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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION APPLICATION (l) NO.16074 OF 2026

Nina Percept Private Limited ... Applicant

Vs.

1. Kyraa Infra Projects
2. Kamlesh Shah
3. Raj Shah ... Respondents

ATUL GANESH KULKARNI

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Date: 2026.09.01 15:09:32 +0530

Mr. Sahil Mahajan with Ms. Smriti Sahani and Ms. Siddhi Patil for the Applicant.

Mr. Bankim Gangar i/by Gangar & Co., for the Respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 27, 2026.

PRONOUNCED ON : SEPTEMBER 1, 2026

JUDGMENT:

1. By the present Application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicant is seeking appointment of an Arbitrator on behalf of the Respondents. The Applicant states that after appointment of the Arbitrator on behalf of the Respondents, both the Arbitrators can appoint the third and Presiding Arbitrator. The said Arbitral Tribunal would then decide

and resolve the disputes and differences between the parties.

2. The facts and circumstances because of which the present Application has been filed are stated as follows. The Applicant, "Nina Percept Pvt. Ltd.", is a Private Limited Company carrying on the business of providing external waterproofing services for building and infrastructure projects. Respondent No.1 is a partnership Firm carrying on the business of construction, development and re-development. Respondent Nos.2 and 3 are the partners of Respondent No.1 and are responsible for its business, management and day-to-day affairs. On 22 March 2021, the Respondent engaged the Applicant for carrying out waterproofing work at its project known as "145 Eden/145 Business Bay Saraswati CHS Ltd." situated at Ghatkopar (East), Mumbai. This was done under Work Order No. SG/KYR/037/20-21 dated 22 March 2021. The said Work Order sets out the work to be carried out, the commercial terms and the other conditions governing the relationship between the parties. On 21 June 2021, 7 July 2021, 11 August 2021, 10 November 2021, 23 February 2022, 31 March 2023, 19 May 2023, 4 August 2023, 31 August 2023 and 27 December 2023, after carrying out the work, the Applicant raised invoices upon the Respondents. The Respondents received the said invoices. According to the Applicant, the Respondents accepted the invoices without raising any dispute, objection or protest regarding the quality, quantity or price of the work carried out. On 21 August 2024, a meeting was held between the parties for resolving the matter. As stated in the minutes of the meeting, the Respondents acknowledged their liability and agreed to pay the outstanding

amount. This included the amount shown in the invoices and the abstract amount. According to the books of accounts of the Applicant maintained in the ordinary course of business, an amount of Rs.19,89,215/- and an abstract payment of Rs.4,46,788.91/- was due and payable by the Respondents. The Applicant, by its letter dated 14 October 2025, called upon the Respondents to pay the outstanding amount of Rs.24,36,005/-. Even after receiving the said letter, the Respondents did not pay the outstanding amount. The Applicant sent several emails requesting the Respondents to clear its dues. According to the Applicant, despite these repeated requests and reminders, the Respondents did not resolve the matter. Therefore, the Applicant invoked the Arbitration Agreement by Advocate's Notice dated 24 December 2025 and appointed Mr. Puneet Arora as its nominee Arbitrator.

3. On 9 September 2024, it is stated that the Board of Directors of the Applicant Company had passed a resolution dated 1 August 2024. By the said resolution, Mr. Sanjay Bahadur, Director, or Mr. Sandeep Batra, Director, or Ms. Hemamalini Uppoor, Whole Time Director and CEO of the Company, were authorised to represent the Company and sign legal proceedings on its behalf before the Court of Law/Tribunal. The said resolution permitted the Directors to delegate their powers to the employees of the Company whose names were mentioned in the resolution. The name of Mr. Tushar Varte is mentioned in the said resolution, under which any of the Directors could sub-delegate their powers to him. On 30 October 2024, Ms. Hemamalini Uppoor, Director of the Applicant Company,

executed a Special Power of Attorney in favour of Mr. Tushar Varte. The Applicant therefore states that the present Application has been properly filed on its behalf.

4. Mr. Sahil Mahajan, learned Advocate appearing for the Applicant, submitted that the Work Order contains an Arbitration Clause, being Clause 12, for resolving any dispute arising between the parties. The said clause reads as follows:

> "In the event of any misunderstanding, dispute or conflicts between M/s. Kyraa Infra Projects and M/s. Nina Percept Pvt. Ltd. and if the same cannot be resolved amicably, then the same shall be resolved by arbitration in accordance with the Arbitration & Conciliation Act, 1996, and by a Board of three Arbitrators, at Mumbai."

