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Arb.O.P (Com.Div.) No.136 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2025

CORAM

**THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE**

**Arb.O.P (Com.Div.) No.136 of 2025**

Five Star Business Finance Limited,  
rep. by its Legal Officer  
Madhu Sandhan Someswaran

... Petitioner

Versus

1.Sharda Bai  
2.Shakar Roa  
3.Basavaraj Balte

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to decide the disputes and differences between the petitioner and respondents in terms of Loan Agreement dated 12.12.2023.

For Petitioner : Ms.Vinodhini Mathelene for  
Mr.P.H.Vinodh Pandian

For Respondents : Set exparte



**ORDER**

**WEB COPY** As directed by this Court, the registry has printed the name of the respondents in the cause list today. All the respondents have now been duly served with the notice in this petition. Till date, the respondents remain un-represented. Hence, the respondents are set exparte by this Court.

2.This petition has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for the appointment of an Arbitrator by this Court.

3.There seems to be a dispute between the petitioner and the respondents arising out of the Loan Agreement dated 12.12.2023. The respondents have also deposited title deeds and have created mortgage through the Memorandum of Deposit of title deeds dated 21.11.2023. There exists an arbitration clause in the aforementioned loan agreement and the same is extracted hereunder:

*'ARTICLE 10: ARBITRATION*

*GOVERNING LAW, DISPUTE RESOLUTION AND  
JURISIDITION: (Art 10 existing agreement)*

*1. This Agreement shall be governed by and construed in*



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*accordance with the laws of India.*

*2. Any and all dispute(s), difference(s) and/or claim(s) arising out or touching upon this Agreement or in relating to this Agreement, whether during its subsistence or thereafter, shall be referred to the Arbitration by a Sole Arbitrator to be appointed by any one of the below mentioned 'arbitral institution' in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof from time to time.*

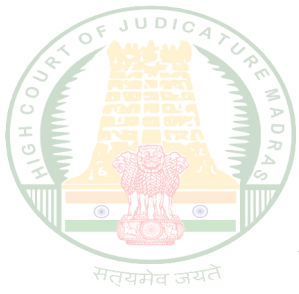
*a. Council for National and International Commercial Arbitration (CNICA) currently having its office at Unit No.208, 2nd Floor, Beta Wing, Raheja Towers, Nos.113-134, Anna Salai, Chennai-600 002, or*

*b. Southern India Chamber of Commerce and Industry (SICCI), currently having its Office at Indian Chamber Bulidings, P.B. No. 1208, Esplanade, Chennai-600 108, or*

*c. Kovise Foundation Conflict Resolution International (KFCRI), currently having its Office at G-2, Plot No.108, Majestic Colony, Valasarawakkam, Chennai 600 087, or*

*d. Any arbitral institution designated under the provisions of the Arbitration and Conciliation Act, 1996 (the act) or any panel of arbitrators maintained under the provisions of the act.*

*The entire arbitral proceedings shall be conducted by the*



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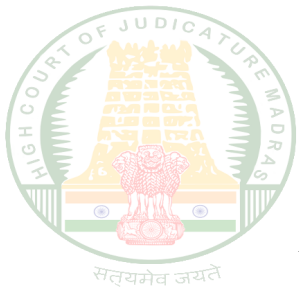
*Arbitrator in the manner he/she considers appropriate, and the award rendered by the Arbitrator shall be final and binding on all the parties to this agreement. The arbitral institution shall provide administrative assistance to the Arbitrator to facilitate the conduct of the arbitral proceedings, if he/she chooses to avail such assistance from the institution.*

*3. The Arbitrator shall be entitled to, at his/her discretion conduct the proceeding in-person and/or through exchange of mail, email and/or any other mode of electronic communication including video conferencing (VC), online, virtual hearing etc., using an external application or platform, if necessary. The parties to the arbitration proceeding shall be bound by the decision of the arbitrator in this regard.*

*4. The parties hereby consent to have the arbitral proceeding conducted by a written pleading, documents, written submissions and/or any other electronic mode of communication-based arbitration as may be determined by the arbitrator.*

*5. The parties herein agree not to insist on in-person and/or oral hearing except in certain exceptional circumstances as the Arbitrator may deem fit.*

*6. The Parties herein agree that the venue and seat of the arbitration proceeding shall be usually at Chennai or in exceptional circumstances any other place as deemed fit by the*



