IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16th DAY OF OCTOBER 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

CIVIL MISCELLANEOUS PETITION NO. 330 OF 2026

BETWEEN:

HITACHI ENERGY INDIA LIMITED
(FORMERLY KNOWN AS ABB POWER PRODUCTS
AND SYSTEMS INDIA LIMITED)
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT 2013
HAVING ITS REGISTERED OFFICE AT
8TH FLOOR, BRIGADE OPS 70/401
KODIGEHALLI MAIN ROAD
BENGALURU, KARNATAKA-560 092.

... PETITIONER

(BY SRI. NANDAKUMAR C K, SENIOR COUNSEL FOR
SRI. ADIT NILESH SHAH, ADVOCATE)

AND

ABB INDIA LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT 1956
HAVING ITS NOW REGISTERED OFFICE AT
DISHA, 3RD FLOOR, PLOT NO.5 & 6
2ND STAGE, PEENYA INDUSTRIAL AREA IV
PEENYA, BENGALURU, KARNATAKA-560 058.

... RESPONDENT

(BY SRI.NANDA KISHORE, ADVOCATE)

THIS CMP IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO APPOINT HON'BLE MR. JUSTICE NAGARAJA RAO KUMAR(RETD) FORMER JUDGE OF THE HON'BLE SUPREME COURT OF INDIA, OR SUCH OTHER FIT AND PROPER PERSON AS THIS HON'BLE COURT MAY DEEM FIT, AS THE SOLE ARBITRATOR TO ADJUDICATE THE DISPUTES THAT HAVE ARISEN BETWEEN HITACHI AND ABB UNDER AND IN RELATION TO THE JOINT OPERATIONAL PROTOCOL AGREEMENT DATED 9 MARCH 2021, IN TERMS OF CLAUSE 13 OF THE SAID AGREEMENT (ANNEXURE-B).

THIS PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.10.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

CAV ORDER

This petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "the 1996 Act") seeks appointment of a Sole Arbitrator to adjudicate upon the disputes arising under the subcontract dated 07.12.2020. The subcontract contains no independent arbitration clause. The petitioner relies on incorporation by reference of Clause 13 of the Joint Operational Protocol Agreement

dated 09.03.2021 (for short, "JOPA") into the said subcontract.

2. The petitioner is a company incorporated under the Companies Act, 2013, and is engaged, inter alia, in the business of power grids, including products, systems and projects relating to power grids automation, integration, high-voltage products and transformers. The respondent is a company incorporated under the Companies Act, 1956, and is engaged in the business of electrification, motion, process automation and robotics.

3. By order dated 27.11.2019, the National Company Law Tribunal, Bengaluru, sanctioned a Scheme of Arrangement under Sections 230 to 232 of the Companies Act, 2013, whereby, the respondent's power grid business stood transferred to and vested in the petitioner with effect from 01.04.2019.

4. On 14.03.2020, Indian Oil Corporation Limited (for short, "IOCL") awarded the Barauni Refinery Project contract to the respondent. On 19.03.2020, the parties jointly requested IOCL to novate the project contract in favour of the petitioner pursuant to the Scheme. IOCL declined novation but approved a subcontracting arrangement permitting the petitioner to execute the project as the respondent's subcontractor.

5. Accordingly, the parties executed the subcontract agreement dated 07.12.2020. Towards IOCL, the respondent continued as main contractor and the petitioner undertook execution as the subcontractor. As between the parties, the agreement described the respondent's role as fiduciary agent and allocated the project benefits, costs, liabilities and risks to the petitioner.

6. Before 07.12.2020, i.e., on 02.12.2020, the parties have agreed upon the terms and conditions of JOPA to govern their operational arrangements for contracts that could not immediately be novated. It was subsequently registered on 09.03.2021. JOPA contains an arbitration clause in Clause 13. The petitioner relies on JOPA as the standard form contract governing the framework referred to in the project-specific subcontract. To determine whether there is a valid arbitration agreement between the parties, the issue to be decided before this Court is whether a reference to JOPA in the subcontract incorporates the said arbitration clause for disputes arising under the subcontract.

