

IN BRIEF

ARBITRATION: SUPREME COURT HOLDS PERSONAL GUARANTOR BOUND BY THE ARBITRATION CLAUSE THROUGH INCORPORATION



National Skill Development Corporation v. Surya Wires Private Limited & Ors., 2026 - SCC OnLine SC 1798: 2026 INSC 977 (decided on September 8, 2026)

Introduction

Whether a person who has executed a personal guarantee can be bound by, and compelled to participate in, arbitration proceedings arising out of a loan agreement containing an arbitration clause, notwithstanding that such person has not signed the loan agreement in his personal capacity, has been a recurring issue in disputes involving multi-document financing transactions. The question assumes particular significance where the deed of personal guarantee does not contain an independent arbitration agreement, but forms part of an interconnected contractual framework and is expressly incorporated into, or otherwise integrated with the principal loan agreement.

The Supreme Court, in *National Skill Development Corporation v. Surya Wires Private Limited & Ors.*, has held that in the circumstances of the case, a personal guarantor could not rely on the absence of a separate arbitration clause in the personal guarantee to escape the arbitration proceedings. The Court found that the personal guarantee was not an independent or collateral instrument but formed an “integral and inseparable part” of the loan agreements and was “woven into their very fabric”. Since the loan agreements expressly brought the personal

guarantees within the definition of “**Facility Agreements**” and further provided that such agreements would be deemed to form part of the loan agreements “*as if the provisions thereof were set out herein in extension*”, the arbitration clause contained in the loan agreements stood incorporated into the personal guarantees under Section 7(5) of the Arbitration and Conciliation Act, 1996 (the “**Act**”).

The decision is significant because it demonstrates how that requirement operates where the contractual documents are deliberately structured as components of a single, composite transaction. The Court emphasised that the intention to incorporate the personal guarantees into the loan agreements was “*explicit, rather than a matter of inference*”.

Factual Background

The dispute arose from a scheme of the Ministry of Skill Development and Entrepreneurship to establish Model Training Centers, styled Pradhan Mantri Kaushal Kendras, across India.

The National Skill Development Corporation, the implementing agency, extended loans to Surya Wires Private Limited (Respondent No. 1) and Disha Education Society (Respondent No. 4) for setting up such centres. On December 20, 2016, the parties executed a cluster of contemporaneous instruments, a service level agreement, a first loan agreement for over Rs. 7.17 crore and ancillary facility agreements, including a personal guarantee furnished by the company’s managing director (Respondent No. 2). A second, materially identical set of agreements, including a second personal guarantee, followed on August 18, 2017, for a further loan of over Rs. 2.13 crore.

When defaults occurred, the appellant invoked arbitration before the Indian Council of Arbitration against all parties, including the managing director in his personal capacity as a personal guarantor. The personal guarantor objected under Section 16 of the Act, contending that he was not a signatory to the loan agreements in his individual capacity and that the personal guarantees contained no arbitration clause of their own. The sole arbitrator allowed the Section 16 application and deleted him from the array of parties in the proceedings. The High Court in an appeal under Section 37 (2)(a) of the Act, affirmed the decision, noting that the personal guarantees contained no arbitration clause of their own and holding that arbitral jurisdiction could not be founded merely on “*proximity of transactions or commercial linkage*”.

The Question Before the Supreme Court

The Supreme Court framed the issue as follows:

“Whether, where parties structure a single transaction through several interconnected instruments, an arbitration clause contained in one instrument can bind a party through another instrument, expressly integrated with it but not itself containing an arbitration clause?”

Section 7(5) of the Arbitration and Conciliation Act, 1996

Section 7(5) of the Act provides:

“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.”

The Supreme Court reiterated that Section 7(5) of the Act does not permit an arbitration clause to be incorporated merely because one contract happens to refer generally to another. Referring to *M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited [(2009) 7 SCC 696]*, the Court noted that incorporation by reference requires, *inter-alia*, a clear reference to the document containing the arbitration clause, an intention to incorporate the arbitration clause, and an arbitration clause capable of application to disputes under the contract and not repugnant to its terms.

