity of transactions or commercial linkage between the instruments but must be traceable to an express or validly incorporated arbitral undertaking by the party sought to be bound. The High Court found that the appellant failed to provide any material to show that respondent no. 2 was the "alter ego" of the Company or had used the corporate form to work fraud which is the high threshold required to bind a non-signatory. The order of the Sole Arbitrator was accordingly affirmed.

<u>SUBMISSIONS</u>

13. Mr. J.K. Chaudhary, learned counsel for the appellant, submitted that a conjoint reading of Clause 11.2 of the Loan Agreements, together with the definition clauses and Schedules thereto demonstrates that the arbitration clause stands incorporated into the Personal Guarantees. It was further submitted that Personal Guarantees executed by respondent no. 2 on 27.12.2016 and 18.08.2017 were not independent or collateral instruments, but mandatory pre-disbursement conditions under the Loan Agreements, contractually defined as "Facility Agreements" and deemed to form an integral and inseparable part thereof.

14. It was argued that the High Court fell into error in applying Section 7(5) of the 1996 Act in an unduly technical and restrictive manner, contrary to the settled position in law[3]. It was urged that where a personal guarantee is expressly rendered an integral part of the loan agreement, the arbitration clause contained in the latter must be held to be incorporated by reference under Section 7(5) of the 1996 Act. It was also submitted that the addition of respondent no. 2 will not derail or delay the arbitration proceedings. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court[4].

15. Mr. Sudev Singh Juneja, learned counsel for respondent no. 2, submitted that, of the seven instruments executed between the parties,

only four contained arbitration clauses, and that the arbitration clause in the loan agreements had, at no stage, been incorporated into the Personal Guarantee. It was urged that Clause 11.2 of the Loan Agreement confines arbitration to disputes concerning that agreement, and that the Loan Agreement separately contemplates enforcement of securities and guarantees in terms of their respective facility agreements. It was contended that the instant case is a "two contract case", involving distinct parties and instruments not cast in a standard form, and therefore, the reliance placed on the decision of this Court in *Inox Wind Limited* (supra) is misplaced. Learned Counsel did not dispute the fact that a non-signatory may, in appropriate case, be bound by an arbitration clause where a mutual intention to that effect is established, but submitted that such intention must be gathered from the language employed in the document and not presumed. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court[5] and a decision of the High Court of England & Wales[6].

16. We have considered the rival submissions advanced by the learned counsel for the parties and have perused the record.

SCOPE AND AMBIT OF SECTION 7(5) OF THE 1996 ACT

17. Section 7(5) of the 1996 Act provides that a reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make the arbitration clause part of the contract. A two-Judge bench of this Court in *M.R. Engineers* (supra) after adverting to the relevant passages from *Russell on Arbitration*, 23rd Edition (2007) summarised the scope and intendment of Section 7(5) of the 1996 Act 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."

18. Another two-Judge Bench of this Court in *Inox Wind Limited* (supra) while reiterating the ratio laid down in *M.R. Engineers* (supra), held that general reference to an earlier contract does not suffice to incorporate an arbitration clause into a later contract, whereas a general reference to a standard form suffices for that purpose.

19. A three-Judge Bench of this Court[7] reaffirmed that Section 7(5) of 1996 Act stands satisfied where the reference in a contract to a document containing an arbitration clause is such as to make that arbitration clause a part of the contract.

20. A Constitution Bench of this Court in *Cox and Kings Limited* (supra) held that the definition of "parties" under Section 2(1)(h) read

with Section 7 of the 1996 Act includes both the signatory as well as non-signatory parties; and conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement. The Constitution Bench noted Article 4.3 of the UNIDROIT Principles of International Commercial Contracts, 2016, which provides that the subjective intention of the parties could be ascertained by having regard to the following circumstances: (a) preliminary negotiations between the parties; (b) practices which the parties have established between themselves; (c) the conduct of the parties subsequent to the conclusion of the contract; (d) the nature and purpose of the contract; (e) the meaning commonly given to terms and expressions in the trade concerned; and (f) usages. It was further held that the requirement of a written arbitration agreement under Section 7 of the 1996 Act does not exclude the possibility of binding non-signatory parties. It was further held that in case of a composite transaction involving multiple agreements, it would be incumbent for the courts and tribunals to assess whether the agreements are consequential or in the nature of a follow-up to, the principal agreement.

