



Original Application No.266 of 2025

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

**DATED: 08.09.2025**

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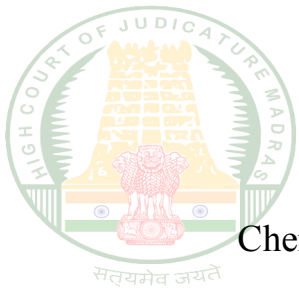
**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Original Application No.266 of 2025**

M/s.SVD Infracon Limited,  
(Formerly known as M/s.Sekhar Deepak Constructions Ltd)  
Represented by its Managing Director, Arumugam Sekhar,  
Peters Road, Gopalapuram,  
Chennai. .... Applicant

**Vs.**

1. M/s.NTC Infra & Engineering Private Limited,  
Redg. Office at No.39B, 2nd floor,  
1st Street, Chakrapani Colony,  
Kongunadu Trust,  
North Parade Road,  
St.Thomas Mount,  
Chennai - 600 016.  
Represented by its Chairman & Managing Director,  
Mr.Kandasamy Chandramohan,  
Also at:  
NTC Tower, No.97(Old No.47)  
Linghi Chetty Street,  
Chennai - 600 001.
2. M/s.NTC Logistics India Private Limited,  
Represented by its Chairman and Managing Director,  
Mr.Kandasamy Chandramohan,  
No.9, 8th Floor, Club House Road, Anna Salai,  
Chennai - 600 002, Tamil Nadu, India.  
Also at  
NTC Tower, No.97(Old No.47)  
Linghi Chetty Street,



Original Application No.266 of 2025

Chennai - 600 001.

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3. M/s.Khilari Infrastructure Private Limited,  
Represented by its Director Mr.Sahebrao Khilari,  
101 to 104, Prabhat Centre Annex,  
Sector 1A CBD Belapur,  
Navi, Mumbai - 400 614.

4. The Managing Director,  
Chennai Metropolitan Water Supply and Sewerage Board,  
No.1, Pumping Station Road,  
Chintadripet, Chennai - 600 002. .... Respondents

### **PRAYER**

To grant an interim injunction restraining the 4th respondent from releasing any amounts to the 1st, 2nd and 3rd respondents or their representatives, agents, assignees, in any manner or form, pending arbitral proceedings.

For Applicant : Mr.Abdul Saleem, Senior Counsel  
for Mr.M.Palanivel

For Respondents : Mr.P.S.Raman, Senior Counsel  
for Mr.E.K.Kumaresan[R1 to R3]

Mr.Gautam S.Raman [R4]

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### **ORDER**



Original Application No.266 of 2025

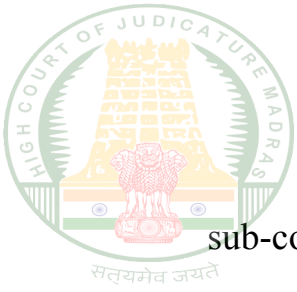
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This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 [for brevity, hereinafter referred to as 'the Act'] seeking for a garnishee order against the fourth respondent from releasing any payments to respondents 1 to 3 or their representatives, agents, assignees, etc., and for a consequential direction to the fourth respondent to disburse the amount to be released to respondents 1 to 3 to the credit of the present application until the arbitral award is passed.

2. The applicant has also sought for a direction to the first respondent to furnish security for a sum of Rs.29,68,28,506/- towards the amount due and payable as on 30.01.2025.

3. Heard Mr.Abdul Saleem, learned Senior Counsel assisted by Mr.M.Palanivel, learned counsel for the applicant, Mr.P.S.Raman, learned Senior assisted Mr.E.K.Kumaresan, learned counsel for the respondents 1 to 3 and Mr.Gautam S.Raman, learned counsel for the fourth respondent.

4. The case of the applicant is that they were employed as a



Original Application No.266 of 2025

sub-contractor by respondents 1 to 3. The applicant was involved in the construction, commissioning sewerage Treatment plants with respect to the work order issued in favour of respondents 1 to 3 by the fourth respondent. The total value of the project awarded to the applicant by the respondents 1 to 3 is nearly Rs.71,64,00,088/- vide work order dated 07.08.2020.

5. The specific case of the applicant is that when the major part of the work entrusted to them was completed, the respondents 1 to 3 took it upon themselves and continued with the remaining work in the year 2023. Thus, the applicant was settled with the bills from RA1 to RA21. The work could not be continued due to non payment of RA22 and RA23 and by then, the project was taken over by the respondents 1 to 3.

6. The applicant states that the infrastructure and labour of the applicant was made use of by respondents 1 to 3 to continue the work and they made direct payment to the vendors from RA24 onwards and the project was completed on 17.02.2025.