The Court also considered the landmark Constitution Bench decision in *Cox and Kings Limited v. SAP India Pvt. Ltd.*, [(2024) 4 SCC 1], which recognised that the definition of “parties” under the Act can extend to both signatory and non-signatory parties and that, in a composite transaction involving multiple agreements, courts and tribunals must assess whether the agreements are consequential or in the nature of a follow-up to the principal agreement.

The Supreme Court’s Analysis

Against this legal framework, the Supreme Court undertook a conjoint reading of the loan agreements, their definitions, the schedules and the Facility Agreements.

The Court first noted that the managing director had executed the relevant instruments in two distinct capacities, as the managing director of the company and separately, in his personal capacity as personal guarantor. Therefore, the question was not simply whether he had signed the loan agreements personally, but whether the contractual architecture of those agreements had incorporated the personal guarantees into them in a manner sufficient to attract Section 7(5) of the Act.

The Court found the answer in the express terms of the loan agreements. The personal guarantees were expressly enumerated in Schedule IV as “Facility Agreements”. The definitions in Article I provided that the “Agreement” included the Schedules, while Clause 12.1 went further by providing that the Facility Agreements *“shall be deemed to be part of this Agreement as if the provisions thereof were set out herein in extension”*. According to the Supreme Court, this phrase operated as *“a deeming fiction internal to the contract”*, bringing every Facility Agreement, including the personal guarantees, *“within the same legal and arbitral framework as the Loan Agreement”*.

Thus, the Court held that the personal guarantees did not *“stand apart from the Loan Agreements”* but were *“woven into their very fabric”*.

The conclusion was independently reinforced by the structure of the transaction. Schedule I made execution of the loan agreement and other Facility Agreements a pre-disbursement condition. The personal guarantees were executed in close proximity to the loan agreements. The Court held that this contemporaneity reinforced the inference that the parties intended the entire cluster of documents to constitute *“a single, composite transaction”*. Read together, the definition clauses, Article XII and the schedules established that the loan agreements and personal guarantees were not intended to operate as isolated or self-contained contracts, but as component parts of one commercial arrangement.

Consequently, the Court found that the intention to incorporate the personal guarantees into the loan agreements was *“explicit, rather than a matter of inference”*.

Absence of Personal Signature Not Decisive

The Supreme Court also held that the managing director’s failure to sign the loan agreements in his personal capacity was not decisive in the circumstances of the case.

The Court observed that the loan agreements were not instruments of an ordinary private bargain. They facilitated the disbursement of funds for a public purpose, and training partners under the scheme were frequently *“thinly capitalized special-purpose entities”*. Personal guarantees of controlling individuals were therefore required as a mandatory pre-disbursement condition, the guarantee being *“the real, and often the only, assurance”* that the funds would be accounted for and recovered where necessary.

Having furnished a guarantee which was expressly integrated into the loan agreement, the guarantor could not sever that guarantee from the arbitration clause while remaining bound to the loan agreement for other purposes, including liability.

The Court held: *“A guarantee so defined and so integrated cannot be severed, for purposes of dispute resolution alone, from the very Clause 11.2 that governs disputes touching the rights and obligations arising under that Agreement, while remaining tethered to it for every other purpose, including the extent of liability.”*

Decision

Accordingly, the Supreme Court held that the arbitration clause in Clause 11.2 of the loan agreements stood incorporated into the personal guarantees dated December 27, 2016, and August 18, 2017 within the meaning of Section 7(5) of the Act. Having executed those personal guarantees, the managing director was bound to submit to arbitration in respect of disputes arising from them.

The Supreme Court quashed and set aside the Delhi High Court’s judgment and the Sole Arbitrator’s order to the extent that they excluded him from the arbitral proceedings. The appeal was accordingly allowed.

Note: *The decision in this case does not establish a general rule that every personal guarantee linked to a loan transaction is automatically governed by the loan agreement's arbitration clause.*

The Court's conclusion turned on the specific contractual framework and the parties' express integration of the personal guarantees into the loan agreements. Accordingly, where parties structure their documents as parts of a single composite transaction and the contractual language expressly incorporates the guarantee into the principal agreement, the absence of a separate arbitration clause in the guarantee, or of the guarantor's personal signature on the principal agreement, will not by itself allow the guarantor to avoid arbitration proceedings.

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