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

Judgment reserved on: 18.07.2025

Judgment pronounced on: 04.09.2025

+ **ARB. A. (COMM.) 25/2024 & I.A. 10158/2024**

INTEC CAPITAL LIMITED

.....Appellant

Through: Mr. Pranav Goyal, Ms. Pooja
Chaudhary, Ms. Mreeganka
Goyal, Mr. Vishant Singh,
Advs.

versus

MR SHEKHAR CHAND JAIN & ANOTHER

.....Respondents

Through: Mr. Mohit Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is an appeal filed under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996 (for brevity "*the Act*") against the impugned order dated 20.04.2024 passed by the learned arbitrator in an arbitration matter,



being Case Ref. No. DIAC/6864B/09-23 titled as “*M/s Intec Capital Ltd. v. M/s Shikhir Plast India Pvt. Ltd. & Others*”.

FACTUAL BACKGROUND

2. The description of the parties is that M/s Intec Capital Ltd. (hereinafter referred to as “*the appellant*”) is a Non-Banking Financial Company incorporated under the provisions of the Companies Act, 1956. Mr. Shekhar Chand Jain (hereinafter referred to as “*the respondent No. 1*”) is the proprietor of M/s Ganesh Polymers (hereinafter referred to as “*the respondent No. 2*”).
3. The appellant has preferred the present appeal against the order dated 20.04.2024 passed by the learned arbitrator in the arbitration proceedings, whereby the application filed by the respondents was allowed and the respondents were deleted from the array of parties.
4. The brief facts of the case as per the appellant are that in the year 2012, Ms. Poonam Jain (hereinafter referred to as “*the principal borrower No. 1*”), the proprietor of M/s Shri Digamber Polymers (hereinafter referred to as “*the principal borrower No. 2*”), approached the appellant seeking a loan facility. Amongst other securities, the respondents agreed to stand as personal guarantors for the said facility and executed separate Deeds of Guarantee on the same date as the Loan Agreement.
5. Relying upon the representations of the respondents, the appellant sanctioned a loan of Rs. 68,18,000/- to the principal borrower No. 2, with the principal borrower No. 1 as the authorised signatory. The loan was granted vide Loan Agreement dated 21.12.2012 and the respondents executed personal Deeds of Guarantee in support thereof.



6. The principal borrowers repeatedly defaulted in repayment. Consequently, the appellant was constrained to invoke the arbitration agreement contained in the Loan Agreement on 11.07.2015, being Clause 32 of the Loan Agreement, which is reproduced as under:

“32. ARBITRATION

32.1 Any conflict, difference, controversies, or disputes arising between the parties shall be resolved amicably at the first instance. Unresolved disputes, if any, shall be submitted / referred to arbitration of the Sole Arbitrator. The Sole Arbitrator shall be either the Director or Head Commercial Business of INTEC CAPITAL LIMITED or any other person nominated by him/them. The Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996, Rules thereunder, any amendments thereto and the language of the Arbitration shall be in English. The decision/award of the Arbitrator shall be final/conclusive and binding on the parties. The seat of Arbitration shall be Delhi.”

7. Thereafter, Mr. Ashish Kumar, Advocate, was appointed as the Sole Arbitrator and arbitration proceedings were commenced. The respondents duly participated in these proceedings. However, on 10.07.2023, the learned arbitrator recused himself from the matter.
8. Thereafter, this Court, *vide* the order dated 15.09.2023, allowed the application of the appellant seeking substitution of the arbitrator and appointed Mr. S.K. Sharma, Advocate, as the Sole Arbitrator to resolve the disputes between the parties. It is pertinent to note that no objection as to the



existence of an arbitration agreement was raised before this Court at that stage.

9. Subsequently, on 18.01.2024, the respondents filed an application under Section 151 of the Code of Civil Procedure, 1908, seeking their discharge from arbitration proceedings by relying on certain judicial precedents.
10. The appellant filed detailed written submissions dated 27.02.2024 opposing the application of the respondents. Further, upon additional research, learned counsel of the appellants also came across a judgment of the Hon'ble Supreme Court relevant to the issue and the same was duly forwarded to the learned arbitrator by email dated 10.04.2024. However, the same was not considered while passing the impugned order.
11. After considering the pleadings, the learned arbitrator, *vide* the impugned order dated 20.04.2024, allowed the application filed by the respondents and held that there does not exist a valid arbitration agreement between the appellant and the respondents, placing reliance upon the judgment of the Hon'ble Supreme Court in ***M.R. Engineers & Contractors Pvt. Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696.***
12. Aggrieved by the impugned order dated 20.04.2024 passed by the learned arbitrator, the appellant has filed the present appeal.

