IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM. ARBITRATION APPLICATION NO. 23 OF 2026

Apurvakriti Infrastructure Private Limited
A Company registered under Companies Act, 2013
Having registered address at 2" Floor, 24/5,
100 Foot Road, Ghitorni, New Delhi, India 110030 **… Applicant**

Versus

1. Tata Projects Limited and Anr.
Near Navi Mumbai Metro Depot Yard
Taloja, Panchanand Phase-1,
Navi Mumbai 410208

2. The City and Industrial Development Corporation)
of Maharashtra Limited (CIDCO) CIDCO Bhavan,
CBD Belapur, Navi Mumbai, Maharashtra. **… Respondents**

Adv. Paromita Majumdar, Adv. Gaurangi Patil a/w Adv. Mayureshwari Rajan Kordaay, Adv. Meenakshi Vimal Adv. Vibhor Jain i/b GP and Associates for Applicant.

Adv. Aaushi Doshi a/w Adv. Surbhi Ahuja, Adv. Ruchita Chavan i/b India Law LLP for Respondent No.1

MANE SONALI DILIP
Digitally signed by MANE SONALI DILIP
Date: 2026.06.17 18:10:47 +0530

CORAM : ARUN R. PEDNEKER, J.
RESERVED ON : 12 JUNE, 2026
PRONOUNCED ON : 17 JUNE, 2026

JUDGEMENT :

1. By the present Commercial Arbitration Application under Section 11 of the Arbitration and Conciliation Act, 1996 the Applicant seeks appointment of an Arbitrator with respect to the disputes that have arisen between the parties under an Agreement-cum-Work Order dated 2 March, 2015.

2. The learned counsel for the Applicant submits that the Respondent No. 1 issued a Work Order on 2 March, 2015 for the construction of Ballastless track work for Belapur-Pendhar corridor of Navi Mumbai Metro Rail Project Line 1 (NMML1). It is further submitted that the Consortium AnTaCs of which the Respondent No.1 is a partner was entrusted with the work by CIDCO. The Applicant is a sub-contractor of the Respondent No.1 and has undertaken the work for Rs.58,27,00,000/-.

3. Subsequently, certain disputes arose as regards the payment of the outstanding amount by the Respondent No.1 to the Applicant. Work Completion Certificate dated 4 December 2023 was issued by the Respondent No.1 to the Applicant. Thereafter, Demand Letter dated 8 May, 2025 was sent by the Applicant to the Respondent No.1. Since the

outstanding amounts were not paid, notice was issued invoking the arbitration clause under Section 21 of the Arbitration and Conciliation Act, 1996 under clause 31.3 of the Special Conditions of Contract executed between the Respondent No.1 and CIDCO by contending that the said Clause is applicable to the agreement between the parties. The said notice was replied by letter dated 6 August, 2025 by the Respondent No.1 wherein it stated that the amicable settlement talks are going on, and they have not failed. Thereafter, another Notice dated 26 September 2025 was issued invoking the arbitration Clause under Section 21 of the Arbitration and Conciliation Act, 1996. The same was not responded to, as such the present application for appointment of arbitrator is filed.

4. **Ms. Paromita Majumdar** the learned counsel appearing for the Applicant submits that the G.C.C. signed between Respondent No.1 with CIDCO particularly Clause 31.1 thereof, provides for arbitration of disputes between the parties. The said contract is between the Respondent No.1 and CIDCO. However, the same has been incorporated by reference into the Tender-cum-Work Order dated 2 March 2015. By virtue of such incorporation, the arbitration clause as provided in the General Conditions of Contract signed between CIDCO and Respondent No.1 would also apply to the contract between the Applicant and the Respondent No.1. Dispute has arisen between the parties and thus she seeks invocation of the arbitration clause and appointment of an Arbitrator. She relies upon the following judgements:

i) ***M. R. Engineers And Contractors Private Limited Vs. Som Datt Builders Limited*** [1]

ii) ***Hirani Developers Vs. Nehru Nagar Samruddhi CHS Ltd. and Anr***.[2]

iii) ***Ajay Madhusudan Patel & Ors. Vs. Jyotindra S. Patel & Ors.***[3]

iv) ***ASF Buildtech Private Limited Vs. Shapoorji Pallonji And Company Private Limited***[4]

5. Per contra, **Ms. Aaushi Doshi** the learned counsel appearing for the Respondent No.1 submits that the General Conditions of Contract which the Applicant relied upon are signed by the Respondent No.1 with CIDCO and the Applicant is not a party to said General Conditions of Contract. The arbitration clause invoked would not apply to the Work Order between the Applicant and the Respondent No.1 She further submits that there is no incorporation of the arbitration clause from the General Conditions of Contract executed between the Respondent No.1 and CIDCO into the tender document executed between the Applicant and Respondent No.1. She submits that there is no arbitration clause in the agreement between the parties and that the matter may not be referred to arbitration. She relies upon the following judgements:

1 (2009) 7 SCC 696.

