



Saraswati Poddar
Senior Associate

SPECIFIC REFERENCE TO ARBITRATION CLAUSE IN CASE OF MULTIPLE CONTRACTS

Supreme Court (“**SC**”) in *NBCC (India) Limited* case¹ held that the arbitration clause from another contract must be specifically referenced in the main contract for it to apply.

Brief Facts.

NBCC (India) Limited (“**NBCC**”) issued an invitation for tender for construction of weir across River Damodar, containing *inter alia* the General and Special Conditions of Contract and Bill of Quantity (“**Tender Documents**”).

On fulfilment of tender criteria, NBCC, vide a Letter of Intent (“**LOI**”), awarded the contract to Zillion Infraprojects Private Limited (“**ZIPL**”), which stated that the terms and conditions mentioned in another contract *i.e.*, Damodar Valley Corporation (“**DVC**”) would apply *mutatis mutandis* to the LOI.

LOI provided for the resolution of dispute through civil court but the DVC provided for arbitration. Dispute arose and ZIPL invoked arbitration based on the clause in the DVC tender documents but there was no response from NBCC. Hence, ZIPL filed Section 11² petition seeking appointment of arbitrator.

The High Court of Delhi (“**HC**”) allowed the arbitration petition and appointed an arbitrator. NBCC challenged the decision of HC before the SC.

SC’s Judgment and Reasoning.

The SC:

- Relied on *M.R Engineers and Contractors Private limited* case³ which outlined the conditions for incorporating an arbitration clause from another document into a contract, which included:
 - a. A clear reference to the document containing the arbitration clause.
 - b. Clear intention to incorporate the arbitration clause into the contract.
 - c. Appropriateness of the arbitration clause, meaning it must be applicable to disputes under the contract and not contradictory to any contract term.

¹*NBCC (India) Limited vs. Zillion Infraprojects Private Limited* (2024) SCC OnLine SC 323.

² Appointment of arbitrators.

³ *M. R Engineers and Contractors Private Limited vs. Som Datt Builders Limited* (2009) 7 SCC 696.

- Emphasized that a general reference to another contract does not automatically incorporate the arbitration clause from the referred document.
- Held: “...[W]hen 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.”⁴
- Further held: “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 L.O.I., which is also a part of the agreement, makes it amply clear that the redressal of the dispute between the NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone.”⁵
- Concluded that the HC erred by appointing an arbitrator and emphasized the importance of clear and specific language when incorporating arbitration clause from another document.

This *Counselence Connect* contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For legal advice, please contact us at: info@counselence.com.

Past issues of *Counselence Connect* are available on the ‘Newsletters’ page of our website.
(www.counselence.com)

⁴ Paragraph No. 22 of the judgment.

⁵ Paragraph No. 23 of the judgment.