SUBMISSIONS OF THE APPELLANT

13. Learned counsel for the appellant submits that the central issue for determination before this Court is whether the respondents, who executed separate Deeds of Guarantee, can be held bound by the arbitration agreement contained in the Loan Agreement dated 21.12.2012.



- 14.** It is submitted at the outset that the principal borrowers are undisputedly bound by the arbitration agreement, both having executed the Loan Agreement dated 21.12.2012 which expressly contains an arbitration clause. This position is admitted and remains unchallenged on record. However, the learned arbitrator discharged the respondents from the reference on the ground that no arbitration agreement exists between the appellant and the respondents.
- 15.** Insofar as the respondents are concerned, they executed separate Deeds of Guarantee on the same date, i.e., 21.12.2012, in respect of the said Loan Agreement. The Deeds of Guarantee, being standard form agreements prepared by the appellant, expressly incorporate and make reference to the Loan Agreement. The material clauses are as follows:
- A.** Clause 2 records that the Guarantor acknowledges the Loan was disbursed at his/her request;
 - B.** Clause 3 records the undertaking of the Guarantor to guarantee repayment of the Loan and ensure due observance by the Borrower; and
 - C.** Clause 4 expressly states that the Guarantor has read and understood all terms and conditions of the Loan Agreement, agrees to be bound by the same and accepts that the Guarantee shall form an integral part of the Loan Agreement.

These clauses, read together, establish that the Guarantee and the Loan Agreement form part of a single composite transaction executed contemporaneously. The remaining clauses of the Deeds of Guarantee are complementary in nature and reinforce this position. Hence, by virtue of



Section 7(5) of the Act, the arbitration clause contained in the Loan Agreement thus stands incorporated into the Deeds of Guarantee.

16. It is submitted that the impugned order is unsustainable as the learned arbitrator has erred in law by misinterpreting the judgment of the Hon'ble Supreme Court in *M.R. Engineers & Contractors Pvt. Ltd. (supra)*. In paragraphs 8 and 9 of the said judgment, the Court drew a clear distinction between "incorporation by reference" and "incorporation in entirety". However, the learned arbitrator wrongly proceeded on the footing that the Deeds of Guarantee contained only a reference to the Loan Agreement, whereas Clause 4 makes it clear that the Loan Agreement stands incorporated in entirety, including its arbitration clause. The impugned order, having been passed in contradiction to the record and in disregard of binding precedent, suffers from patent illegality.
17. Further reliance is placed upon the judgment of the Hon'ble Supreme Court in *Shinhan Bank v. Carol Info Services Ltd., (2023) 20 SCC 388*, which categorically held that where the amenities agreement records that it forms part of the leave and license agreement, all terms of the amenities agreement, including the arbitration clause, stand incorporated. Applying this ratio, the present case goes beyond mere reference and falls squarely within the principle of incorporation.
18. It is pertinent to note that the Loan Agreement and the Deeds of Guarantee were executed as part of one composite transaction. The principle laid down in *Punjab National Bank Ltd. v. Bikram Cotton Mills & Anr., AIR 1970 SC 1973*, therefore applies. The Hon'ble Supreme Court in that case recognized that where agreements are executed contemporaneously as part of a single transaction, they must be read together to give full effect to the



intention of the parties. The intention here was clearly that the Loan Agreement and the Deeds of Guarantee operate together, binding both the Borrower and the Guarantors.

