

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 01.04.2021**

**CORAM**

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**O.P.No.243 of 2021**

**&**

**A.Nos.433 & 434 of 2021**

Samunnati Financial Intermediation & Services Pvt. Ltd.,  
Represented by its Head of Stressed Accounts Sankaranarayana  
Sarma,  
Having Office at Baid Hi Tech Park,  
8<sup>th</sup> Floor, No.129 B East Coast Road,  
Thiruvanmiyur, Chennai – 600041 ... Petitioner

**Vs.**

1.M/s.Sambandh Finserve Private Limited,  
Door No. at Jubilee Villa, 1<sup>st</sup> Floor,  
Plot No.7, Sindhi Colony, Mission Hata,  
Rajgangpur, Odisha – 770017

2.Deepak Kindo

... Respondents

**Prayer:** The Petition is filed under Section 11 (6) A of the  
Arbitration and Conciliation Act, 1996, to appoint an arbitrator to  
resolve the disputes arising out of clause 14 of the Term Loan

Agreement dated 13.02.2020 and 04.09.2020 between the petitioner and respondents.

For Petitioner : Mr.Vaibhav

For Respondent 1 : Mr.Supriyo Ranjan Mahapatra

For Respondent 2 : No Appearance.

**ORDER**

The above original petition is filed to appoint an arbitrator to resolve the disputes arising out of clause 14 of the Term Loan Agreements dated 13.02.2020 and 04.09.2020 between the petitioner and respondents. It is the case of the petitioner that at the request of the 1st respondent the petitioner had sanctioned a loan of Rs.5,00,00,000/- by way of term loan on 25.09.2008. The 1st respondent had executed various documents in favour of the petitioner for availing the said term loan. On 26.12.2019, the limit was enhanced to a sum of Rs.14,20,60,000/-. This included the

outstanding under the earlier loan limit of Rs.5,00,00,000/-. Once again the 1st respondent had executed various documents in favour of the petitioner.

2. The 2nd respondent had executed a personal guarantee dated 13.02.2020. There was a further enhancement to a sum of Rs.20,20,60,000/- by borrowing an additional amount of Rs.6,00,00,000/- from the petitioner herein and the 1st respondent had executed an agreement dated 04.09.2020. The 2nd respondent has also extended his personal guarantee for the said loan. Both the agreement contain an arbitration clause and they are intrinsically linked.

3. On 07.10.2020, the board members had received a letter from their senior executives alleging serious irregularities in the conduct of the 1st respondent's management. It was also revealed that a sum of Rs.391 Crores shown as assets under management of

the entity was inflated for a non existent value and the actual value was only a sum of Rs.140 Crores. Serious allegations of fraud was also imputed to the 2nd respondent who was then the CEO and Managing Director of the 1st respondent company.

4. There were also a Forensic audit conducted in respect of the irregularities pursuant to the resolution of the board meeting of the 1st respondent on 09.10.2020. It was by a letter dated 22.10.2020 which was received by the petitioner on 25.10.2021 that they came to know about the financial fraud perpetrated by the 1st respondent. The outstanding as on 30.10.2020 to the petitioner was to the tune of Rs.20,30,02,919/-.

5.The petitioner had therefore taken out various applications for interim measures and this Court was pleased to grant an injunction against the 2nd respondent from alienating, encumbering or creating any charge in respect of the schedule properties by the

2nd respondent or his agents or persons claiming through them till disposal of the arbitral proceedings. Since dispute has now arisen in respect of the outstanding to the petitioner, the petitioner has moved this petition for appointing an arbitrator.

6. The 2nd respondent has not entered appearance though he has been served.

7. The 1st respondent alone has filed a counter, in which the only objection to the appointment of the arbitrator is that the 2nd respondent had committed a serious acts of fraud where the accounts of the respondent company has been manipulated. That apart, there has been an inflation in the actual portfolio of the assets under management, diversion of funds to related entities, fictitious disbursements and withdrawals and also list of fictitious clients. All of which has been done at the instance of the 2nd respondent. Therefore, serious allegations of fraud have to be gone into and the

same cannot be resolved by an arbitrator.