2 2026 SCC Online SC 854

3 (2024) 9 S.C.R. 894 : 2024 INSC 710.

4 2025 INSC 616

i) ***Dascon Sourav Commercial Private Limited Vs. CLE Private Limited***[5]

ii) ***NBCC (India) Limited Vs. Zillion Infra Projects Private Limited***[6]

iii) ***Inox Wind Limited Vs. Thermocables Limited***[7]

iv) ***Maharashtra State Electricity Distribution Company Limited (MSEDCL) and Ors. Vs. R. Z. Malpani*** [8]

v) ***Hindustan Petroleum Corporation Limited Vs. BCL Secure Premises Private Limited***[9]

iv) ***Elite Engineering And Construction (Hyderabad) Private Limited Represented by Its Managing Director Vs. Techtrans Construction India Private Limited Represented by its Managing Director***[10]

6. Having heard the learned counsel for the parties the relevant clauses of the Work Order dated 2 March, 2015 is noted below:

5 2024 SCC OnLine Cal 3590.

6 (2024) SCC 174.

7 (2018) 2 SCC 519.

8 2026 SCC OnLine SC 553.

9 (2026) 3 SCC 711

10 (2018) 4 SCC 281.

Details of Annexure attached to this WO
Annexure-1 : Schedule of item, Price and Qty
Annexure-2 : Scope Matrix
Annexure-3 : CIDCO Tender No.C.A. No. 02/CIDCO/RP/SE (TP-III)/2012-13 including all amendments/corrigendum thereof
Annexture-4 : CIDCO's SCC (VOI II of V)
Annexture-5 : CIDCO's GCC (VOI II of V)
Annexture-6 : CIDCO's requirement (Technical specifications, drawings, General specifications and Maintenance specifications etc.)
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Subject : Work Order of construction of Ballastless track work for 'Belapur-Pendhar' corridor of Navi Mumbai Metro Linde 1 (NMML1), CIDCO which includes Design. Supply incl. spares (as per scope matrix), Erection. Testing and Commissioning as per CIDCO Specification in Navi Mumbai, Maharashtra State.

Ref : 1) CIDCO Tender C.A. No. 02/CIDCO/RP/SE (TP-III)/2012-13

2) CIDCO LOA No. CIDCO/SP/CE(SP)/2014/160 dt. 04.07.14

3) CIDCO WO Ref. No. CIDCO/SP/SE (To-III)/2014/183 dt. 01.08.2014.

4) Your offer vide email dt. 03.01.2015

5) MOM dt. 22.01.2015

6) Your email dt 29.01.2015 regarding RMC prices

7) Your confirmations dt 09.02.2015 for MOM clarifications, taxation and final landed price.

With reference of the above, we are pleased to issue this Work Order for the subject work along with the documents enclosed herewith as Annexures and the Terms and Conditions as detailed below. The technical

specification, drawings of CIDCO, addendums & Corrigendums thereof and all terms and conditions (except otherwise specifically agreed to in writing) as specified hereunder read along with all annexures and reference documents listed above shall form an integral part of this Work Order. AnTaCs consortium has been entrusted by CIDCO the subject work, where in Tata Projects Ltd. is the consortium partner.

1.0 Scope of Work: Construction of Ballastless Track Work for 'Belapur-Pendhar' corridor of Navi Mumbai Metro Rail Project Line1 (NMML1). CIDCO which includes Design, Supply incl. spares (as per scope matrix), Erection, Testing and commissioning as per CIDCO Specification. All the works shall be executed on 'back to back' in accordance with the Specifications and Standards stipulated in CIDCO bid.