19. *In arguendo*, it is submitted that if the case is treated as one of “reference” rather than “incorporation”, the position would still not aid the respondents. Both the Loan Agreement and the Deeds of Guarantee are standard form contracts drafted by the appellant. In such circumstances, the law laid down in *M/s Inox Wind Ltd. v. M/s Thermocables Ltd.*, (2018) 2 SCC 519, becomes applicable. In the said judgment, the Hon’ble Supreme Court, relying on the dictum of Bingham LJ in *Federal Bulk Carriers Inc. v. C. Itoh & Co. Ltd.*, (1989) 1 Lloyd’s Rep 103 (CA), held that where agreements are standard form contracts, even a general reference is sufficient to incorporate an arbitration clause, including in “two-contract” situations. Thus, whether tested on the basis of incorporation or reference, the arbitration clause contained in the Loan Agreement stands attracted to the Deeds of Guarantee.
20. Further reliance is placed upon the judgment of this Court in *RBCL Piletech Infra v. Bholasingh Jaiprakash Construction Ltd. & Ors.*, 2024:DHC:5415, where this Hon’ble Court held that in composite transactions, guarantors who acknowledge liability as directors / partners / group entities of the borrower and at whose instance the loan is disbursed, are bound by the arbitration clause.
21. For the aforementioned reasons, the Deeds of Guarantee must be read as an integral part of the Loan Agreement and the respondents cannot escape the scope of the arbitration agreement. The impugned order dated 20.04.2024, by which the learned arbitrator discharged them from the arbitration



proceedings, suffers from legal infirmity and is liable to be set aside. Accordingly, the present appeal deserves to be allowed.

SUBMISSIONS OF THE RESPONDENTS

22. Learned counsel for the respondents submits that the respondents have not signed the Loan-cum-Facility Agreement, which alone contains the arbitration clause. Neither the Deeds of Guarantee executed by them contain any specific reference to the arbitration clause, nor is the clause itself reproduced therein. Hence, the respondents cannot be subjected to arbitral proceedings in the present matter.
23. The respondents executed separate Deeds of Guarantee to secure the loan availed by the principal borrowers. These Deeds of Guarantee are independent contracts, devoid of any arbitration clause or provision binding the respondents to the terms of the Loan Agreement.
24. It is submitted that while there are two distinct agreements: (i) the Loan Agreement containing the arbitration clause (to which the respondents are not signatories), and (ii) the Deeds of Guarantee (to which the respondents are signatories), the latter contains no arbitration clause. Being separate instruments, the Deeds of Guarantee cannot be merged with or treated as part of the Loan Agreement.
25. Clause 32.1 of the Loan Agreement uses the expression “parties”, which evidently refers only to the signatories of that agreement. Neither the language of the Loan Agreement nor the Deeds of Guarantee suggest that the terms of the Loan Agreement, including the arbitration clause, were incorporated or made applicable to the Guarantors.



26. The present case involves two separate and distinct agreements entered into by different sets of parties. The respondents were never made aware of the terms of the Loan Agreement and undertook liability solely to the extent of guaranteeing repayment of the loan upon default. The respondents never agreed to be bound by procedural terms such as arbitration. Thus, the essential elements of informed consent and mutual understanding, which are the foundation of contractual obligations, were absent.
27. It is a settled principle of contract law that an arbitration clause contained in one agreement cannot be enforced against a non-signatory unless there is a clear and specific incorporation of such clause by reference. In the present matter, such incorporation is conspicuously absent.
28. The Deeds of Guarantee do not contain any clause that could even remotely be construed as incorporating or adopting the arbitration clause of the Loan Agreement. Hence, it cannot be presumed or implied that the respondents agreed to submit disputes to arbitration.
29. In *M.R. Engineers & Contractors Pvt. Ltd. (supra)*, the Hon'ble Supreme Court held that the arbitration clause contained in the main contract would not apply to disputes arising under a subcontract unless specifically incorporated. Therefore, the ratio of this case directly supports the contention of the respondents that they cannot be compelled to arbitrate.
30. Reliance is placed on the judgment of the Hon'ble Supreme Court in *NBCC (India) Ltd. v. Zillion Infraprojects Pvt. Ltd., (2024) 7 SCC 174*, wherein the Court reiterated that a mere general reference in one contract to another contract does not result in incorporation of the arbitration clause of the latter. Similarly, in *S.N. Prasad, Hitek Industries (Bihar) Ltd. v. Monnet Finance Ltd. & Ors., (2011) 1 SCC 320*, the Hon'ble Supreme Court held that



arbitration under the Act can only take place between parties to the arbitration agreement. If disputes involve both signatories and non-signatories, arbitration may proceed only as between signatories, but cannot bind non-signatories.