21. A three-Judge Bench of this Court[8], observed that the intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance and termination of the underlying contract containing such an agreement.

22. Thereafter, a two-Judge Bench of this Court[9], held that for arbitration to remain a viable and effective alternative mechanism for dispute resolution, it is imperative to ensure that commercial reality does not outgrow this mechanism. The mechanisms of arbitration must be sufficiently elastic to accommodate the complexities of multi-party and multi-contract arrangements without compromising foundational principles such as consent and party autonomy. The approach of courts and Arbitral Tribunal in particular must be responsive to the emerging commercial practices and expectations of the parties who submit themselves to it.

ANALYSIS

23. In the backdrop of the aforesaid well-settled legal principles, we advert to the facts of the case in hand.

24. It bears notice that respondent no. 2 executed the instruments dated 20.12.2016 and 18.08.2017 in two distinct capacities: first, as Managing Director of the Company, in a representative capacity; and secondly, in his personal and individual capacity, as guarantor under the Personal Guarantees. It is in this context that relevant extracts from clauses of the Loan Agreements fall for consideration.

Article I Clause 1.1

Sub-clause (b)

"Agreement" shall refer to this Loan Agreement including all the Schedules and annexures attached with it.

Sub-clause (l)

"Facility Agreements/Facility Documents" shall mean and include this Agreement, Memorandum of Approval and all other agreements, instruments, undertakings, deeds and other documents executed or entered into, or to be executed or entered into by the Borrowers with the Lender in connection with the Project as detailed in Schedule IV.

Sub-clause (u)

"Schedule(s)" means the Schedule (s) to this Agreement and which forms an integral part of this Agreement.

Interpretation

Sub-clause (xi)-

In case of any inconsistency between any provision of this Agreement and any other Facility Documents the relevant provision of this Agreement shall prevail.

Clause 11.2 Dispute Resolution

(i) All or any dispute, controversy, claim or disagreement arising out of or touching upon or in relation to the terms of this Agreement or its termination, breach, invalidity, including the interpretation and validity thereof and the respective rights and obligations of the Parties hereof that cannot be amicably resolved by mutual discussion within 30 (thirty) calendar days shall be settled as per the provisions of the Arbitration and Conciliation Act, 1996 which shall be final and binding arbitration. The proceedings of the arbitration shall be in accordance with the Rules of Arbitration of the Indian Council of Arbitration ("ICA") which rules are deemed to be incorporated by reference in this clause and the award made in pursuance thereof shall be binding on the parties.

Article XII-Miscellaneous

Clause 12.1

The schedules attached herewith along with the Annexures and the Facility Agreement(s) shall be deemed to be part of this Agreement as if the provisions thereof were set out herein in extension. Any amendment(s), modification(s), revision(s) to the Agreement, Facility Agreement(s), Schedule(s), thereto and other document(s) shall be in writing between the Parties which shall form an integral part of this Agreement without the need to enter into any supplemental agreement.

Schedule I-Pre-Disbursement Conditions

1. Execution of the Loan Agreement and other Facility Agreements, if any.

Schedule IV - Facility Agreements as defined in Definitions Clause in Article I would include any or all of the underwritten:

a) Deed of Hypothecation

b) Irrevocable Power of Attorney

c) Personal Guarantee(s)

d) Deed of Assignment

e) Undertaking (s)

f) Memorandum of Entry

g) Deed of Declaration

h) Any other agreement as may be required for the purpose of this PMKK

25. A conjoint and harmonious reading of the aforesaid clauses admits of no doubt that the Personal Guarantees constitute an integral and inseparable part of Loan Agreements. The Personal Guarantees are expressly enumerated in Schedule IV as included in the "Facility Agreements", and sub-clauses (b) and (u) of Clause 1.1 of Article I declare, in terms, that the "Agreement" includes all Schedules annexed to it. Clause 12.1 of Article XII (Miscellaneous) goes further and stipulates that facility agreements "shall be deemed to be part of this agreement as if provisions thereof were set out herein in extension". The phrase "as if the provisions thereof were set out herein in extension" operates as a deeming fiction internal to the contract, binding every facility agreement, including the Personal Guarantee, within the same legal and arbitral framework as the Loan Agreement. The Personal Guarantees do not, therefore, stand apart from the Loan Agreements, and are woven into their very fabric.