5. It was submitted that the Work Order contains a valid and binding Arbitration Clause. According to the Applicant, the clause provides that if any dispute arises between the parties and the same cannot be resolved amicably, such dispute has to be referred to arbitration before a panel of three Arbitrators at Mumbai, in accordance with the Arbitration and Conciliation Act, 1996. It was submitted that the disputes which have arisen between the parties are connected with the Work Order and the obligations arising under it. Therefore, according to the Applicant, the disputes fall within the scope of the Arbitration Agreement contained in the Work Order. In support of his submissions, Mr. Mahajan relied upon the judgments of the Supreme Court in the cases of *Glencore International AG v. Sheee Ganesh Metals and Others,* 2025 SCC OnLine SC 1815*, Caravel Shipping Services Pvt. Ltd. v. Premier Sea Foods Exim Pvt. Ltd.,* (2019) 11 SCC 461*,* and *Hi Style India Pvt.*

Ltd. v. Rakesh Corporation, 2025 SCC OnLine Bom 4504.

6. Mr. Gangar, learned Advocate appearing for the Respondents, submitted at the outset that the present Arbitration Application is not maintainable. According to him, the Applicant and the Respondents have not signed any agreement containing the Arbitration Clause. He submitted that Exhibit "A" to the Arbitration Application is the Work Order issued by Respondent No.1. Though the said Work Order bears the signature of Respondent No.2, who is a partner, it does not bear the signature of the Applicant. Mr. Gangar submitted that Exhibit "B" to the Arbitration Application is an invoice stated to have been issued by the Applicant to Respondent No.1. However, according to the Respondents, the said invoice does not bear the signature of the Applicant. On this basis, it was submitted that there is no Arbitration Agreement between the Applicant and the Respondents. Therefore, according to the Respondents, the alleged disputes between the parties cannot be referred to arbitration.

7. The Respondents relied upon the same objection in respect of the other invoices. It was submitted that Exhibits "C" to "K" to the Arbitration Application are various invoices stated to have been issued by the Applicant to Respondent No.1. According to the Respondents, none of these invoices bears the signature of the Applicant. It was therefore again submitted that there is no Arbitration Agreement between the Applicant and the Respondents and, consequently, the alleged disputes cannot be referred to arbitration.

REASONS AND FINDINGS:

8. I have considered the present Application, the Work Order, the invoices placed on record, the minutes of the meeting dated 21 August 2024, the correspondence exchanged between the parties and the submissions made by Mr. Sahil Mahajan, learned Advocate for the Applicant, and Mr. Gangar, learned Advocate for the Respondents. The main objection of the Respondents is that there is no Arbitration Agreement between the parties. According to the Respondents, the Work Order is signed only by Respondent No.2, and it is not signed by the Applicant. It is submitted that the invoices relied upon by the Applicant do not bear the signature of the Applicant and therefore those invoices cannot show existence of any Arbitration Agreement.

9. This objection is required to be considered first. If there is no Arbitration Agreement between the parties, there would be no question of appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. At the same time, at this stage the Court is not required to hold a trial in respect of all disputes between the parties. The question, which arises is whether it can be prima facie seen that the parties had agreed that their disputes can be referred to arbitration.

10. The Respondents have mainly proceeded on the footing that an Arbitration Agreement must have the signatures of both parties. I am unable to accept this submission. The legal position relied upon by the Applicant shows that an Arbitration Agreement is required to be in writing. However, in every case, a separate

signature of both parties is not the only manner in which the agreement can be established.

11. In *Glencore International AG* , the Supreme Court considered a case where one party had not signed the contract containing the arbitration clause. In paragraph 19, the Supreme Court observed:

> "There is no denying the legal proposition that an arbitration agreement can be inferred even from an exchange of letters, including communication through electronic means, which provide a record of the agreement."

12. Thus, merely because one party has not signed the document, the matter does not come to an end. If the conduct of the parties shows that they accepted and acted upon the contract, such conduct can be considered for deciding whether the arbitration clause was accepted. The conduct of the parties in acting upon the contract can show acceptance of its terms, including the arbitration clause. This principle is relevant to the objection raised in the present case. The Respondents have pointed out that the Applicant has not signed the Work Order. This fact cannot be ignored. However, the Court cannot stop the consideration only by looking at the signature on the Work Order. What was done by the parties after the Work Order was issued is required to be considered.