31. Further reliance is placed upon the judgments of the Hon'ble Supreme Court in *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1 and *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*, (2021) 4 SCC 379, both of which reaffirm that the existence of a valid arbitration agreement is a *sine qua non* for reference to arbitration.
32. Similarly, this Court in *STCI Finance Ltd. v. Shreyas Kirti Lal Doshi & Anr.*, 2020 SCC OnLine Del 100, held that in the absence of a binding arbitration agreement, guarantors cannot be forced into arbitration proceedings.
33. It is further submitted that the reliance of the appellant on *Inox Wind Ltd.* (*supra*), *Shinhan Bank* (*supra*) and *RBCL Piletech Infra* (*supra*) are misplaced. In *Inox Wind Ltd.* (*supra*), the arbitration clause formed part of a standard form contract mutually signed by both parties. By contrast, in the present matter, the respondents never signed or consented to the Loan Agreement or its arbitration clause. In *Shinhan Bank* (*supra*), both agreements were executed by the same parties, which is not the case here. In *RBCL Piletech Infra* (*supra*), the facts involved composite commercial transactions unlike the present matter where the Deeds of Guarantee are independent contracts.
34. Therefore, it is submitted that the arbitration clause being part of a separate contract to which the respondents were not parties cannot bind them in the absence of express incorporation or consent. Hence, compelling the



respondents to arbitrate would amount to enforcing upon them a contract to which they never agreed, something impermissible in law.

35. For the aforementioned reasons, the learned arbitrator has correctly allowed the application filed by the respondents and thereby the respondents were deleted from the array of parties on the ground that no arbitration agreement exists between the appellant and the respondents. Thus, the present appeal is liable to be dismissed.

ANALYSIS AND FINDINGS

36. I have heard learned counsels of the parties and perused the material available on record.

37. The learned arbitrator held as under:

“27. Due to the aforesaid circumstances and reasons stated above, the Application of Respondents 3 & 4 is hereby allowed. Respondents 3 & 4 are not party to the Loan Agreement and cannot be bound by the arbitration clause contained therein. Therefore, Respondents 3 & 4 are discharged from the present proceedings.”

38. The core issue requiring determination is whether the arbitration clause contained in the Loan Agreement dated 21.12.2012 binds the respondents, who executed contemporaneous Deeds of Guarantee securing the said loan.
39. At the outset, it is undisputed that the Loan Agreement, executed between the appellant and the principal borrowers, contains an arbitration clause,



being Clause 32. It is also not in dispute that the respondents did not sign the Loan Agreement but executed separate Deeds of Guarantee on the same date. The question, therefore, turns on whether the arbitration clause in the Loan Agreement can be said to have been incorporated into the Deeds of Guarantee.

40. The appellant has placed reliance upon Clauses 2, 3 and 4 of the Deeds of Guarantee, particularly Clause 4, which records that the Guarantor has read and understood the Loan Agreement, agrees to be bound by its terms and conditions and accepts that the Guarantee shall form an integral part of the Loan Agreement. The Clauses are reproduced as under:

“2. INTEC CAPITAL LIMITED has at the request of the Borrower and the Guarantor agreed to provide LOAN to the Borrower.

3. The Guarantor, in consideration of INTEC CAPITAL LIMITED providing the LOAN, hereby guarantees the due performance and observance by the Borrower of all the terms and conditions of the Agreement and agrees to pay on first demand any moneys which may be due and etc.

4. The Guarantor confirms to have read and understood the terms and conditions governing the LOAN and agrees to be bound by the same. The Guarantor acknowledges and accepts that this Guarantee shall form an integral part of the Agreement.”

(Emphasis applied)



41. According to the appellant, these clauses establish incorporation of the Loan Agreement in its entirety, thereby attracting the arbitration clause by virtue of Section 7(5) of the Act, which reads as under:

“7. *Arbitration agreement.*—

(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.”*

42. *Per contra*, the respondents contend that the Deeds of Guarantee are independent contracts, not containing any arbitration clause or express incorporation of Clause 32 of the Loan Agreement. It is urged that unless the Deeds of Guarantee specifically incorporate the arbitration clause of the Loan Agreement, the respondents cannot be bound by arbitration proceedings. The respondents rely heavily on the judgment of the Hon’ble Supreme Court in ***M.R. Engineers & Contractors Pvt. Ltd. (supra)***, to argue that mere reference to another contract does not *ipso facto* incorporate its arbitration clause.

43. In my considered view, the distinction between “general reference” to another contract and “incorporation by specific reference” laid down in the decision of the Hon’ble Supreme Court in ***M.R. Engineers & Contractors Pvt. Ltd. (supra)*** is relevant and apposite. The relevant paragraphs of the said judgment read as under:

“8. *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. We will give a few instances of incorporation and mere reference to explain the position (illustrative and not exhaustive).

