

General Reference To Tender Documents In A Letter Of Intent Does Not Incorporate An Arbitration Clause: Supreme Court

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Introduction

In *Maharashtra State Electricity Distribution Company Limited & Ors. v. R Z Malpani* [2026 INSC 342], the Supreme Court examined whether a Letter of Intent issued pursuant to a tender process created a concluded contract and incorporated the arbitration clause contained in the tender documents.

The Supreme Court held that, on a prima facie view, there was no arbitration agreement between the parties. The Letter of Intent did not create a binding legal relationship, as it contemplated the issuance of a future work order and execution of a formal agreement.

The Supreme Court further held that even if the Letter of Intent were assumed to create a legal relationship, a general reference to the tender documents was not sufficient to incorporate the arbitration clause contained in those documents.

The judgment clarifies that while the referral court's enquiry under Section 11 of the Arbitration and Conciliation Act, 1996 is limited, arbitration cannot be imposed where no arbitration agreement exists even on a prima facie view.

In this article, we navigate through the facts of the case and the findings rendered by the Supreme Court.

Brief Facts

Maharashtra State Electricity Distribution Company Limited floated a tender for civil and interior works relating to renovation of customer facilitation centres across Maharashtra. The tender documents contained Special Conditions of Contract, which included an arbitration clause.

R Z Malpani participated in the tender process and submitted its bid. A Letter of Intent dated 16 November 2022 was thereafter issued in favour of R Z Malpani. The Letter of Intent stated that the work was entrusted subject to terms and conditions, but also clarified that it was issued to enable the bidder to complete preliminaries and to start work once a detailed work order was issued. No work order was issued. No formal agreement was executed between the parties. The sites were also not handed over.

R Z Malpani invoked arbitration by relying on the arbitration clause contained in the tender documents. MSEDCL disputed the existence of any concluded contract or arbitration agreement.

R Z Malpani filed an application under Section 11 of the Arbitration Act before the Bombay High Court. The High Court appointed a sole arbitrator. MSEDCL challenged the order before the Supreme Court.

Arguments from Both Sides

MSEDCL contended that there was no concluded contract between the parties. It was submitted that the Letter of Intent was only a precursor to a future work order and formal agreement. Since neither a work order was issued nor a formal agreement was executed, the Letter of Intent could not be treated as a binding contract.

MSEDCL further submitted that a general reference in the Letter of Intent to the tender documents did not incorporate the arbitration clause contained in the tender documents. The arbitration clause could be incorporated only if there was a specific reference showing an intention to make that clause part of the contract.

R Z Malpani contended that the order appointing an arbitrator should not be interfered with, as the scope of scrutiny under Section 11 is limited. It was submitted that the existence of an arbitration agreement could be gathered from the tender documents, the bid, the Letter of Intent and the conduct of the parties.

R Z Malpani further submitted that a formal contract is not always necessary for an arbitration agreement. According to R Z Malpani, once the tender conditions containing an arbitration clause were accepted and acted upon, a valid arbitration agreement came into existence.

Findings of the Supreme Court

The Supreme Court allowed the appeal and set aside the order appointing an arbitrator.

The Supreme Court first considered the scope of enquiry under Section 11 of the Arbitration Act. The Supreme Court referred to ***Vidya Drolia v. Durga Trading Corporation* [(2021) 2 SCC 1]**, ***NTPC Ltd. v. SPML Infra Ltd.* [(2023) 9 SCC 385]**, ***Interplay Between Arbitration Agreements under Arbitration Act, 1996 and Stamp Act, 1899, In re* [(2024) 6 SCC 1]**, and ***SBI General Insurance Co. Ltd. v. Krish Spg.* [(2024) 12 SCC 1]**.

The Supreme Court noted that the present position is that, at the Section 11 stage, the court is required to examine only the prima facie existence of an arbitration agreement. Issues such as accord and satisfaction, limitation, frivolity and arbitrability are ordinarily left to the arbitral tribunal. However, the present case required examination of whether an arbitration agreement existed at all.

The Supreme Court then examined the tender framework and the Letter of Intent. The tender documents contemplated that the successful tenderer would execute an agreement in the company's standard form. The Letter of Intent itself stated that it was issued to enable the bidder to complete preliminaries and start work once the detailed work order was issued.