7. On disputes arising in connection to operationalising of the subcontract, the petitioner instituted proceedings under Section 9 of the 1996 Act in Com.A.A. No.33/2026 before the LXXXVII Additional

Chief Civil and Sessions Judge, Commercial Court, Bengaluru. An ad interim ex parte order was granted on 23.01.2026. By order dated 25.04.2026, the Commercial Court dismissed the proceedings and vacated the ad interim order. The petitioner preferred COMAP No.264/2026 under Section 37 and, obtained an interim order therein. The said appeal is pending before the Division Bench of this Court.

8. Meanwhile, the petitioner issued notice dated 15.04.2026 under Section 21 invoking JOPA Clause 13, produced as Annexure-J. The respondent replied on 15.05.2026, as reflected in Annexure-K. The petitioner states that the respondent did not agree to constitute the arbitral tribunal in accordance with the agreement and it has therefore, approached this Court.

9. Learned counsel for the petitioner submits that JOPA is a standard form contract governing the parties' arrangements for unnovated projects, while the subcontract sets out the project-specific obligations. The disputes arose under the latter. Nevertheless, the subcontract refers to JOPA as the governing standard contractual framework. The petitioner therefore invokes Section 7(5) of the 1996 Act, rather than contending that the disputes originate under JOPA.

10. It is further submitted that Clause 5 of subcontract expressly makes JOPA an integral part of subcontract and Clause 6 gives JOPA precedence in the event of inconsistency. These provisions demonstrate acceptance of the standard framework. The arbitration clause need not be reproduced in the subcontract or separately identified where the

reference adopts the consensual standard terms and conditions of the JOPA as an integral part.

11. In support of his contention, learned counsel relied upon **INOX Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519,** and **Giriraj Garg v. Coal India Ltd., (2019) 5 SCC 192**, and sought allowance of the petition.

12. Learned counsel for the respondent submits that the subcontract and JOPA are independent agreements; the subcontract contains neither an arbitration clause nor a provision specifically incorporating JOPA's arbitration clause. A general reference, even if present, is insufficient. According to the respondent, the documents do not disclose an intention to adopt JOPA in its entirety or to submit subcontract disputes to arbitration.

13. The respondent also contends that references to invoicing and routing of IOCL receipts through the respondent, followed by transfer to the petitioner under the JOPA, are operational arrangements and cannot import arbitration. Reliance is placed on **M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696, and NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd., 2024 INSC 218.** Accordingly, dismissal of the petition is sought.

14. Heard the learned counsel for both the parties.

15. The question is whether the subcontract's reference to JOPA, in its capacity as the parties' standard form contractual framework, incorporates Clause 13 as per under Section 7(5) of the 1996 Act, so as to permit arbitration of a dispute admittedly

arising under the subcontract. It is relevant to extract Section 7(5) of the 1996 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."*

16. The provision does not make every reference to another document an Arbitration Agreement. The reference must disclose an intention to adopt the arbitration clause as a part of the contract. What is to be ascertained from the contractual language is the intention, the function of the referred document and the extent of its adoption. Where the statutory requirement is fulfilled, physical reproduction of the arbitration clause is unnecessary.

17. In **SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 INSC 532,** the Supreme Court explains the limited examination of prima facie existence at the Section 11 stage. The Court must examine limitation of the application filed for the appointment of an arbitrator; questions concerning limitation of the substantive claims are for the tribunal to decide. This limited inquiry does not permit appointment of an arbitrator where the documents disclose no agreement to arbitrate.

18. In **M.R. Engineers & Contractors (P) Ltd. (supra),** particularly paragraph 24, the Supreme Court distinguished incorporation of an arbitration agreement by reference and mere general reference to another contract. A general reference to an independent contract ordinarily does not import arbitration, and adoption of performance terms alone is insufficient. The judgment also recognised

incorporation of arbitration agreement/clause when governing standard terms and conditions are adopted and that the imported clause must be applicable to disputes under the adopting contract, consistent with its terms.