9. *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.*

(Emphasis applied)



44. On perusal, the Hon'ble Supreme Court held that a general reference to another document would not incorporate the arbitration clause of that document, unless the reference is specific to the arbitration clause or the entire document is expressly incorporated.
45. Thus, the test is whether there is clear intention of the parties to import the arbitration clause.
46. Applying this principle to the present case, it is seen that Clause 4 of the Deeds of Guarantee is not a mere general reference but expressly acknowledges that the Guarantor has read and understood the Loan Agreement, agrees to be bound by its terms and accepts the Guarantee to be an "integral part" of the Loan Agreement. The use of the phrase "integral part" is significant, as it denotes that the Guarantee is not intended to operate as an isolated instrument, but in conjunction with and subject to the terms of the Loan Agreement.
47. Thus, this satisfies the test of incorporation of the Loan Agreement in entirety.
48. Further, the reliance of the appellants on *Shinhan Bank (supra)* is well-founded. In that case, the Hon'ble Supreme Court held that where the amenities agreement forms part of the leave and license agreement, all terms of the leave and license agreement, including the arbitration clause, would stand incorporated. The relevant paragraphs of the said decision read as under:

"15. The plain consequence of Clause (1) of the amenities agreement is that all the terms of that agreement constitute an integral part of the Leave and Licence agreement. The amenities agreement does not merely contain a reference to the Leave and



Licence agreement. It incorporates all the terms of the amenities agreement as an integral part of the Leave and Licence agreement. By doing so, the parties have intended to make the arbitration clause in the amenities agreement an integral part of the Leave and Licence agreement.

16. *Section 7(5) of the Arbitration and Conciliation Act, 1996 stipulates that 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. Clause (1) of the amenities agreement is intended to make the arbitration clause which is embodied in the amenities agreement (Clause 17) an integral part of the Leave and Licence agreement.*

17. *In M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd. [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] , this Court held thus : (SCC p. 704, para 17)*

...

18. *The principle which emerges from the provisions of Section 7(5) is elucidated in para 19 of the judgment [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] , which is extracted below : (SCC p. 705)*

“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.”

19. The arbitration agreement which is embodied in Clause 17 of the amenities agreement was intended by the parties for all intents and purposes to be a part of the Leave and Licence agreement.”

49. Thus, the case of the appellant is on a stronger footing, since the Deeds of Guarantee reference the Loan Agreement in clear terms and expressly make themselves an integral part thereof.

50. The reliance placed by the respondents on **NBCC (India) Ltd. (supra)** and **S.N. Prasad (supra)** is distinguishable.

51. The relevant paragraph of **NBCC (India) Ltd. (supra)** reads as under:

“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.”

52. The relevant paragraph of **S.N. Prasad (supra)** reads as under:



“9. There is no dispute that the loan agreements among the first respondent (lender), the second respondent (borrower) and the third respondent (guarantor) contained a provision for arbitration. The said provision for arbitration is extracted below:

“In the event of any dispute, question or difference arising out of or in connection with this agreement and the respective rights and obligations of the parties hereunder, the same shall be referred to the arbitration in accordance with the provisions of the Arbitration Act, 1940.”

But the appellant was not a party to the same. In fact the appellant's letter of guarantee for Rs. 75 lakhs was given on 27-10-1995, prior to the dates of the two loan agreements. It is also not in dispute that the letter dated 27-10-1995 given by the appellant to the first respondent did not contain a provision for arbitration; and that except the said letter dated 27-10-1995, the appellant did not execute any document or issue any communication.”