13. The Applicant's case is that it was engaged under the Work Order for carrying out waterproofing work at the project of the Respondents. After the work was carried out, the Applicant raised invoices on 21 June 2021, 7 July 2021, 11 August 2021, 10 November 2021, 23 February 2022, 31 March 2023, 19 May 2023,

4 August 2023, 31 August 2023 and 27 December 2023. It is the case of the Applicant that the Respondents received these invoices. There is no material shown to this Court which demonstrates that, at the relevant time, the Respondents rejected the Work Order by stating that they had never agreed to it. The Applicant has relied upon the meeting held between the parties on 21 August 2024 and the minutes of the said meeting. According to the Applicant, in that meeting the Respondents acknowledged the outstanding liability and agreed to make payment. The Applicant has relied upon its letter dated 14 October 2025 calling upon the Respondents to pay Rs.24,36,005/-. According to the Applicant, even after receiving the said letter, the Respondents did not dispute the basic transaction and did not make payment of the outstanding amount. These circumstances are relevant because they show the conduct of the parties after the Work Order was issued. It is true that the Respondents dispute the very existence of the Arbitration Agreement. However, their main objection is that the Applicant has not signed the Work Order and has not signed the invoices. These facts, by themselves, are not sufficient to hold that the parties never agreed to the Work Order or that the arbitration clause contained in it can never be acted upon. The Court is required to consider the conduct of the parties in the background of the entire transaction.

14. In *Govind Rubber Limited v. Louis Dreyfus Commodities Asia Private Limited*, as noticed by the Supreme Court in paragraph 27 of *Glencore*, it was held that a commercial document containing an arbitration clause should be considered in a manner which gives

effect to the agreement between the parties instead of making the arbitration clause ineffective. The intention of the parties is therefore relevant. The following observation quoted in paragraph 27 is material:

> "16. On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication."

15. The Court observed:

> "If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement."

16. The words "at ad idem", in simple terms, mean that the material should prima facie show that both sides were agreeing to the same arrangement.

17. In the present case, there is a specific Work Order bearing No. SG/KYR/037/20-21 dated 22 March 2021. The Work Order sets out the work to be carried out and the terms under which the work was to be done. It contains Clause 12, which provides:

> "In the event of any misunderstanding, dispute or conflicts between M/s. Kyraa Infra Projects and M/s. Nina Percept Pvt. Ltd. and if the same cannot be resolved amicably, then the same shall be resolved by arbitration in accordance with the Arbitration & Conciliation Act, 1996, and by a Board of three Arbitrators, at Mumbai."

18. Thus, there is no uncertainty about what the arbitration clause provides. The question, which remains is whether the

Applicant, though it has not signed the Work Order, can be said to have accepted the Work Order and its terms from the conduct and material placed on record.

19. On this aspect, the subsequent conduct of the parties becomes important. The Applicant states that it actually carried out the waterproofing work mentioned in the Work Order. The Respondents thereafter received the invoices raised for that work. There is no material shown before me to indicate that, at the relevant time, the Respondents rejected the entire transaction by stating that there was no Work Order accepted by them or that the Applicant had carried out the work without any agreed arrangement. On the contrary, the material relied upon by the Applicant shows that the parties continued to deal with each other in relation to the same transaction. Thereafter, a meeting was held for resolving the outstanding amount. Therefore, the conduct of the parties cannot be separated from the written Work Order.

20. I have considered the submission of Mr. Gangar that the invoices do not bear the signature of the Applicant and therefore those invoices cannot assist the Applicant. If the invoices are considered, this submission may have some force to the limited extent that the invoices alone may not constitute a signed Arbitration Agreement. However, the Applicant is not relying upon the invoices as the document containing the arbitration clause. The arbitration clause is contained in the Work Order. The invoices are relied upon as part of the subsequent conduct of the parties. Therefore, the absence of the Applicant's signature on the invoices cannot by defeat the Arbitration Agreement contained in the Work

Order.

21. In *Caravel Shipping Services Private Limited v. Premier Sea Foods Exim Private Limited*, referred to by the Supreme Court in paragraph 28 of *Glencore*, the legal position was reiterated that an Arbitration Agreement must be in writing, but it need not be signed. The Supreme Court noted that Section 7(4) does not mean that in every case an Arbitration Agreement must bear the signatures of the parties. The basic requirement is that the agreement should be in writing. The same approach is applicable while considering the present Application. At this stage, this Court is not required to finally decide every disputed question which may arise between the parties in the arbitral proceedings. The Applicant has produced the Work Order containing the arbitration clause. It has placed material showing the alleged performance of the work and the subsequent dealings between the parties.

22. The Respondents have relied upon the absence of the Applicant's signature. However, on the material before the Court, they have not shown that the Work Order was rejected by them at the relevant time or that the transaction never took place. Therefore, the objection cannot be accepted merely because there is no signature of the Applicant.

23. The Respondents have submitted that there is no Arbitration Agreement because the Applicant and Respondent No.1 have not executed any separate agreement containing the Arbitration Clause. This submission cannot be accepted. The law does not require that an Arbitration Agreement must in every case be

contained in a separate document signed by both parties. An arbitration clause contained in a written commercial document can constitute the Arbitration Agreement if acceptance of its terms can otherwise be shown from the material and conduct of the parties.