The Supreme Court noted that no work order was ever issued and no formal agreement was executed. The mere submission or renewal of bank guarantees did not create a concluded contract, particularly when the tender documents and the Letter of Intent contemplated further steps.

The Supreme Court relied on ***State of Himachal Pradesh v. OASYS Cybernetics Pvt. Ltd.* [2025 SCC OnLine SC 2536]**, where the legal character of a letter of intent was considered. In ***OASYS Cybernetics (supra)***, the Supreme Court held that a letter of intent is ordinarily a precursor to a contract and not the contract itself. It creates no vested right unless it crosses the threshold of final and unconditional acceptance.

The Supreme Court also referred to ***South Eastern Coalfields Limited v. S. Kumar's Associates AKM (JV)* [(2021) 9 SCC 166]**, where it was held that whether a concluded contract exists depends on the terms of the tender, the letter of intent and the conduct of the parties.

Applying these principles, the Supreme Court held that the Letter of Intent in the present case was a promise to make a promise, and not a promise itself. It did not evince a commercial intention to create a binding legal relationship. It merely laid down preliminary conditions in contemplation of a future work order and agreement.

The Supreme Court then considered the alternative argument that even if the Letter of Intent were treated as a contract, the arbitration clause in the tender documents was not incorporated.

The Supreme Court referred to Section 7(5) of the Arbitration Act, which provides that reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement only if the reference is such as to make the arbitration clause part of the contract.

The Supreme Court relied on ***NBCC (India) Ltd. v. Zillion Infraprojects Pvt. Ltd.* [(2024) 7 SCC 174]**, where the distinction between reference and incorporation was explained. In ***NBCC (supra)***, the Supreme Court had relied on ***M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd.* [(2009) 7 SCC 696]** and clarified that a general reference to another document does not incorporate the arbitration clause contained in that document. Incorporation requires a clear intention to make the arbitration clause part of the contract.

Applying *NBCC (supra)* and *M.R. Engineers (supra)*, the Supreme Court held that the Letter of Intent made only a general reference to the tender documents. It did not refer to arbitration or dispute resolution. It did not specifically incorporate the arbitration clause contained in the Special Conditions of Contract.

The Supreme Court distinguished *UNISSI (India) (P) Ltd. v. Post Graduate Institute of Medical Education and Research [(2009) 1 SCC 107]*, where the tender had been acted upon and supplies had been made despite the absence of a formal contract. In the present case, no work order was issued, no formal agreement was executed, no site was handed over, and no work commenced.

The Supreme Court therefore held that this was a rare case where even on a prima facie view, no arbitration agreement existed. The order appointing an arbitrator was accordingly set aside.

Comment

The judgment in *Maharashtra State Electricity Distribution Company Limited (supra)* clarifies two important principles in tender-based arbitration disputes.

First, a Letter of Intent does not automatically create a concluded contract. The legal effect of a Letter of Intent depends on its terms and the surrounding contractual framework. If the Letter of Intent contemplates further steps such as issuance of a work order or execution of a formal agreement, it may not by itself create binding contractual obligations.

Second, a general reference to tender documents does not automatically incorporate the arbitration clause contained in those documents. Section 7(5) requires the reference to be such as to make the arbitration clause part of the contract. A general adoption of tender terms, without specific incorporation of the arbitration clause, may not suffice.

The decision is particularly relevant in public procurement disputes, where tender documents often contain arbitration clauses but parties may not ultimately execute the contemplated contract. The judgment makes it clear that arbitration cannot be imposed merely because an arbitration clause exists somewhere in the tender documents.

The Supreme Court has also preserved the limited nature of Section 11 scrutiny. The decision does not expand judicial interference at the referral stage. Rather, it recognises that the existence of an arbitration agreement is the foundational enquiry under Section 11. Where even that threshold is not met, reference to arbitration cannot be ordered.

The judgment therefore reinforces the central role of consent in arbitration. A party cannot be compelled to arbitrate unless the agreement to arbitrate is clearly established, either directly or by valid incorporation.

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