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## **Supreme Court of India holds that a Letter Of Intent is not a concluded contract, and without a specific reference to arbitration clause in tender documents, does not give rise to an arbitration agreement under the Arbitration and Conciliation Act, 1996**

The Hon'ble Supreme Court of India ("Supreme Court") in its judgement of *Maharashtra State Electricity Distribution Company Limited and Ors. vs. R Z Malpani*<sup>1</sup>, dated April 9, 2026, allowed an appeal filed by the Maharashtra State Electricity Distribution Company Limited. It set aside the ex-parte order dated October 1, 2025 ("Impugned Order") passed by the Ld. Bombay High Court ("Bombay HC") in an arbitration application, wherein the Bombay HC had appointed a sole arbitrator under Section 11<sup>2</sup> of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). The Supreme Court, while allowing the appeal, held that a Letter of Intent ("LOI") issued in anticipation of a formal Work Order and contract does not constitute a concluded contract, and that in the absence of a concluded contract, no valid arbitration agreement under Section 7<sup>3</sup> of the Arbitration Act can exist. Furthermore, the Supreme Court held that a general reference, in the LOI, to tender documents does not amount to specific incorporation of an arbitration clause contained therein.

### **Brief facts**

Maharashtra State Electricity Distribution Company Limited ("MSEDCL"/"Appellant") is a State Government company, fully owned by the Government of Maharashtra, engaged in electricity distribution. R Z Malpani ("Respondent") is a partnership firm engaged in civil construction and allied businesses. In August 2021, the Appellant floated a tender for civil and interior renovation work across 134 (one hundred and thirty-four) CFC centers throughout Maharashtra, with a total estimated cost of INR 17,41,37,020 (Indian Rupees seventeen crore forty-one lakh thirty-seven thousand and twenty). The Respondent participated in the tender process and submitted its bid on September 3, 2021.

The Appellant, on November 16, 2022, issued an LOI accepting the Respondent's bid for a value of INR 17,76,19,699 (Indian Rupees seventeen crore seventy-six lakh nineteen thousand six hundred and ninety-nine). Pursuant to the LOI, the Respondent on November 29, 2022, furnished bank guarantees as security deposit and renewed them from time

<sup>1</sup> SLP (C) No. 36889 OF 2025 (decided on April 9, 2026)

<sup>2</sup> Section 11 of the Arbitration Act governs the appointment of arbitrators and provides the machinery for constituting an arbitral tribunal when parties fail to do so on their own.

<sup>3</sup> Section 7 of the Arbitration Act defines an 'arbitration agreement' as 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. The agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

to time. The LOI expressly stated that it was being issued to enable the Respondent “to start with preliminaries to start the work as soon as the detailed Work Order is issued”. Furthermore, Clause 23 of the Instructions to Tenderers in the tender documents additionally provided that the successful tenderer would execute a formal agreement with the Appellant in the Appellant’s standard proforma.

Despite repeated requests by the Respondent seeking issuance of a Work Order, the Appellant failed to issue the same or hand over the project sites to commence renovation work. On August 5, 2024, the Respondent terminated the contract citing the Appellant’s failure to hand over the project sites. On August 30, 2024, the Respondent issued a notice under clause 23 of the Special Conditions of Contract invoking arbitration and claiming compensation of INR 4,89,85,500 (Indian Rupees four crore eighty-nine lakh eighty-five thousand five hundred). On September 27, 2024, the Appellant formally cancelled the tender and refunded the EMD and Security Deposit on October 24, 2024.

The Respondent, on October 1, 2024, re-invoked the arbitration agreement. The Appellant specifically replied on November 4, 2024, contending that the tender documents along with the LOI were insufficient to form a valid contract or arbitration agreement. The Respondent thereafter filed an application under Section 11 of the Arbitration Act before the Bombay HC. Despite due service of notice, the Appellant failed to appear before the High Court on June 26, 2025, and July 17, 2025, respectively. The Bombay HC, by way of the Impugned Order, appointed a sole arbitrator, aggrieved of which the Appellant filed the present appeal.

## Issues

1. Whether *prima facie* there exists an arbitration agreement between the parties?
2. Whether the reference to arbitration under Section 11 of the Arbitration Act by the Bombay HC warrants interference by this court?