26. This conclusion finds independent reinforcement in Clause 1 of Schedule I of the Loan Agreements which stipulates the execution of the Loan Agreement and other facility agreements as a pre-disbursement condition. The contemporaneity of execution, with the Personal Guarantees having been executed on 27.12.2016 and 18.08.2017, in close proximity to the Loan Agreements dated 20.12.2016 and 18.08.2017 respectively, reinforces the inference that the parties intended the entire cluster of documents to constitute a single, composite transaction. Read together, the definition clauses under Article I, Article XII and the Schedules conclusively establish that the Loan Agreements and Personal Guarantees were designed to operate not as isolated or self-contained contracts, but as component parts of one composite transaction governing a single commercial

arrangement.

27. The intention of the parties to incorporate the Personal Guarantees into the Loan Agreements is, in these circumstances, explicit, rather than a matter of inference.

28. The fact that respondent no. 2 did not append his signature to the Loan Agreements in his personal capacity is not, in the circumstances of this case, decisive. The Loan Agreements were not instruments of an ordinary private bargain, they were the means by which the appellant, a not-for-profit company disbursed funds to training partners such as the Company for establishment of Model Training Centres. Training partners engaged under such a scheme are frequently thinly capitalized special-purpose entities, and it is for this reason that personal guarantees of the individuals controlling them are exacted as a mandatory pre-disbursement condition under Schedule I, the guarantee being the real, and often the only, assurance that funds disbursed for the public purpose of skill training will be accounted for and, if necessary, recovered. Respondent no. 2 furnished precisely such a guarantee, contemporaneously with and as a condition precedent to each Loan Agreement, which by its own deeming fiction treats every Facility Agreement, with the Personal Guarantee included, as set out "as if ... in extension" of the Agreement itself. A guarantee so defined and so integrated cannot be severed, for purposes of dispute resolution alone, from the very Clause 11.2 that governs disputes touching the rights and obligations arising under that Agreement, while remaining tethered to it for every other purpose, including the extent of liability.

CONCLUSION

29. For the foregoing reasons, we hold that the arbitration clause contained in Clause 11.2 of the Loan Agreements stands incorporated, within the meaning of Section 7(5) of the 1996 Act, into the Personal Guarantees dated 27.12.2016 and 18.08.2017 executed by respondent no. 2, who is accordingly bound to submit to arbitration in respect of disputes arising therefrom.

30. The judgment dated 28.01.2026 passed by the High Court, and the order dated 23.10.2024 passed by the Sole Arbitrator, insofar as the application under Section 16 of the 1996 Act *qua* respondent no. 2 was allowed, are quashed and set aside.

31. In the result, the appeal is allowed. There shall be no order as to costs. Pending applications, if any, stand disposed of.

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[1] High Court of Delhi

[2] ARB. A. (COMM.) 11 of 2025.

[3] *M.R. Engineers and Contractors Private Limited* v. *Som Datt Builders Limited*, (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271.

[4] *Inox Wind Limited* v. *Thermocables Limited*, (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195 and *Cox and Kings* v. *SAP India Pvt. Ltd.*, (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680.

[5] *Industrial Finance Corporation of India Ltd.* v. *Cannanore Spinning and Weaving Mills Ltd.*, (2002) 5 SCC 54 : (2002) 110 Comp Cas 685; *S.N. Prasad, Hitek Industries (Bihar) Ltd.* v. *Monnet Finance Ltd.*, (2011) 1 SCC 320 : (2011) 1 SCC (Civ) 141; *NBCC (India) Ltd.* v. *Zillion Infraprojects Pvt. Ltd.*, (2024) 7 SCC 174 : (2024) 3 SCC (Civ) 773 and *Adavya Projects Pvt. Ltd.* v. *Vishal Structures Pvt. Ltd.*, (2025) 9 SCC 686 : (2025) 4 SCC (Civ) 375.

[6] *Habas Sinai Ve Tibbi Gazlar Isthisal Endustri AS* v. *Sometal SAL*, [2010] EWHC 29 (Comm).

[7] *Shinhan Bank* v. *Carol Info Services Limited*, (2023) 20 SCC 388.

[8] *Ajay Madhusudan Patel* v. *Jyotrindra S. Patel*, (2025) 2 SCC 147.

[9] *ASF Buildtech Private Limited* v. *Shapoorji Pallonji and Company Private Limited*, (2025) 9 SCC 76 : (2025) 4 SCC (Civ) 27.

[§] 2026 INSC 977