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

Judgment reserved on: 09.01.2026
Judgment pronounced on: 28.01.2026

\+ ARB. A. (COMM.) 11/2025, I.A. 4910/2025 (Delay of 13 days in filing the appeal) & I.A. 6645/2025 (Directions)

NATIONAL SKILL DEVELOPMENT CORPORATION
.....Appellant

Through: Mr. Jyoti Kumar Chaudhary, Mr. Ankit Konwar, Mr. Prateek Singh and Ms. Subhashini Kumari, Advocates.

versus

SURYA WIRES PRIVATE LIMITED & ORS. ….Respondents

Through: Mr. Sudev Singh Juneja, Advocate for Respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal has been filed under Section 37(2)(a) of **the Arbitration and Conciliation Act, 1996**[1], assailing the **Order dated 23.10.2024**[2] passed by the learned Sole Arbitrator in Case No. AC 2322/2022 before the Indian Council of Arbitration. The learned Sole Arbitrator *vide* the Impugned Order, allowed the Second Application filed by Respondent Nos. 2, 3, 5 and 7, under Section 16 of the Act, and allowed removal of Respondent Nos. 2, 3, 5 and 7 from the array

[1] The Act
[2] Impugned Order

of parties.

BRIEF FACTS:

2. The Appellant is a not-for-profit company that extends financial assistance to companies and organisations that provide skill training. Respondent No. 1, is a company engaged in the establishment and operation of training institutes. Respondent Nos. 4 and 6 are also borrower entities connected with the same project. Respondent Nos. 2, 5 and 7 are directors and/or authorised representatives of the said borrower companies, *respectively*.

3. In 2016 and 2017, Respondent No. 1 approached the Appellant for financial assistance to establish training institutes under the **Pradhan Mantri Kaushal Vikas Yojana**[3] across multiple districts of the country.

4. The First Loan Agreement dated 20.12.2016 provided Rs. 7,17,63,197/- for setting up training institutes across 15 districts/clusters. The Appellant disbursed this amount in multiple tranches as per the agreed schedule. The agreement was executed on behalf of the borrower companies by their authorised representatives, including Respondent No. 2.

5. As part of the pre-disbursement conditions, the borrower entities executed ancillary and security documents in favour of the Appellant, including Deeds of Assignment, Deeds of Hypothecation and Irrevocable Powers of Attorney. Respondent No. 2 executed Personal Guarantees dated 27.12.2016.

6. Thereafter, *vide* a Second Loan Agreement dated 18.08.2017, an additional Rs. 2,13,83,194/- were provided for establishing training

[3]PMKVY

institutes in 4 more districts/clusters. This was likewise executed on behalf of the borrower companies, being Respondent Nos. 1, 4 and 6, by their authorised representatives, including Respondent No. 2. In connection therewith, Respondent No. 2 executed a second Personal Guarantee dated 18.08.2017.

7. Subsequently, defaults occurred in the repayment of the amounts due under the Loan Agreements, which led to the issuance of Loan Recall Notices dated 29.10.2021, under Clause 6.2 of both Loan Agreements. Respondent No. 2 was also served as a signatory to the Personal Guarantees.

8. 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 claimed to be outstanding under the two Loan Agreements. Respondent Nos. 2, 3, 5 and 7 raised objections under Section 16 of the Act, contending that they were not bound by the arbitration agreements in their personal capacities.

9. By the Impugned Order, the learned Sole Arbitrator allowed the objection to the extent of deleting Respondent Nos. 2, 3, 5 and 7 from the array of parties. The present appeal under Section 37(2)(a) of the Act has been filed by the Appellant, limited to the deletion of Respondent No. 2.

CONTENTIONS OF THE APPELLANT:

10. Learned counsel for the Appellant would assail the Impugned Order to the limited extent it directs the deletion of Respondent No. 2 from the array of parties to the arbitral proceedings. It would be contended that the learned Sole Arbitrator has failed to appreciate that

the Personal Guarantees dated 27.12.2016 and 18.08.2017 do not constitute independent contracts, but form an integral part of the Loan Agreements dated 20.12.2016 and 18.08.2017.

11. Learned counsel for the Appellant would submit that Respondent No. 2 squarely falls within the scope of Section 7(5) of the Act due to his secured obligation arising from the Personal Guarantees executed under their personal capacity.

12. Learned counsel for the Appellant would further contend that Respondent No. 2 is the Managing Director of Respondent No.1-Company and consequently has significant control over the company's operations. Resultantly, the doctrine of *'alter ego'*, which permits the lifting of the corporate veil, would particularly be applicable in the present case; however, the learned Sole Arbitrator failed to consider the same.