19. In **INOX Wind Ltd. (supra),** the Supreme Court clarified that the standard form contract principle extends beyond trade associations and professional bodies and includes even the accepted standard terms of a contracting party. The purchase order there adopted accompanying standard terms that the supplier accepted. A general reference to those terms was sufficient to include arbitration. Accordingly, a separate mention of the arbitration clause is not invariably required when the reference embraces the terms of governing standard form contract. The relevant paragraphs are extracted below:

"17. This Court in M.R. Engineers & Contractors (P) Ltd. vs. Som Datt Builders Ltd. [(2009) 7 SCC 696],, which is discussed in detail supra, held the rule to be that an arbitration clause in an earlier contract cannot be incorporated by a general reference. The exception to the rule is a reference to a standard form of contract by a trade association or a professional institution in which case a general reference would be sufficient for incorporation of an arbitration clause. Reliance was placed by this Court on Russell on Arbitration 23rd Edition (2007). The development of law regarding incorporation after the judgment in M.R. Engineers requires careful consideration. It has been held in Habas Sinai Ve Tibbi Gazlar Isthisal Endustri AS v Sometal SAL that a standard form of one party is also recognized as a 'single contract' case. In the said case, it was also held that in single contract cases general reference is enough for incorporation of an arbitration clause from a standard form of contract. There is no distinction that is drawn between standard forms by recognized trade associations or professional institutions on one

hand and standard terms of one party on the other. Russell on Arbitration 24th Edition (2015) also takes note of the Habas case.

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 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' 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 Edition (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. We are in agreement with the

judgment in M.R. Engineers case 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."

20. In **Giriraj Garg (supra),** the Apex Court held that in case of individual sale orders being governed by a standard contractual scheme, the arbitration clause in the said scheme formed a part of the sale orders through their governing reference. The distinction between a single-contract case and a two-contract case concerns the function of the referred terms. Several documents may constitute the contractual terms of one transaction.

21. **NBCC (India) Ltd. (supra),** does not displace **INOX Wind (supra).** Paragraph 15 expressly recognises incorporation of an arbitration clause/agreement through general reference to a

party's standard form contract. On its facts, however, the Court identified a two-contract situation involving another contract's terms and a letter of intent expressly directing disputes only to civil courts. "General reference" was therefore not held to be "incorporation" of the arbitration clause therein.

22. From these authorities, it is very clear that first, the adopting instrument must be in writing. Secondly, it must identify the document containing the arbitration clause. Thirdly, the reference must adopt that document in the form of governing standard form contract, rather than select isolated obligations. Fourthly, the clause must be capable of application to the subcontract dispute and must not conflict with the provisions of the concerned subcontract.

23. It is relevant to extract Clause 13 of JOPA and Clauses 2, 5 and 6 of subcontract. The same read as under:

Clause 13 of JOPA:

"13. Any dispute arising out of or in relation to this Agreement shall be resolved by final and binding arbitration, conducted in English, and held in Bengaluru (which shall also be the seat of arbitration) in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. A sole arbitrator shall be appointed jointly by the Parties within 30 (thirty) days of either Party requesting the other to suggest or approve a sole arbitrator. If the Parties fail to agree on a sole arbitrator within the 30 (thirty) days period mentioned above, then any of the Parties may request the relevant court in accordance with the Arbitration and Conciliation Act, 1996 to appoint the arbitrator. The foregoing shall not preclude either Party from seeking interim or injunctive reliefs or orders for interim preservation from the courts in Bengaluru, India."

Clauses 2, 5 and 6 of subcontract:

"2. Effect of Contract: Whenever reference is made in this agreement to the Contract, such reference shall be construed to include all documents forming a part of the Contract including but not limited to the plans, specifications, change orders, general conditions, supplemental conditions and addenda. To the extent that they are applicable to the work to be performed by APPSIL under this agreement, the provisions of the Contract that describe ABB's obligations to IOCL applicable to the entire Contract to be performed by APPSIL under this agreement are incorporated herein by this reference with the same force and effect as though set forth in full, APPSIL expressly assumes all of the main Contractor's obligations to IOCL applicable to the work to be performed under the Contract. APPSIL agrees to be bound to ABB to the same extent that ABB is bound to IOCL, by all terms and provisions of the Contract, and by all decisions, rulings, and interpretations made by IOCL or its authorized representative. In the event that any provision of this agreement as applied to the work of APPSIL hereunder is found to be inconsistent with the provisions of

the Contract, the provisions of the Contract shall prevail and shall govern the obligations of APPSIL under this Agreement.

……..