5.0 Completion Schedule: AIPL shall submit the preliminary designs within 3 weeks from the dt. of WO.

In terms 0° Clause 43.1 of the GCC and as mentioned in Schedule 14, Annexure-A of SCC of CIDCO contract, all works to be executed under this contract shall be completed by 30th Jan 2017 fi.e. 30 Months (including monsoon) from the date of issue of Work Order by CIDCO}. The Key Dates mentioned in Annexure-8 attached as per CIDCO contract concluded by AnTaCs Consortium, the commencement to be reckoned as 01.08.2014.

6.0 Recoveries for delay in work completion: (i) Delay In Completion:

If CONTRACTOR is not able to achieve the Key Date, then you shail be fiable to pay liquidated damages at 0.25% per week (partial week would not be counted for this calculation) of contract value. The Liquidated Damage for delay in completion shail be limited to 5% of the contract value. Delay in providing the stage wise access to the CONTRACTOR by the CIDCO/TPL if any, shall be exempt! from levy of Liquidated Damage on pro rata basis.

ii) Failure to achieve Availability Targets:

> *If CONTRACTOR fails to achieve the availability targets set out in System Assurance Document within 24 months. then CONTRACTOR is liable to pay liquidated damages at the rate of 0.25% per month up to 2.5% of the contract value.*
>
> *(iii). Any other damages imposed by the Client (CIDCO) as specified in Genera! Specification of CIDCO Contract.*
>
> *(iv) Non compliance of instructions given by Client (CIDCQ) as per Clause 43.0 of SCC of the CIDCO contract.*
>
> *The overall liquidated damages under S No. (i to iii) of this Clause shall be restricted to 7.5% of the contract value.*

7. The entire Work Order dated 2 March, 2015 does not have an independent arbitration clause. As such the Applicant has relied on the arbitration clause No.31.3 of the General Conditions of Contract, executed between the Respondent No.1 and CIDCO and is noted below:

> *31.3 In the event the dispute or difference or claim, as the case may be, is not resolved, as evidenced by the signing of the written terms of settlement by the Parties, within 30 (thirty) days of reference for amicable settlement, the same shall be- finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. as amended and revised from time to time and for the time being in force (the Arbitration Act).*

8. The law as regards incorporation of arbitration clause by reference is discussed by the Supreme Court in the case of ***M. R. Engineers And Contractors Private Limited Vs. Som Datt Builders Limited*** reported in (2009) 7 SCC 696, wherein the Supreme Court dealt with the scope of Section 7(5) of the Arbitration and Conciliation Act, 1996. The issue

involved was whether the arbitration clause contained in the main contract would stand incorporated by reference in the subcontract, where the subcontract provided that it shall be carried out in accordance with the terms and conditions applicable to the main contract. The Supreme Court summarized the law as under:

> ***24.*** *The scope and intent of Section 7(5) of the Act may therefore be summarized 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 & 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 Government is a party), the arbitration clause forming part of such General Conditions of contract will apply to the contract between the parties.

9. The judgement of ***M. R. Engineers And Contractors Private Limited*** (supra) has been followed in various cases. In the case of ***Hirani Developers Vs. Nehru Nagar Samruddhi CHS Ltd. and Anr***. 2026 SCC Online SC 854, the Hon'ble Supreme Court has held that, an arbitration clause in another document would get incorporated into the contract by reference, if the contract contains clear reference to the document containing the arbitration clause and such reference to the other document clearly indicates the intention to incorporate the arbitration clause into the contract. The Supreme Court clarified that a general reference to another contract would not have the effect of incorporating the arbitration clause from the

referred document into the contract between the parties. In the case of ***NBCC (India) Limited Vs. Zillion Infra Projects Private Limited*** *(2024) 7 SCC 174,* The Supreme Court has observed that perusal of Section 7(5) of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document by the parties.

9A. The Supreme Court in the case of ***Inox Wind Limited*** (supra) 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. A general reference to a consensual standard form is sufficient for incorporation of an arbitration clause.

The Supreme Court in ***Inox Wind Limited*** (supra) referring to the judgement of Queen's Bench (U.K.) in the case of ***Habas Sinai Ve Tibbi Gazlar Insthisal Endustri AS V. Sometal Sal*** *2010 Bus LR 880* has noted following board categories in which the parties attempt to incorporate an arbitration clause :

> *(1) A and B make a contract in which they incorporate standard terms.*
>
> *These may be the standard terms of one party set out on the back of an offer letter or an order, or contained in another document to which reference is made; or terms embodied in the rules of an organisaiton of which A or B or both are members; or they may be terms standard in a particular trade or industry.*
>
> *(2) A and B make a contract incorporating terms previously agreed between A and B in another contract or contracts to which they were both parties.*

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

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

In Categories 1 and 2, a general reference would be sufficient for incorporation of an arbitration clause from a standard form of contract. In cases falling under Categories 3 and 4 mentioned above which are two-contract cases, it was held that a stricter rule has to be followed by insisting on a specific reference to the arbitration clause from an earlier contract.