13. Learned counsel for the Appellant would further submit that the execution of the Personal Guarantees was a mandatory pre-disbursement condition under the Loan Agreements and, therefore, the Guarantees cannot be viewed in isolation, but must be read as part of a single composite transaction governing the financial assistance and its security.

14. The learned counsel for the Appellant would contend that, notwithstanding the absence of an express arbitration clause in the Personal Guarantees, the surrounding contractual framework and the role played by Respondent No. 2 in the execution of the Loan Agreements and allied documents disclose an intention to bind him to the arbitral process. Reliance would be placed on the decision of the

Hon'ble Supreme Court in ***Cox & Kings Ltd. v. SAP (India) (P) Ltd***[4] to submit that, in appropriate cases, a non-signatory may be held bound by the arbitration agreement where such intention can be gathered from the composite nature of the transaction and the conduct of the parties.

CONTENTIONS OF THE RESPONDENT:

15. Learned counsel for the Respondent would contend that the Personal Guarantee executed by Respondent No. 2 was never subject to an arbitration agreement. It would be submitted that a general reference to the Loan Agreement in the Personal Guarantee does not incorporate the arbitration agreement. For this, *inter alia*, reliance would be placed upon ***M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd***[5]**.**

16. Learned counsel for the Respondent would further contend that the Personal Guarantee does not contain any arbitration clause. It is submitted that the arbitration agreement embodied in Clause 11.2 of both the Loan Agreements is expressly confined to disputes arising out of the said Loan Agreements, as it refers only to disputes arising from 'this Agreement,' and, therefore, cannot be invoked in respect of the Personal Guarantee.

17. Learned counsel for the Respondent would further contend that the contractual scheme reflects a deliberate allocation of dispute resolution mechanisms across different instruments. It would be submitted that while arbitration clauses have been expressly incorporated in certain Facility Documents, the Personal Guarantee is conspicuously silent in this regard, thereby evincing an intention to

[4](2022) 8 SCC 1
[5](2009) 7 SCC 696

exclude disputes arising under the Guarantee from the scope of arbitration.

18. Learned counsel for the Respondent would submit that the conditions for binding a non-signatory to an arbitration agreement, as articulated by the Hon'ble Supreme Court in ***Cox & Kings Ltd***.(*supra*) are not satisfied in the present factual matrix.

19. It would further be contended that the Personal Guarantee constitutes an independent contract, the obligations under which arise only upon a separate and distinct process of invocation. It is urged that the Appellant has invoked arbitration solely under the Loan Agreements and not in enforcement of the Personal Guarantee.

ANALYSIS:

20. This Court has heard the learned counsel for both parties and, with their able assistance, examined the relevant records.

21. The issue that arises for consideration in the present appeal is whether Respondent No. 2, having executed the Personal Guarantees dated 27.12.2016 and 18.08.2017, can be held bound by the arbitration clause contained in the Loan Agreements dated 20.12.2016 and 18.08.2017.

22. It is not in dispute that the Personal Guarantees dated 27.12.2016 and 18.08.2017 do not themselves contain any clause for reference of disputes to arbitration. The question, therefore, is whether the reference made in the above-stated Guarantees to the Loan Agreements is sufficient, in law, to import the arbitration clause contained in the Loan Agreements so as to bind Respondent No. 2 in his individual capacity.

23. In this context, it is apposite to first advert to Section 7 of the

Act, which defines the existence and scope of an arbitration agreement.

> "**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.
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> (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
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> (3) An arbitration agreement shall be in writing.
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> (4) An arbitration agreement is in writing if it is contained in—
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> (a) a document signed by the parties;
> (b) an exchange of letters, telex, telegrams or other means of telecommunication 1 [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.
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> (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."

24. The contours of this provision, specifically Section 7(5) of the Act, which deals with the incorporation of an arbitration clause by reference, have been authoritatively explained by the Hon'ble Supreme Court in ***M.R. Engineers*** *(supra)*; relevant paragraphs of which are extracted as under:

> "**14.** The wording of Section 7(5) of the Act makes it clear that a mere reference to a document would not have the effect of making an arbitration clause from that document, a part of the contract. The reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document, into the contract. If the legislative intent was to import an arbitration clause from another document, merely on reference to such document in the contract, sub-section (5) would not contain the significant later part which reads: "and the reference is such as

to make that arbitration clause part of the contract", but would have stopped with the first part which reads:

> "7. (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing…."

15. Section 7(5) therefore requires a *conscious* acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties. But the Act does not contain any indication or guidelines as to the conditions to be fulfilled before a reference to a document in a contract can be construed as a reference incorporating an arbitration clause contained in such document into the contract. In the absence of such statutory guidelines, the normal rules of construction of contracts will have to be followed."