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*Arbitrator.*

*7. The language of arbitral proceedings shall be English.*

*8. The parties herein agree that in the event of death of the Arbitrator to whom the matter has been originally referred or the Arbitrator being unable or unwilling to act as arbitrator for any reason whatsoever, the arbitral institution shall substitute another person as it may deem fit to act as Arbitrator, who shall proceed with the reference from the stage, at which it was left by his/her predecessor.*

*9. The Arbitrator so appointed shall have the power to pass an award on the secured asset or any other security or interest created between the parties and also to pass interim orders/directions as may be appropriate to protect the interest of the parties pending adjudication of the claim and/or resolution of the disputes.*

*10. Parties also consent to the following:*

*a. to send a copy of the award through post/courier or a scanned image or such an award to the parties through mail/email or any other electronic mode through such institution which shall be considered as signed copy for the purposes of the Act.*

*b. if the award is not made or could not be made within 12 months from the date of completion of pleadings by the arbitrator, for any reason whatsoever, the parties hereby*



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*consent for an extension of time for another six months.*

*11. In respect of the arbitral proceeding, all notices, processes and communications in that regard to all the parties shall be through post/courier and/or mail/email and/or any other electronic mode of communication, as may be determined by the arbitrator and if resorted to, shall be a valid service of notices, processes and communications on the parties. Any notice, processes and communications issued to the counsel or representative representing the parties to the arbitration proceeding shall be deemed and valid service on the parties.*

*12. The post/courier and/or mail/email and/or any other electronic mode of address provided by the Borrower(s)/Guarantor(s) to the lender under the agreement or any other document executed by the Borrower(s)/Guarantor(s) with the lender/company shall be deemed to be an active postal/mail/email and/or any other electronic mode of address and any service effectuated upon such postal/mail/email and/or any other electronic mode of address shall be deemed to be completed. Any change or other discrepancies in the postal/mail/ email and/or any other electronic mode of address provided above, shall be informed to the lender/company promptly.*

*13. All communications shall be considered to have been*



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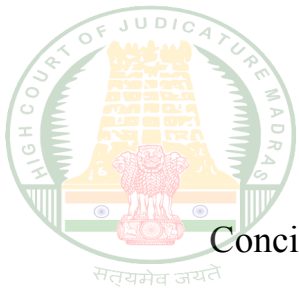
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*received by the parties within seven days from the time of sending the communication. In case, if after expiry of seven days from the date of communication, there lies no response from the parties, it shall be the discretion of the Arbitrator to proceed with the arbitration proceeding and/or render the award as the case may be in their absence.*

*14. It shall be the responsibility of the parties to maintain sufficient space in the email account and/or in any other mode of electronic account(s) and also to have supporting applications/software in their computer/mobile/any other electronic device or accessories and infrastructure required to access the electronic documents sent to them and also to enable the arbitrator to conduct the arbitration proceeding through VC, online, virtual hearing etc.*

*15. Unless otherwise directed by the Arbitrator, the existence or subsistence of a dispute or the commencement of arbitral proceedings under this clause shall not in any manner prevent or postpone the performance of any obligations of any party which do not form part of the dispute.'*

4.The petitioner has invoked arbitration in accordance with the arbitration clause by issuing notice to the respondents on 04.12.2024 to comply with the requirements of Section 21 of the Arbitration and



Conciliation Act, 1996. No reply has been received by the petitioner for the same.

5.Since there exists an arbitration clause in the loan agreement, which is the subject matter of the dispute between the parties and since the petitioner has complied with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996 by issuing notice to the respondents on 04.12.2024 and since there is no consensus between the parties with regard to the name of the Arbitrator, this Court will have to necessarily appoint an Arbitrator as prayed for in this petition.

6.For the foregoing reasons, this Arbitration Original Petition is allowed by issuing the following directions:

(a)This Court appoints Mr.N.K.Vanan, Advocate, having address at No.55, Vellala Street, Puraissaiwalkam, Chennai-600 084, Mobile No.94440 50416 as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondents, arising out of the Loan Agreement dated 12.12.2023, on merits and in accordance with law;

(b)The Arbitrator shall be paid his remuneration/fees in accordance



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with the 4<sup>th</sup> Schedule of the Arbitration and Conciliation Act, 1996;

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(c)Both the parties shall equally share the Arbitrator's fees;

(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

No costs.

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**ABDUL QUDDHOSE, J.**  
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