## Findings and analysis

The Supreme Court reaffirmed the principles under Section 11 of the Arbitration Act. It also held that the scope of inquiry under Section 11 of the Arbitration Act is confined to determining whether *prima facie* there exists an arbitration agreement. The Supreme Court while relying on *SBI General Insurance Co. Limited vs. Krish Spg.*<sup>4</sup>, further reaffirmed that tests of ‘eye of the needle’ and ‘ex-facie meritless’ no longer apply, as they require courts to examine contested facts even minimally, which is inconsistent with the principles of modern arbitration. The Supreme Court, on the questions of limitation and arbitrability, observed that the same is the subject matter to be left to the arbitral tribunal to decide in line with Section 16 of the Arbitration Act.

The Supreme Court also held that the LOI in itself does not create a concluded contract, nor does it create a binding legal relationship. Rather it is merely a ‘promise to make a promise’ and not a promise itself. The purpose of the LOI in this case was to merely set out preliminaries for a future formal contract. In the present case, the LOI explicitly contemplated the subsequent issuance of a Work Order and execution of a formal agreement, pursuant to the LOI, out of which none of the conditions materialised. Additionally, it was observed that mere furnishing of bank guarantee does not constitute a concluded contract, as neither the LOI nor the tender documents contemplate the same.

Furthermore, the Supreme Court while relying on *NBCC (India) Limited vs. Zillion Infraprojects Private Limited*<sup>5</sup> and *M.R. Engineers & Contractors (P) Limited vs. Som Datt Builders Limited*<sup>6</sup> clearly drew a distinction between the terms ‘reference’ and ‘incorporation’ of an arbitration clause. It was further held that Section 7(5) of the Arbitration Act provides that a reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement only if the reference is such as to make that arbitration clause part of the contract. A mere general reference in the LOI to the terms and conditions of the tender documents is not sufficient, and there must be a specific reference

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<sup>4</sup> (2024) 12 SCC 1

<sup>5</sup> (2024) 7 SCC 174

<sup>6</sup> (2009) 7 SCC 696

to the arbitration clause for it to be incorporated. Since the LOI did not mention any arbitration or dispute resolution clause and did not specifically incorporate Clause 23 of the special conditions of contract from the tender documents, no valid arbitration agreement could be said to exist.

The Supreme Court further distinguished the judgments *UNISSI (India) (P) Ltd. vs. Post Graduate Institute of Medical Education and Research*<sup>7</sup> and *Glencore International AG vs. Shree Ganesh Metals*<sup>8</sup> which were relied upon by the Respondent. It held that in these cases there was a contract which was actually acted upon, unlike the present case wherein no sites were ever handed over, no Work Order was issued, and the terms of the tender were never worked upon by the Respondent. The Supreme Court further observed that the Bombay HC's finding that the Appellant had not disputed the existence of an arbitration agreement was factually erroneous. The Appellant had specifically contested this in its reply dated November 4, 2024, and clearly stated the intention of the Respondent.

Furthermore, the Supreme Court, reaffirmed the principle of “*when in doubt, do refer*” and held that courts must lean towards referring disputes to arbitration when an arbitration agreement is prima facie existent. However, the present case was rare, wherein even on a prima facie view and without going into disputed facts, no arbitration agreement could be said to exist between the parties. In view of the same, the Supreme Court allowed the present appeal and set aside the Impugned Order passed by the Bombay HC.

## Conclusion

The present Supreme Court ruling is significant as it clarifies the interplay between LOIs, concluded contracts, and arbitration agreements in the context of public procurement and infrastructure contracts. The Supreme Court has firmly reiterated that an LOI issued in anticipation of a formal contract is merely preliminaries to the contract and does not crystallise into a binding agreement by itself. In the absence of a concluded contract, reliance on an arbitration clause embedded in tender documents will not suffice to establish a valid arbitration agreement under Section 7 of the Arbitration Act, unless the LOI specifically incorporates such clause by express reference.

The ruling has important practical implications for parties engaged in government contracts, where there are many occasions when there is a gap between issuance of the LOI and execution of the formal contract agreement. Moreover, during this gap period, the contractor is usually expected to mobilise its resources and commence preliminary works. In light of the present judgment, the contractors will need to be diligent as to the steps taken and work executed during this intervening period. In the absence of a formal contract agreement being executed, the procedure for resolution of disputes would be wholly different than what is stipulated in the tender documents.

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<sup>7</sup> (2009) 1 SCC 107

<sup>8</sup> (2025) SCC OnLine SC 1815

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