25. Moreover, a further reading of ***M.R. Engineers*** *(supra)*, brings to light the distinction between a mere reference to another document and its incorporation into the contract, and the effect thereof. The relevant observations are extracted below:

> "**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. Therefore when there is a reference to a document in a contract, the court has to consider whether the reference to the document is with the intention of incorporating the contents of that document in entirety into the contract, or with the intention of adopting or borrowing specific portions of the said document for application to the contract.
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> **17.** We will give a few instances of incorporation and mere reference to explain the position (illustrative and not exhaustive). If a contract refers to a document and provides that the said document shall form part and parcel of the contract, or that all terms and conditions of the said document shall be read or treated as a part of the contract, or that the contract will be governed by the provisions of the said document, or that the terms and conditions of the said document shall be incorporated into the contract, the terms and conditions of the document in entirety will get bodily lifted and incorporated into the contract. When there is such incorporation of

> the terms and conditions of a document, every term of such document (except to the extent it is inconsistent with any specific provision in the contract) will apply to the contract. If the document so incorporated contains a provision for settlement of disputes by arbitration, the said arbitration clause also will apply to the contract.
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> **18.** On the other hand, where there is only a reference to a document in a contract in a particular context, the document will not get incorporated in entirety into the contract. For example, if a contract provides that the specifications of the supplies will be as provided in an earlier contract or another purchase order, then it will be necessary to look to that document only for the limited purpose of ascertainment of specifications of the goods to be supplied. The referred document cannot be looked into for any other purpose, say price or payment of price. Similarly, if a contract between X and Y provides that the terms of payment to Y will be as in the contract between X and Z, then only the terms of payment from the contract between X and Z, will be read as part of the contract between X and Y. The other terms, say relating to quantity or delivery cannot be looked into.
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> **19.** Sub-section (5) of Section 7 merely reiterates these well-settled principles of construction of contracts. It makes it clear that where there is a reference to a document in a contract, and the reference shows that the document was not intended to be incorporated in entirety, then the reference will not make the arbitration clause in the document, a part of the contract, unless there is a special reference to the arbitration clause so as to make it applicable."

26. The principle enunciated hereinabove has since been reiterated by the Hon'ble Supreme Court in ***NBCC (India) Ltd. v. Zillion Infraprojects Pvt. Ltd***.[6], where it has been held that a mere general reference of one contract in the terms of another contract, cannot, of and by itself, lead to the incorporation of the Arbitration Clause of the former into the latter. The relevant paragraphs of the said judgement are extracted as follows:

> "**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

[6] (2024) 7 SCC 174

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.

18. This Court further held that where the contract provides that the standard form of terms and conditions of an independent trade or professional institution 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. It has been held that 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. It has also been held that 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, the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.

19. A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties.

20. It is thus clear that a reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document into the contract.

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22. No doubt that this Court in ***Inox Wind Ltd.* v. *Thermocables Ltd.* [*Inox Wind Ltd.* v. *Thermocables Ltd.*, (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195]** has distinguished the law laid down in *M.R. Engineers & Contractors* [*M.R. Engineers & Contractors (P) Ltd.* v. *Som Datt Builders Ltd.*, (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] . In the said case (i.e. *Inox Wind* [*Inox Wind Ltd.* v. *Thermocables Ltd.*, (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195]), this Court has held 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. Though this Court in *Inox Wind* [*Inox Wind Ltd.* v. *Thermocables Ltd.*, (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195] agrees with the judgment in *M.R. Engineers & Contractors* [*M.R. Engineers & Contractors (P) Ltd.* v. *Som Datt Builders Ltd.*, (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] , it holds that 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. In the said case (i.e. *Inox Wind* [*Inox Wind Ltd.* v. *Thermocables Ltd.*, (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195]), this Court found that the purchase order was issued by the appellant therein in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. The respondent therein by his letter had confirmed its acceptance. This Court found that the case before it was a case of a single contract and not two-contract case and, therefore, held that the arbitration clause as mentioned in the terms and conditions would be applicable.

23. The present case is a "two-contract" case and not a "single-contract" case.

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29. As already discussed hereinabove, when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention/reference thereto.

30. We are of the considered view that the present case is not a case of "incorporation" but a case of "reference". As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the LoI, which is also a part of the agreement, makes it amply clear that the redressal of the dispute between NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone."

