



ARBITRATION AND CONCILIATION

When a Letter of Intent Isn't Enough: Supreme Court Clarifies Limits of Arbitration Agreements

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Introduction: The Illusion of Commitment

In fast-paced commercial transactions, parties often treat a Letter of Intent (LoI) as the beginning of binding obligations. However, the Supreme Court's decision in *Maharashtra State Electricity Distribution Company Ltd. v. R Z Malpani* (09 April 2026) serves as a cautionary reminder that intent alone does not create enforceable rights.

The Court reaffirmed a fundamental principle of arbitration law: an arbitration agreement cannot exist in the absence of a concluded contract or a clearly established intention to arbitrate.

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Factual Matrix: From Tender to Dispute

The dispute arose from a tender issued by Maharashtra State Electricity Distribution Company Ltd. for civil infrastructure works. The respondent contractor submitted a successful bid valued at approximately ₹17.76 crore. Following this, the authority issued a Letter of Intent and the contractor furnished bank guarantees in compliance with its terms.

Despite these developments, no formal work order was issued and no agreement was executed between the parties. The contractor ultimately terminated the arrangement and invoked arbitration.

The Bombay High Court, exercising jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996, proceeded to appoint an arbitrator. This order was challenged before the Supreme Court.

Core Legal Issue

The central question before the Court was whether an arbitration clause contained in tender documents could be enforced when the relationship between the parties never matured into a concluded contract and remained confined to a Letter of Intent.

Supreme Court's Holding: Absence of Contract, Absence of Arbitration

The Supreme Court held that the Letter of Intent was merely a preliminary step in the contractual process and did not constitute a binding agreement. In the absence of a concluded contract, there could be no valid arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996.

The Court further clarified that a general reference to tender conditions does not amount to incorporation of an arbitration clause. As a result, the appointment of the arbitrator by the High Court was set aside.

Section 7 of the Arbitration Act: Requirement of a Valid Agreement

Section 7 defines an arbitration agreement as one that must be in writing and must demonstrate a clear intention of the parties to submit disputes to arbitration. Sub-section (5) permits incorporation of an arbitration clause by reference, but such incorporation must be explicit and unambiguous.

The Court emphasized that a mere reference to another document is insufficient unless the reference clearly indicates an intention to incorporate the arbitration clause contained in that document. In the present case, the Letter of Intent failed to satisfy

this requirement.

Letter of Intent and Contract Formation

A significant contribution of the judgment lies in its articulation of the legal status of a Letter of Intent. The Court treated the Lol as a precursor to a contract rather than a contract itself. It may reflect a willingness to proceed, but it does not necessarily establish a binding relationship.

The absence of a formal work order, executed agreement, and definitive intention to be bound meant that the essential requirement of consensus ad idem was not met. Consequently, the relationship between the parties remained in the realm of negotiation rather than crystallizing into a legally enforceable contract.

Scope of Judicial Intervention under Section 11

Although courts generally adopt a limited and prima facie approach while exercising powers under Section 11, the Supreme Court reiterated that this restraint is not absolute. Where the non-existence of an arbitration agreement is evident on the face of the record, courts are justified in refusing to refer the matter to arbitration.

Incorporation by Reference: Established Legal Position

The judgment builds upon earlier decisions including *M.R. Engineers & Contractors Pvt. Ltd. v. Som Datt Builders Ltd.* and *Inox Wind Ltd. v. Thermocables Ltd.* These authorities establish that incorporation of an arbitration clause requires a specific and conscious reference. A general or vague reference to another document does not suffice.

By applying this principle, the Court concluded that the arbitration clause contained in the tender documents was never validly incorporated into any binding agreement between the parties.

Practical Implications

The decision highlights the risks of treating preliminary documents as legally binding instruments. Parties must ensure that their intention to arbitrate is explicitly recorded in a formally executed agreement. Reliance on indirect references or incomplete documentation can result in the loss of arbitral remedies.

The ruling also serves as a reminder that the jurisdiction under Section 11 is not merely procedural. Courts retain the authority to examine whether a valid arbitration agreement exists before referring disputes to arbitration.

Conclusion

The Supreme Court's ruling draws a clear distinction between commercial intent and legal enforceability. A Letter of Intent may signal the beginning of a business relationship, but it does not, by itself, create binding contractual obligations or an enforceable arbitration agreement.

By reinforcing the necessity of clarity and formalization in contract formation, the judgment strengthens doctrinal consistency in Indian arbitration law and cautions parties against assuming legal consequences from incomplete arrangements.

For more details, write to us at: contact@indialaw.in

Reference:

[\[2026 INSC 342\] MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED \(MSEDCL\) & ORS. Vs. R Z MALPANI](#)

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