Perusal of tender document dated 2 March, 2015 and the GCC executed between the Respondent No.1 and CIDCO would indicate that the present matter falls in the category (3) above, as such strict rule has to be followed for incorporation of arbitration agreement into the tender document dated 2 March, 2015 by special reference to the arbitration clause of GCC.

10. Thus, from the above noted judgments, it is clear that there has to be a specific incorporation of the arbitration clause, where the parties refer to another document and seek to apply the same to a later contract. In the instant case, upon a perusal of the clauses of the Work Order dated 2 March, 2015 it is to be noted that, there is no specific reference to arbitration clause 31.3 noted above. The technical specifications issued by the CIDCO and

corrigendum thereof are binding on the Applicant. From the tender document dated 2 March, 2015, it is apparent that all the technical specifications, annextures and other terms and conditions of the General Conditions of Contract executed between CIDCO and Respondent No.1 are incorporated into the Tender-cum-Work Order dated 2 March, 2015. However, there is no specific clause in the Tender-cum-Work Order incorporating the arbitration clause i.e. clause 31 of the Special Conditions of Contract executed between CIDCO and Respondent No.1.

11. The learned counsel for the Applicant has submitted that the issue as regards the applicability of clause 31 General Conditions of Contract be left to the Arbitrator to be decided under Section 16 and reliance is placed on the judgement of ***Ajay Madhusudan Patel & Ors.*** (supra) at para 64, where the Supreme Court has taken a view that the referral court is required to *prima facie* rule on the existence of the arbitration agreement, however, recognizing the complexity of determining whether the non-signatory party is veritable party of the arbitral agreement such a determination, the arbitral tribunal was considered the proper forum, since it can decide whether the non-signatory is a party to the arbitration agreement on the basis of factual evidence and application of legal doctrine. In this process, the non-signatory must also be given an opportunity to raise objections regarding the jurisdiction of the arbitral tribunal in accordance with the principles of natural justice.

12. The learned counsel for the Applicant has also relied upon the judgement of ***ASF Buildtech Private Limited Vs. Shapoorji Pallonji And Company Private Limited*** 2025 INSC 616, Particularly, at Para no. 96 whereas the Supreme Court has held, that the referral court only has to determine the *prima facie* existence of an Arbitration Agreement, whereas, the issue of determining parties to an arbitration agreement is quite distinct from "existence" of the arbitration agreement, as such issue relates the jurisdiction of competence of the arbitral tribunal, and thus, empowered to decide the same under Section 16.

13. It is further submitted that the approach of referral court in relation to the question of whether the non-signatory party is a veritable party to the arbitration agreement, in the case of ***Cox and Kings Ltd. v. SAP India Pvt. Ltd.*** (2024) 4 SCC 1, the Supreme Court has observed that once an arbitral tribunal stands constituted it becomes automatically open to all the parties to raise preliminary objections touching upon the jurisdiction of the tribunal and seek an adjudication thereof.

14. Referring to the above judgements learned counsel for the Applicant has stated that the matter be referred to the arbitral tribunal and the arbitral tribunal be called upon to decide the interpret issues as regards whether clause 31 of the General Conditions of Contract signed between the Respondent No.1 and CIDCO would also apply to the parties. However, this Court is unable to accept the submissions of the Applicant. Considering the judgements as noted above in ***M. R. Engineers And Contractors Private Limited*** (supra), ***NBCC (India) Limited*** (supra) and ***Hirani Developers***

(supra) and ***Inox Wind Limited*** (supra) and also considering the tender document, this Court holds that Clause 31 of the General Conditions of Contract signed between the Respondent No.1 and CIDCO is not incorporated in the Tender-cum-Work Order dated 2 March, 2015 executed between the Respondent No.1 and the Applicant. In absence of arbitration agreement between the parties, it would not be possible for this Court to refer the disputes to arbitration. Accordingly, the Commercial Arbitration Application is **dismissed**.

[ARUN R. PEDNEKER, J.]