5. Attached - Arrangement between INABB and APPSIL required for Contract execution Annexure "A", FOA issued by IOCL to ABB Annexure "B", Contract executed between ABB and IOCL- Annexure "C", AND Joint Operation Protocol - Annexure "D" are integral parts of this Agreement.

6. Nothing in this Agreement is intended to affect the operation or interpretation of Joint Operation Protocol Agreement, Scheme and or other agreements entered pursuant to the Scheme. If there is any conflict or inconsistency between the provisions of this Agreement, Joint Operational Protocol Agreement and any of the Scheme, or other agreements entered pursuant to the Scheme, the provision of the Scheme and other agreement, the Joint Operational Protocol Agreement shall prevail over this Agreement to the extent of the inconsistency."

24. From the above, it is clear that JOPA provides the standard intercompany framework between the parties for unnovated projects and the subcontract applies that framework to the Barauni project. Its standard-form function lies in supplying the governing terms and conditions against which project-specific rights and obligations operate. The execution of the subcontract as a separately signed instrument does not, by itself, exclude the governing standard form contract principle.

25. It is undisputed that both parties agreed onto the terms of JOPA on 02.12.2020 which was later registered on 09.03.2021. The fact that JOPA was registered after the subcontract does not make it a subsequent agreement. Contemporaneous execution of the agreements supports the conclusion that the JOPA framework was known to and accepted by the

parties at the time of execution of the subcontract, as also reflected in its terms.

26. The reference, read with the pleaded precedence provision, can be understood as an adoption of the standard framework, governing the subcontractual relationship. It is clear from the terms that the reference is not treated as a bare mention of JOPA for an isolated payment related transaction. The precedence provision gives effect to the adopted framework where project-specific terms conflict with it. The said provision is corroborative to the petitioner's contention and the decisive feature is the subcontract's adoption of the governing standard terms and conditions of JOPA. Furthermore, Clause 5 of the subcontract clearly adopts JOPA as an integral part of the former. This establishes the intention of the parties to incorporate JOPA in its entirety into the subcontract.

27. On that reading, the adopted standard terms include Clause 13. The parties' written consent towards the subcontract's reference made to the governing standard form contract together with their acceptance of JOPA is demonstrated. Arbitration is not imposed merely because the agreements relate to the same project. Rather, in view of the above, the dispute-resolution term becomes part of the subcontract under Section 7(5). The absence of mention or repetition of Clause 13, in the subcontract, does not defeat its incorporation under the standard-form contract principle.

28. In view of the above, based on the findings concerning adoption of the standard terms and their applicability, this Court is satisfied prima facie that the subcontract incorporates JOPA Clause 13 and the said Clause therefore, constitutes a valid arbitration agreement between the parties under Section 7(5) of

the 1996 Act. The dispute sought to be referred arises under the subcontract read with JOPA. The absence of a separately reproduced arbitration clause in the subcontract does not bar invocation of the said clause for the appointment of an arbitrator. These observations are confined to the referral inquiry and do not determine the merits of the subcontract dispute.

29. Having regard to the existence of the arbitration clause contained in the JOPA, which provides for resolution of disputes arising between the parties, and the fact that the petitioner has duly invoked the said arbitration clause by issuing notice under Section 21 of the Act, this Court is of the opinion that a Sole Arbitrator is required to be appointed for adjudication of the disputes between the parties.

30. Accordingly, the following:

ORDER

a) Civil Miscellaneous Petition is allowed.

b) The Hon'ble Sri Justice V.Gopala Gowda, Former Judge, Supreme Court of India, is appointed as the Sole Arbitrator in the present case to arbitrate the disputes between the parties at the Arbitration and Conciliation Centre (Domestic & International), Bengaluru, as per the Rules governing the said Arbitration Centre.

c) All the claims and contentions of the parties are left open.

d) Registry is directed to communicate this order via e-mail to the Arbitration and Conciliation Centre (Domestic & International), Khanija Bhavan, Bengaluru, and also to Hon'ble Mr.Justice or the learned Sole Arbitrator.

e) Registry is directed to return all the original documents produced by any of the parties

after obtaining Photostat copies of the same.

f) Parties are directed to appear before the Director, Arbitration and Conciliation Centre, Bengaluru, on 30.11.2026 at 11:30 a.m.

Sd/-
(H.T. NARENDRA PRASAD)
JUDGE

Cm/-