53. On perusal, in **NBCC (India) Ltd. (supra)** and **S.N. Prasad (supra)**, the non-signatories were not shown to have expressly incorporated the terms of the principal contract. By contrast, in the present case, Clause 4 of the Deeds of Guarantee goes beyond a general reference and reflects express incorporation, thereby attracting the arbitration clause.
54. Even assuming that Clause 4 of the Deeds of Guarantee amounts only to a reference to the Loan Agreement, the present case would still fall within the exception recognized in **Inox Wind Ltd. (supra)**, wherein the Hon'ble



Supreme Court held that in the context of standard form contracts, even a general reference is sufficient to incorporate the arbitration clause. In the present case, the Loan Agreement and the Deeds of Guarantee are standard form documents, thereby satisfying this test as well. The relevant paragraphs of the said decision read as under:

“18. We are of the opinion 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. In M.R. Engineers [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] this Court restricted the exceptions to standard form of contract of trade associations and professional institutions. In view of the development of law after the judgment in M.R. Engineers [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] case, we are of the opinion that a general reference to a consensual standard form is sufficient for incorporation of an arbitration clause. In other words, general reference to a standard form of contract of one party will be enough for incorporation of arbitration clause. A perusal of the passage from Russell on Arbitration, 24th Edn. (2015) would demonstrate the change in position of law pertaining to incorporation when read in conjunction with the earlier edition relied upon by this Court in M.R. Engineers case [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd.,



(2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] . We are in agreement with the judgment in M.R. Engineers case [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] with a modification that a 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.”

(Emphasis applied)

55. The learned arbitrator, however, held that **Inox Wind Ltd. (supra)** was inapplicable, reasoning that the Loan Agreement and the Deeds of Guarantee constitute two separate contracts and, therefore, the case falls within the “two-contract” scenario.
56. I am of the considered view that this finding of the learned arbitrator is erroneous, as the Hon’ble Supreme Court clarified in paragraph 16 of **Inox Wind Ltd. (supra)**, the principle applicable to “single contract” cases has been extended even to situations where separate contracts exist, provided they are part of a single commercial relationship. The Court observed as under:

“16. For a better understanding of the single and two-contract cases and reference to standard form terms it is relevant to examine Russell on Arbitration, 24th Edn. (2015) which is as under: (See pp. 52-54, 24th Edn.)

...

Extension of the single-contract cases.

Recently, the courts appear to have extended the “single contract” principle applicable to standard



form contracts, where general words of incorporation will suffice, to other types of contract where the same rationale can be said to apply. Thus, if the document sought to be incorporated is a bespoke contract between the same parties, the courts have accepted this as a “single contract” case where general words of incorporation will suffice, even though the other contract is not on standard terms and constitutes an entirely separate agreement. The rationale for this approach is that the parties have already contracted on the terms said to be incorporated and are therefore even more likely to be familiar with the term relied on than a party resisting incorporation of a standard term. Put another way, if general words of incorporation are sufficient for the latter, they should be even more so for the former. The courts also appear to have accepted as a “single contract” case a situation where the contract referred to is between one of the parties to the original contract and a third party, where the contracts as a whole “were entered into in the context of a single commercial relationship”. (Para 2.050)”

(Emphasis applied)

- 57.** In light of this exposition, the Loan Agreement and the Deeds of Guarantee, though distinct in form, are part of a single composite transaction executed on the same date and intended to govern the same commercial arrangement.



The evident commercial intention was to secure the repayment of the loan by binding both the borrower and the guarantors to the same set of obligations, including the dispute resolution mechanism. The principle that contemporaneous documents forming part of a single transaction must be read together, as enunciated in *Punjab National Bank Ltd. (supra)*, also fortifies the case of the appellant. Therefore, the present case squarely falls within the “single contract” scenario envisaged in *Inox Wind Ltd. (supra)* and the arbitration clause contained in the Loan Agreement stands duly incorporated into the Deeds of Guarantee.

58. In view of the considered analysis, this Court finds that the learned arbitrator erred in treating the reference to the Loan Agreement in the Deeds of Guarantee as a mere general reference. On a proper construction, the terms of the Deeds of Guarantee establish incorporation of the Loan Agreement in entirety, thereby binding the respondents to its arbitration clause.
59. Hence, the impugned order dated 20.04.2024 passed by the learned arbitrator suffers from patent illegality under Section 37(2)(a) of the Act and is liable to be set aside.

CONCLUSION

60. For the said reasons, the present appeal filed under Section 37(2)(a) of the Act is allowed and the impugned order dated 20.04.2024 passed by the learned arbitrator in the arbitrator matter, being Case Ref. No. DIAC/6864B/09-23 titled as “*M/s Intec Capital Ltd. v. M/s Shikhir Plast India Pvt. Ltd. & Others*”, is hereby set aside.
61. Accordingly, the appeal is allowed and is disposed of.



JASMEET SINGH, J

SEPTEMBER 04th, 2025 / shanvi

Click here to check corrigendum, if any