8. Heard the learned counsels and perused the records.

9. The only objection put forward by the 1<sup>st</sup> respondent is that third party interest are involved and serious acts of fraud have been committed by the 2nd respondent. All of these transactions are the transactions between the 1st respondent and other third parties. This is nothing to do with the petitioner. Therefore, the 1st respondent cannot use this as a defense to the appointment of an arbitrator with reference to the dispute that have arisen *inter se* between the petitioner and the 1<sup>st</sup> respondent which has nothing to do with the third parties. There is no merits in the defense taken by the 1st respondent.

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10. Consequently, I appoint Hon'ble Mr. Justice A.Ramamurthi (Retd), Former Judge, Madras High Court, Residing at Plot No.9

(HIG) TNHB, Phase – II, Nolambur, Mogappair West, Chennai – 600 037, Mob: 9444066306 as an arbitrator to resolve the disputes arisen out of clause 14 of the Term Loan Agreement dated 13.02.2020 and 04.09.2020 between the petitioner and respondents.

i) The arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of entering reference. It is open to the respondents to raise all legal objections as to the validity of contract.

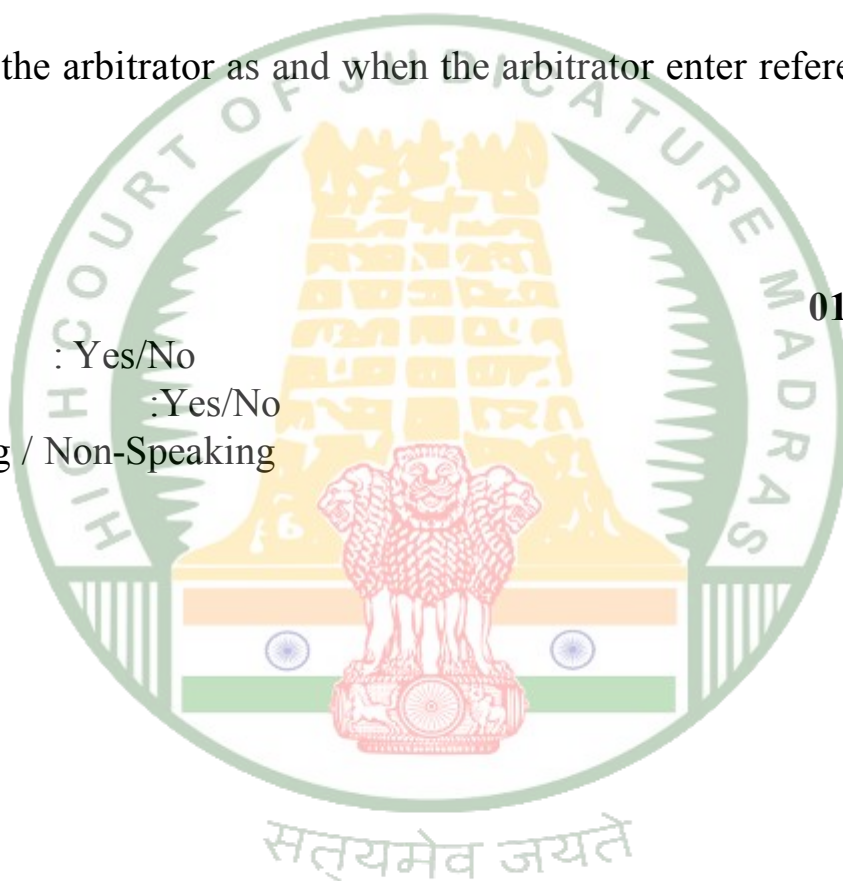
ii) The arbitrator is at liberty to fix the remuneration and other incidental expenses as per law.