7. The applicant sent a notice dated 28.10.2024 requesting for



Original Application No.266 of 2025

WEB COPY

payment of a sum of Rs.29,68,28,506/-. Even though the applicant initially received a reply from the first respondent stating that the amount will be reconciled and informed to the applicant and till such time, the applicant was requested to ensure smooth functioning and ensure that the project was commissioned, nothing fructified thereafter.

8. The applicant issued the arbitration notice dated 31.01.2025 for appointing a sole arbitrator and on receipt of the same, a reply was also given by the respondent dated 26.02.2025.

9. It is under these circumstances, the present application came to be filed before this Court under Section 9 of the Act.

10. The application came up for hearing on 17.03.2025 and this Court passed an order restraining the fourth respondent from making any payment to respondents 1 to 3 to an extent of Rs.15,00,00,000/- pending disposal of the application.

11. After notice was served, counter was filed by the



respondents and thereafter, additional counter affidavit was also filed by the respondents.

12. The matter came up for final hearing on 01.09.2025 and this Court after hearing both sides, passed the following order:

*"This Court heard the learned counsel for applicant, the learned Senior Counsel appearing on behalf of the respondents 1 to 3 and the learned Standing Counsel for the respondent No.4.*

*2. This Court carefully went through the earlier order passed on 21.08.2025. It is seen that the work had stopped in the year 2023 itself. However, the applicant has chosen to file this application after nearly two years. When this Court posed a specific question to the learned counsel for applicant as to when the trigger notice was issued under Section 21 of the Arbitration and Conciliation Act, the learned counsel submitted that the trigger notice was issued on 31.01.2025. Till date, the applicant has not chosen to move any application under Section 11 of the Act for appointment of an Arbitrator. Thus, for a dispute which started in the year 2023, till date, no steps have been taken by the applicant to refer the dispute to the Arbitral Tribunal. It must be kept in mind that no invoke Section 9, there must be a manifest intention to arbitrate. The law was made clear by the Hon'ble Apex Court in the case of Ashok*



WEB COPY



Original Application No.266 of 2025

*Traders (Firm) and another V. Gurumukh Das Saluja and others reported in (2004) 3 SCC 155 and in the case of Sundaram Finance Ltd v. NEPC India Ltd reported in (1999) 2 SCC 479.*

*3. In the course of proceedings, it was also indicated by this Court that a retired Hon'ble Judge of this Court will be appointed as the Arbitrator to resolve the dispute between the parties. The total claim made by the applicant is roughly Rs.29 Crores. According to the applicant, the fourth respondent has to pay the respondents 1 to 3 a sum of roughly Rs.9 Crores.*

*4. The learned Senior Counsel appearing on behalf of the respondents 1 to 3 submitted that the applicant is due and payable a sum of Rs.9 Crores towards running bills and the respondents 1 to 3 have set-off claims and if that is taken into consideration, the applicant must only pay to the respondents 1 to 3. The substantiate the same, bills are available with the respondents.*

*5. The applicant, in order to secure their interest, have approached this Court seeking for a garnishee order and to prevent the fourth respondent from settling the bills in favour of the respondents 1 to 3.*

*6. The learned counsel for applicant seeks for some time to take instructions. Post this Original Application under the caption 'for orders' on 08.09.2025."*

13. When the matter was taken up for hearing today, Mr.Abdul



Original Application No.266 of 2025

Saleem, learned Senior Counsel appearing on behalf of the applicant submitted that the bills were not settled to the applicant for RA22 and RA23 and the labour and infrastructure of the applicant was utilised by the respondents and the applicant was requested to co-operate for completion of the project and ultimately the project was completed on 17.05.2025. Therefore, the applicant did not want to put spokes in the completion of the project and aggravate the situation and that is the reason why the trigger notice under Section 21 of the Act came to be issued on 31.01.2025 just before the completion of the project on 17.02.2025.

14. The learned Senior counsel further submitted that the respondents 1 to 3 were not able to make any payments from 2023 onwards and that shows that they are not financially sound and hence, if the fourth respondent is permitted to make the payments to respondents 1 to 3 to an extent of Rs.15 Crores, even if ultimately the applicant gets a favourable award, they will not be able to see the colour of the coin. Hence, the protection that was granted by this Court by an interim order dated 17.03.2025 has to be continued and that the applicant will not have any objection in this Court appointing a sole arbitrator and that the



interim order must be continued till the completion of the arbitral proceedings.

15. *Per contra*, Mr.P.S.Raman, learned Senior Counsel appearing on behalf of the respondents 1 to 3 reiterated his submissions that the applicant is due and payable a sum of Rs.9 crores towards the running bills and if the set-off claims are also raised by the respondents 1 to 3, it is the applicant who will have to make the payments to respondents 1 to 3. The learned senior counsel further submitted that even assuming that the respondents 1 to 3 are liable to make the payments to the applicant, that by itself is not a ground to pass a garnishee order or to seek for a security, unless the applicant is able to establish before this Court that the financial position of respondents 1 to 3 is so bad, that even if the award is passed, the applicant will not be able to recover the amount from respondents 1 to 3. If that is not the case, it was contended that a garnishee order or an order seeking for furnishing security, cannot be passed as a matter of routine.

