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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 244/2026, I.A. 16924/2026 & I.A. 16925/2026
SANNVERSE RAILTECH PRIVATE LIMITEDPetitioner
Through: Mr. Tarkeshwar Nath, Mr. Anant Dev and Mr. Harshit Singh, Advs.
versus

KONKAN RAILWAY CORPORATION LIMITEDRespondent
Through: Mr. Nakul Mohta, Ms. Saijal Arora and Mr. Hitesh Nagar, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% **23.07.2026**

1. This is a petition filed under Section 9(1) of the Arbitration and Conciliation Act, 1996¹ filed by the Petitioner substantially seeking the relief of (i) Restraining/Injuncting the Respondents from taking any action pursuant to their letter dated 19.05.2026, including levying any damages, (ii) restraining the Respondent from invoking and/or encashing the Bid Security Bank Guarantee dated 30.10.2025 for an amount of Rs.2,00,00,000/- furnished by the Petitioner to the Respondent, (iii) restraining the Respondent to issue any fresh notice inviting tender etc.

2. Succinctly, the facts of the present case would reveal that the North Easter Railways² decided to undertake Civil Engineering

¹ "the Act", hereinafter

² "NER", hereinafter



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Works, Electrification Works and signalling work of the new Single Broad Gauge, line of Paniahwa-Chhitauni-Tamkuhi Road, through EPC mode and subsequently a Tender Notice/ Request for proposal was issued on 12.08.2025.

3. Apparently, a Memorandum of Understanding³ dated 29.10.2025 came to be executed between the Petitioner and the Respondent to participate in the aforesaid tender floated by the NER. In view of a term of the said MOU, a Bank Guarantee for Rs.2,00,000,000/- was offered by the Petitioner as a Bid Security to the Respondent, who in turn participated in the tender floated by NER. Subsequently, the Respondent was declared successful and accordingly the work was awarded to them by NER.

4. It has been contended by the Petitioner that pursuant to the award of the aforesaid work by NER to the Respondent, a letter dated 01.04.2026 was issued to the Petitioner for performance of the work of the aforesaid tender on back-to-back basis.

5. Certain dispute arose between the Petitioner and Respondent, resulting in certain delay in the submission of the performance security by the Respondent to NER and although it has been submitted that the Respondent subsequently submitted the performance BG and additional BG, but since the said BGS's were beyond time, the same was returned by NER to the Respondent.

6. In the aforesaid conspectus of facts, this Court vide an order

³ "MOU", hereinafter



dated 06.07.2026 recorded the following observations:

“1. Admittedly, the relation between the petitioner and respondent is by virtue of a Memorandum of Understanding dated 29.10.2025 however, this Court finds that arbitration clause is conspicuously absent in the said MOU.

2. The petitioner has placed reliance on Clause 24 and 25 of the Bid Document, which contains the arbitration clause between the respondent and North Eastern Railway to contend that the same is applicable for a dispute between the petitioner and Konkan Railways, however, this Court does not find any subsequent contract/agreement incorporating the said arbitration clause by reference to adjudicate any dispute between the petitioner and the respondent, except the letter of acceptance.

3. Even a facial reading of the letter of acceptance dated 01.04.2026 does not express that the parties were ad idem for arbitration.

4. The supreme court in Para 22 of NBCC(INDIA) Limited vs. Zillion Infrastructure Pvt Ltd. has held that mere reference in the second contract to the terms and condition of the first contract, the arbitration clause would not be ipso facto applicable unless there is a specific mention or reference. The relevant para is reproduced for kind of perusal

“22. As already discussed herein above, 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.”

5. Therefore, the petitioner has to rely on an existing arbitration clause in order to invoke this court's jurisdiction section 9.

6. Upon putting a query as to the existence of an arbitral clause between the party, the Learned Counsel for the petitioner seeks and is granted an opportunity to satisfy the Court on the maintainability of the present Section 9 petition in the absence of any arbitration clause between the parties.