iii) The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

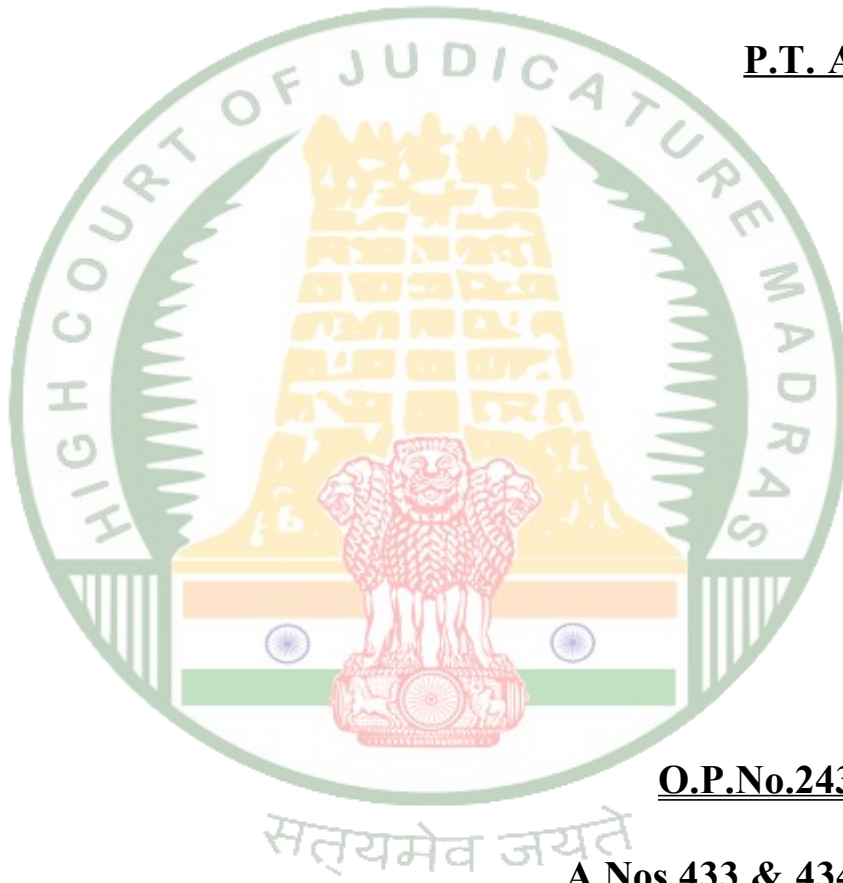
11. The Original Petition is ordered leaving the parties to bear their own costs. Considering the fact that the arbitrator is now been appointed, the applications are closed giving liberty to the applicant to move the arbitrator as and when the arbitrator enter reference. No costs.

**01.04.2021**

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**P.T. ASHA. J.,**

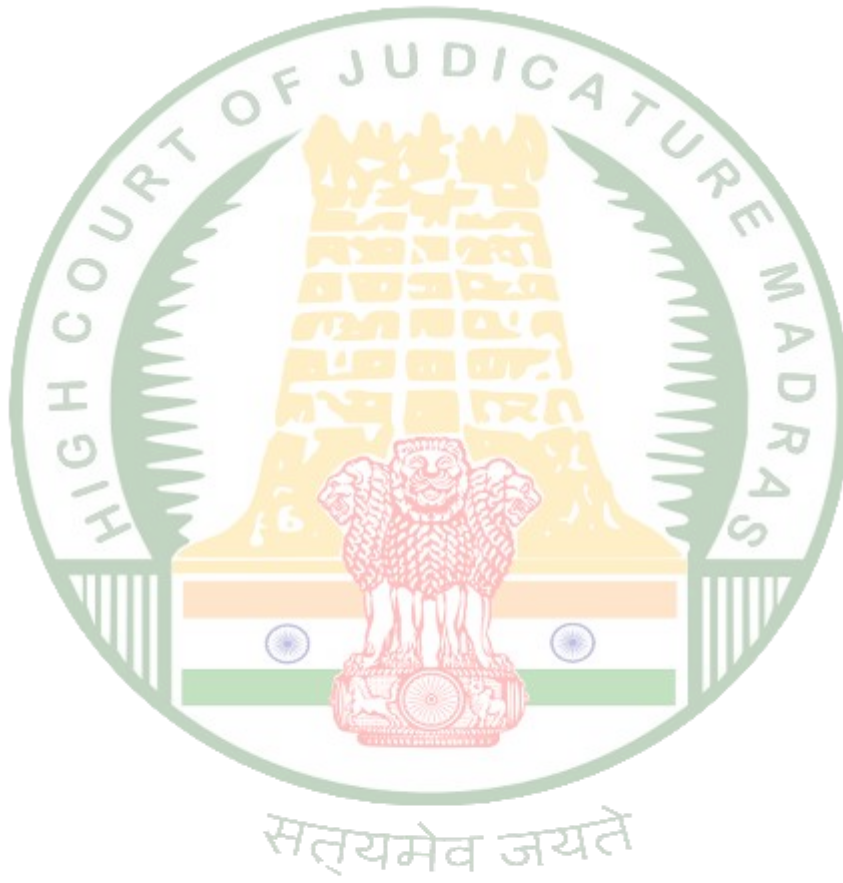
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