16. This Court carefully considered the submissions made on either side and the materials available on record.



Original Application No.266 of 2025

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17. The undisputed fact is that the services of the applicant was utilised and their bills were also settled from RA1 to RA21. The actual dispute now confines itself to the non-payment of the bills from RA22 to RA23. Insofar as RA24 is concerned, direct payments were made to the vendors by allegedly using the infrastructure and labour of the applicant. Thus, the applicant is claiming for a sum of Rs.29,68,28,506/- from the respondents 1 to 3.

18. An attempt was made by this Court to refer the parties for mediation. However, unfortunately the mediation attempts failed.

19. The only issue that is involved is as to whether the garnishee order and the order directing furnishing of security is necessitated on the facts of the present case.

20. As was observed by this Court in the earlier order dated 01.09.2025, the Court must always bear in mind while dealing with an application under Section 9 of the Act that there must be a manifest intention to arbitrate. Such intention manifests itself when a trigger notice



Original Application No.266 of 2025

is issued under Section 21 of the Act.

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21. In the case in hand, the dispute had arisen in the year 2023 itself, when the applicant was not paid for RA22 and RA23. That apart, the respondents took over the work for RA24 and they directly started paying the vendors. If that is the case, the applicant should have necessarily raised the dispute at the earliest point of time since their position is not going to improve thereafter for the simple reason that from RA24 the respondents have taken over the work and they were doing the work with the labour and infrastructure of the applicant.

22. Apart from the above, if the Court has to pass a garnishee order or an order directing furnishing of security, the Court has to be satisfied on the *prima facie* materials that the respondents 1 to 3 are in financial doldrums and that they are sinking and it will be very difficult to recover the money from them, even if the applicant succeeds before the Arbitrator. That will be the threshold for the Court to pass such orders under Section 9 of the Act, apart from applying the triple test of *prima facie* case, balance of convenience and irreparable loss and hardship.



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23. The respondents 1 to 3 have raised counter claim against the applicant and hence, *prima facie* there is a dispute with respect to the amount payable as between the applicant and the respondents. There is also no material to show that the respondents 1 to 3 do not have the financial wherewithal, if ultimately the award is passed against them. Under such circumstances, a garnishee order or an order directing furnishing of security, cannot be passed as a matter of course.

24. In the light of the above discussions, the relief as sought for by the applicant cannot be granted by this Court.

25. The learned counsel appearing on behalf of the fourth respondent submitted that the fourth respondent is not even a signatory to the agreement and therefore, the fourth respondent cannot be made to undergo the arbitration proceedings. This submission was stoutly denied by the learned Senior Counsel appearing on behalf of the applicant.

26. In the considered view of this Court, the Tribunal itself has an implied power to implead the parties, even if such a party is a non signatory to the agreement. This has been recognised by the Apex Court



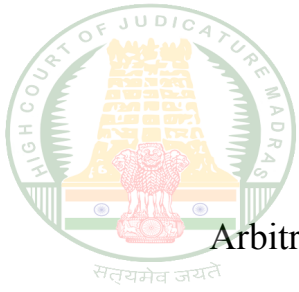
Original Application No.266 of 2025

in the case of *ASF Buildtech Vs. Shapoorji Pallonji & Co. Pvt. Ltd.*,

reported in (2025) SCC Online SC 1016. Therefore, if at all the fourth respondent has any objection, it can be raised before the learned Arbitrator and the same will be considered on its own merits and in accordance with law.

27. In view of the above discussions, this Court is inclined to appoint a sole arbitrator. Accordingly, Hon'ble Mr.Justice Sanjay V.Gangapurwala, Former Chief Justice, Madras High Court, (residing at Durga Mata Mandira Samor, House No.2-2-278, Govardhanagiri, Kharakuwa, Aurangabad - 431 001, Mobile No.9545111995, sanjay.gangapurwala@gmail.com) is appointed as the sole Arbitrator and the Arbitrator is requested to enter upon reference qua the Memorandum of Understanding dated 26.09.2019, adjudicate the arbitral dispute that were arising between the parties by holding the sittings in any venue in Chennai to the convenience of all concerned and render an award. Fees of the sole Arbitrator shall be in accordance with the Madras High Court

**N.ANAND VENKATESH, J.**  
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Original Application No.266 of 2025

Arbitration Centre (MHCAC)(Administrative Cost and Arbitrator's Fees)

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**08.09.2025**

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**Original Application No.266 of 2025**