7. Accordingly, list this matter on 23.07.2026 for arguments on maintainability.”



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7. Mr. Tarkeshwar Nath, learned Counsel for the Petitioner has submitted that the judgment of the Hon'ble Supreme Court as quoted in the aforesaid order dated 06.05.2026 is distinguishable on facts and in canvassing his submission has relied on the judgment of ***State of U.P. v. Combined Chemicals Company Pvt. Ltd.***⁴.

8. As far as the Judgment of the Apex Court in ***State of U.P. v. Combined Chemicals Company Pvt. Ltd.***⁵, is concerned, the issue in aforesaid judgment was whether an arbitration clause contained in a tender document became binding when no separate formal agreement had been signed.

9. However, in the present case, dispute resolution clause is only found in Clause 5 of the MOU dated 29.10.2025, executed between the parties, wherein the dispute or controversies between the parties were agreed to be settled by mutual discussion or negotiations. Therefore, this Court is not able to find any clause, which would lead this Court to hold that parties were in any manner *ad idem* for adjudication of their dispute by the mechanism of Arbitration.

9. The learned Counsel for the Petitioner has submitted that there exists an Arbitration clause in the tender Document/RFP executed between the Respondent and NER and since the MOU executed between the Petitioner and the Respondent is an outcome of the said Tender document/RFP, the arbitration clause has to be construed to have been borrowed into the MOU. Although, the said submission of

⁴ (2011) 2 SCC 151

⁵ (2011) 2 SCC 151



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the learned Counsel appears to be attractive in the first blush, however, this Court is not able to find any terms in the MOU, by virtue of which the arbitration clause of the tender document/RFP has been borrowed or incorporated into the MOU. Neither there is any averment nor any submission on the part of the learned Counsel as to how and in what manner the said arbitration clause came to be inserted and/or transplanted into the MOU from the RFP/Tender Document.

10. According to this Court, the judgment relied by the learned Counsel for the Petitioner is distinguishable on the facts of the present case, as the said judgment involved the same tender transaction and the same parties and it did not involve an attempt to import an arbitration clause from an independent principal contract between two different parties (*i.e.* NER and the Respondent) into a subcontract/back-to-back contract entered between one of the parties to the principal contract (*i.e.* Respondent) with a third party (*i.e.* the Petitioner).

11. The learned Counsel for the Petitioner also sought to rely on the judgment of *Shinhan Bank v. Carol Info Services Ltd.*⁶, and *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd.*⁷, to contend that there exists an arbitration clause between the parties. However, this court is afraid to hold it again that the ratio of the said judgment does not support the case of the petitioner in any manner as even in this case the agreements were executed between the same parties,

⁶ (2023) 20 SCC 388

⁷ (2015) 13 SCC 477



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whereas in the present matter the arbitration clause is contained in the Tender/RFP document executed between NER and the Respondent, which contains the arbitration clause, whereas the MOU has been executed between the Respondent and the Petitioner, wherein there is no agreement for arbitration between them. It has to be understood that party autonomy is the hallmark of any arbitration and in case there is no indication in any of the documents, which would show that the parties were *ad idem* for arbitration at the time of executing the MOU, this court cannot stich an arbitration clause into the subsisting agreement, which otherwise does not exist.

12. Since, the learned Counsel for the Petitioner is unable to point out any document by virtue of which the arbitration clause existing in the tender document executed between NER and the Respondent has been sought to be incorporated or borrowed into the MOU dated 29.10.2025, either literally or by any necessary implications, this Court is left with no alternative but to hold that there exists no arbitration clause between the parties.

13. It goes without saying that to invoke this Court's jurisdiction under Section 9, there must be an arbitral clause between the parties. It is a settled law that if there exists no arbitration agreement between the parties, the proceedings under Section 9 of the Act are not maintainable.

14. Accordingly, the present petition is dismissed as being not maintainable, in the absence of any arbitration clause and liberty is granted to the Petitioner to pursue, such other remedy as may be



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permissible under law.

15. Interim order, if any, stands Vacated.

16. Pending applications, if any, also stand dismissed.

OM PRAKASH SHUKLA, J

JULY 23, 2026/gunn