24. I am conscious that the burden of establishing the existence of the Arbitration Agreement is upon the party relying upon it. However, as held by the Supreme Court and noticed in paragraph 24 of *Glencore*, at the stage of reference only prima facie proof of the existence of the Arbitration Agreement is required. The referral Court is not expected to conduct a mini-trial regarding the existence or validity of the Arbitration Agreement. If any question requires detailed evidence and examination, the same can be considered by the Arbitral Tribunal. Therefore, the submission of the Respondents cannot be accepted merely because the Applicant has not signed the Work Order. The entire transaction has to be considered. In the present case, there is a written Work Order containing Clause 12. There is the Applicant's case that it performed the waterproofing work under that Work Order. There are repeated invoices relating to the said work. There is material regarding subsequent discussions between the parties concerning the outstanding amount. At present, there is no material which conclusively shows that Respondent No.1 treated the Work Order as non-existent from the beginning.

25. The reliance of Mr. Gangar upon the absence of signatures on Exhibits "B" to "K" therefore does not take the Respondents' case any. Those invoices cannot be considered separately from the Work Order and the subsequent conduct of the parties. Whether the

invoices were actually accepted, whether the entire amount claimed by the Applicant is payable, whether the work was carried out in the required quality and quantity, and whether the Respondents have any defence to the claim are matters relating to the merits of the dispute. Those questions can be considered in arbitration. On the material available, they do not destroy the Arbitration Agreement at this stage.

26. The Respondents have not placed before me any material showing that Clause 12 is null and void, inoperative or incapable of being performed. On the contrary, Clause 12 provides for resolution of disputes by arbitration in accordance with the Arbitration and Conciliation Act, 1996. It provides for a Board of three Arbitrators at Mumbai. The clause therefore gives the method for resolution of the disputes and the place of arbitration.

27. I therefore find, on consideration of the material available, that there is prima facie an Arbitration Agreement between the parties contained in Clause 12 of the Work Order dated 22 March 2021. The fact that the Applicant did not sign the Work Order and that the invoices do not bear its signature do not, by themselves, make the Arbitration Agreement nonexistent. The subsequent conduct relied upon by the Applicant provides sufficient material, at this stage, to show acceptance of the transaction and to permit the arbitration clause to be acted upon.

28. The Applicant has submitted that the disputes between the parties arise out of the Work Order. This submission deserves acceptance at this stage. The claim of the Applicant is for amounts

which, according to it, remain unpaid towards the waterproofing work carried out under the Work Order. The claim is therefore connected with the performance of the work and the obligations arising from the Work Order. Such dispute falls within Clause 12, which covers "any misunderstanding, dispute or conflicts" between the parties where the same cannot be resolved amicably.

29. The Applicant has relied upon its attempts to resolve the dispute before invoking arbitration. It has referred to the meeting dated 21 August 2024, the letter dated 14 October 2025 and repeated emails seeking payment of the outstanding amount. The Respondents dispute their liability. But the existence of such dispute shows that a dispute has arisen from the transaction covered by the Work Order. Whether the Applicant is entitled to the amount claimed is a separate question. That question can be decided by the Arbitral Tribunal. The present case is therefore not one where the Applicant is trying to bring an arbitration clause from some unrelated document. The arbitration clause is contained in the Work Order relating to the very waterproofing work which, according to the Applicant, was carried out by it. The authorities relied upon by the Respondents regarding incorporation of an arbitration clause from another document therefore do not assist the Respondents on the facts of the present case.

30. On an overall consideration of the material and the submissions made by both sides, I am satisfied that the objection of the Respondents based upon the absence of the Applicant's signature cannot be accepted as a ground for rejecting the present

Application. The Applicant has shown the existence of the Arbitration Agreement on a prima facie basis. The disputes raised by the Applicant arise out of the Work Order and therefore fall within the scope of Clause 12. I accordingly hold that the necessary requirements for invoking the jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996, are satisfied. The request for appointment of the nominee Arbitrator on behalf of the Respondents therefore requires to be considered in accordance with the arbitration mechanism contained in Clause 12 of the Work Order.

31. In view of the aforesaid, the present Application under Section 11 of the Act is disposed of in terms of the following order:

A) Ayushi Anandpara Parekh, Advocate of this court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Office Address:- C/o Rohaan Cama, Office Nos. 17–18, 1st Floor, Islam Building, Veer Nariman Road, Fort, Mumbai – 400001.

Email ID: ayushi.anandpara@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along

with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

32. All issues on merits are kept open to be agitated before the arbitral tribunal appointed hereby.

33. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

(AMIT BORKAR, J.)