27. Applying the aforesaid principles to the present case, it becomes necessary to examine the manner in which the Loan Agreements have been referred to in the Personal Guarantees. A plain reading of the relevant clauses indicates that the reference to the Loan Agreements is confined to clarifying the Guarantor's obligation and to adopting the

meanings of capitalised terms, with the liability and the manner of its enforcement arising solely from the Personal Guarantee. Thus, the reference operates in a limited and contextual sense and does not evince an intention to incorporate the terms of the Loan Agreements, including the arbitration clause, into the Personal Guarantees.

28. The contractual framework, when read as a whole, further supports this conclusion. While the Loan Agreements and other ancillary documents expressly provide for arbitration as the chosen mode of dispute resolution, the Personal Guarantees, despite being contemporaneously executed, are silent in this regard. The absence of an arbitration clause in the same, when viewed alongside its express inclusion in other instruments, cannot be treated as inadvertent or otiose.

29. Arbitration, being a matter of consent, must rest on a clear and unequivocal agreement to submit disputes to the arbitral forum. The jurisdiction of the arbitral tribunal cannot be founded on the proximity of the transactions or the commercial linkage between the instruments, but must be traceable to an express or validly incorporated arbitral undertaking by the party sought to be bound.

30. The reliance placed by the learned counsel for Appellant on the decision in ***Cox & Kings Ltd.*** (*supra*) does not advance the Appellant's case any further. The principle of binding a non-signatory, as enunciated therein, is predicated upon a demonstrable intention, gathered from the contractual framework and the conduct of the parties, to treat such non-signatory as a party to the arbitration agreement. In the present case, the contractual scheme, far from disclosing such intention, reflects a deliberate compartmentalisation of obligations and dispute resolution mechanisms across distinct

instruments.

31. The submission made by the learned counsel for the Respondent, founded on the doctrine of alter ego, cannot be accepted in the absence of pleadings or material to indicate misuse of the corporate form or any conduct warranting such an exceptional course, as noticed in ***Vatsala Jagannathan v. Tristar Accommodations Ltd***.[7]. Even otherwise, the doctrine cannot be employed to dispense with the foundational requirement of an arbitration agreement under Section 7 of the Act. The relevant extract of the said judgement is set out hereinbelow:

> **"22.** In order to establish that respondents 2 to 5 are bound by the arbitration agreement between the petitioners and the first respondent, learned counsel for the petitioners invoked the doctrine of alter ego. For such purpose, the relevant extract from the book 'International Commercial Arbitration' by Gary B. Born was relied upon. At page 1432 of the book, it is stated as under:
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> > *"Authorities from virtually all jurisdictions hold that a party who has not assented to a contract containing an arbitration clause may nonetheless be bound by the clause if that party is an "alter ego" of an entity that did execute, or was otherwise a party to, the agreement. This is a significant, but exceptional, departure from "the fundamental principle ... that each company in a group of companies (a relatively modern concept) is a separate legal entity possessed of separate rights and liabilities."*
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> **23.** The learned Author proceeded to further state as under:
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> > *".... In the context of arbitration agreements, demonstrating an "alter ego" relationship under most developed legal system requires convincing evidence that one entity dominated the day-to-day actions of another and/or that it exercised this power to work fraud or other injustice or inequity on a third party or to evade statutory or other legal obligations."*
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> **24.** From the above extracts of the learned author's work, it is clear that the doctrine of alter ego is resorted to in exceptional cases to depart from the fundamental principle that only a signatory

[7] 2023 SCC OnLine Mad 308

> to an arbitration agreement is bound by it. It is further clear that it is a significant and exceptional departure which should not be resorted to unless there is convincing evidence that the non-signatory is the alter ego of the signatory. The doctrine of alter ego was also dealt with by the Supreme Court and this Court in decisions cited at the bar, and the same are dealt with next.
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> **32.** Arbitral proceedings enable the resolution of disputes by a private consensual forum which derives authority from the contract between parties as opposed to the public court system, which traces authority to the Constitution of India and/or statute. Given the fountainhead of authority, such proceedings should, as a rule, be only between parties to the arbitration agreement and any deviation therefrom should necessarily be the exception. As discussed earlier, the exception on the ground of "alter ego" should be resorted to with considerable circumspection. For reasons discussed above, the petitioner has failed to establish that respondents 3 to 5 qualify as "alter egos" of the first respondent or as successors-in-interest. As a corollary, the petitioners are not entitled to join respondents 3 to 5 as parties to arbitral proceedings."

32. In view thereof, this Court finds no infirmity in the Impugned Order dated 23.10.2024 passed by the learned Sole Arbitrator, and the same does not warrant this Court's interference in appeal under Section 37(2)(a) of the Act.

33. Accordingly, the present Appeal, along with pending application(s), if any, is disposed of in the aforesaid terms.

34. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 28, 2026/her