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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 128 of 2025

M/s.SUN X Concrete India Private Limited
Rep by its Director/Authorised Representative
D.Ranjith Babu
Ramaniyam Ocean Isha,
No.11, Rajiv Gandhi Salai (OMR)
Okkiyam Thoraipakkam, Chennai-600096

Appellant(s)

Vs

1. M/s.Sekhardeepak Construction Limited
Represented by its Managing Director,
Old No.132, New No.241, Peters Road,
Gopalapuram, Chennai-600086.

2.M/s.NTC Infra & Engineering Pvt td.,
Represented by its Managing Director
Sigapi Aachi Buildings,
9th Floor, 18/3, Rukmani Lakshmipathy
Road, Egmore, Chennai-600008.

Respondent(s)



PRAYER Petition filed under Section 11(6) of the Arbitration and Conciliation Act, a) to appoint an Arbitrator in terms of section 11 of the Arbitration and Conciliation Act, 1996, to resolve the disputes that have arisen between the petitioner and the respondents as per clause in the invoices. b) The respondents be directed to pay the costs of this petition.

For Petitioner(s): Mr.B.Manoharan

For Respondent(s): No Appearance for R1

ORDER

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

2. When this petition came up for hearing on 13.03.2025, this Court on considering the averments made in the petition and the documents filed along with the petition passed the following order:

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



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2. There seems to be a dispute between the petitioner and the respondents arising out of all the Invoices raised by the petitioner on the first respondent. The petitioner has supplied materials to the first respondent for the project of the second respondent. They have raised Invoices for the same, which have been filed as documents along with this petition. According to the petitioner, the Invoices remain unpaid. The Invoices contain an arbitration clause and the same is extracted here hereunder:

'All disputes arising out of or in connection with this Invoice or touching upon the Invoice shall be referred to sole Arbitration and the Sole Arbitrator shall be appointed by SUN X Concrete India Private Limited and the award passes thereon would be binding on both the parties. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Reconciliation Act, 1996 or any amendment thereof. The seat of arbitration shall be at Chennai only'.

3. The petitioner has invoked arbitration in accordance with the arbitration clause by issuing a notice to the respondents on 28.10.2024 in compliance with Section 21 of the Arbitration and Conciliation Act, 1996. A reply has also been received from the



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second respondent on 05.11.2024. Since there is no consensus between the parties with regard to the name of the Arbitrator, the petitioner has been constrained to filed this petition under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator by this Court. Since there exists an arbitration clause in all the Invoices, which are the basis of the petitioner's claim and since the petitioner has complied with the statutory requirement under Section 21 of the Arbitration and Conciliation Act, 1996, this Court is issuing notice to the respondents returnable by 27.03.2025. Private notice is also permitted. Post the matter on 27.03.2025.

3.The 2nd respondent has filed a counter affidavit. The 2nd respondent has taken a specific stand that the Agreement was between the petitioner and the 1st respondent and that there is absolutely privity of contract between the 2nd respondent and the petitioner. The 2nd respondent has also taken a stand that the Agreement was only between the 2nd respondent and the 1st respondent and therefore, the 2nd respondent cannot be roped in this case. The 2nd respondent has also made an allegation that the 1st respondent is now attempting to shift the entire liability on the 2nd respondent and that there are independent

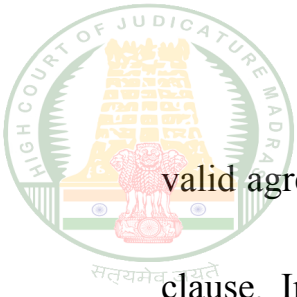


proceedings as between the 1st respondent and 2nd respondent which is pending before this Court. Thus, the 2nd respondent has questioned the existence of a valid Arbitration Agreement under Section 7 of the Act as between the petitioner and the 2nd respondent and therefore, the present petition is liable to be dismissed by this Court.

4.This Court has carefully considered the submissions made on either side and also the materials available on record.

5.The 1st respondent has been served with notice and the name of the 1st respondent has also printed in the cause list. There is no representation either in person or through counsel. However, the learned counsel for the petitioner produced the communication received from the 1st respondent to the effect that it is only the 2nd respondent who has to settle all the payments to the petitioner.

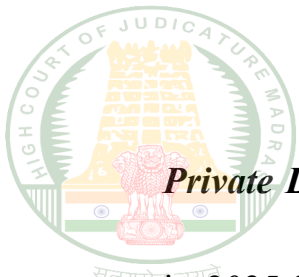
6.The *sine qua non* for entertaining the petition under Section 11 of the Act and appointing an Arbitrator, is to see as to whether there is existence of a



valid agreement between the parties and such agreement contains an arbitration clause. In the instant case, the arbitration clause is relatable to the invoices which contains such a clause. The said clause has also been extracted in the earlier order passed on 13.03.2025.

7.The 2nd respondent has taken a very definite stand that they have no privity of contract with the petitioner and they are not liable to pay any amount to the petitioner towards the disputed invoice, since the 2nd respondent has paid the entire amount to the 1st respondent and it is the 1st respondent who has to make the payment to the petitioner.

8.Taking into consideration the facts and circumstances of the case and the materials placed before this Court, this Court is not able to come to a conclusion as to whether there is any privity of contract as between the petitioner and the 2nd respondent. Insofar as the non-signatories are concerned, impleading them as a party is a power that is available to the Tribunal. Useful reference can be made to the judgement of the Apex Court in *ASF Buildtech*



Private Limited v Shapoorji Pallonji and Company Private Limited reported

in **2025 SCC Online SC 1016**. The Apex Court made it clear that if impleading

becomes necessary for the Tribunal, it has the implied powers to do so.

9.In view of the above, for the present, this Court is inclined to appoint an Arbitrator to decide the dispute between the petitioner and the 1st respondent and in course of proceedings, if the role of the 2nd respondent also comes to surface, the Tribunal can always implead the 2nd respondent and proceed further.

10.In the light of the above discussion, this Court will proceed to appoint a sole Arbitrator. **Ms.Poongkhulali Balasubramaniam, Advocate, M-1, 'Vadhula' No.18, Brindavan Street, Mylapore, Chennai 600 004 [Mobile: 9176568368]** is appointed as sole Arbitrator. The sole Arbitrator is requested to enter upon reference, adjudicate upon arbitrable disputes that have arisen between the parties. The Arbitrator shall holds holding sittings in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) as per



Madras High Court Arbitration Proceedings Rules 2017 and fee of Hon'ble sole

Arbitrator shall be in accordance with the Madras High Court Arbitration Centre

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(MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

14.This petition is disposed of in the above terms. No Costs.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

SSR



To
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1. Ms.Poongkhulali Balasubramaniam
Advocate,
M-1, 'Vadhula' No.18, Brindavan Street,
Mylapore, Chennai 600 004
[Mobile: 9176568368]

2.The Director
Tamil Nadu Mediation and Conciliation
Centre-cum-Ex-Officio Member
Madras High Court Arbitration Centre
Chennai - 104.



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N.ANAND VENKATESH J.

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