IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Application No. 488 of 2025

M/s.Cholamandalam Investment and Finance Company Limited,
'Chola Crest', C 54 & 55, Super B-4
Thiru Vi Ka Industrial Estate,
Guindy, Chennai - 600 032.
Represented by its Authorised Signatory. .... Applicant

Vs.

1. M/s.Swadesh Green Infra Ltd.,
   C-201, Nariana Industrial Area Phase - I,
   New Delhi- 110 028.

2. Mr.Ravi Gupta
3. Mr.Salil Gupta
4. Ms.Meena Gupta ... Respondents
5. Adhunik Niryat Ispta Limited,
   Address:208-210, Sushma Tower D- Block,
   Central Market Prashant Vihar Delhi,
   New Delhi- 110 085.

6. Bhagat Ram Chunni Lal
7. Dharuv International - 07AEQPG3840J1ZA,
   Address: Y8- Block, Loha Mandi, Naraina,
   New Delhi - 110 028, Delhi, India.

8. Faiz Iron Trader: 07ANDPM9627R1Z5
   Address: G/F E 39/1 New Seelampur Delhi
   Shahdara Delhi 110 053, New Delhi - 110 053.

9. Jai Bhole Steel Tubes Private Limited,

Address: 502, Overlock Road Distt Ludhiana
Punjab - 141 003.

10. Overseas Metalhub Private Limited,
Address: Plot AT KH 8392102& 11, Delhi West Delhi,
Delhi - 110 041.

11. Super Star Steels Private Limited,
Address: Jaspal Bangar Road VPO Kanganwal,
Ludhiana Punjab.

12. U V Ispat Private Limited,
Address: Y -223/2 Loha Mandi Naraina,
New Delhi, Delhi - 110 028.

13. Vedanta Electricals Private Limited,
Address: Khasra No.155/360 & 155/361 Industrial Area,
Pooth Khurd North West Delhi - 110 039. .... Garnishees

PRAYER: To pass an order prohibiting the garnishees from making payment of a sum of Rs.1,71,20,121.97 or any amount to the respondents or to their men, agents, representatives or to anyone claiming on respondents behalf and restrain the respondents or their men, agents, representatives or anyone claiming on respondents behalf from receiving a sum of Rs.1,71,20,121.97 or any amount from the garnishees and further direct the garnishees to deposit the sum of Rs.1,71,20,121.97 or any amount to the credit of the above application.

For Applicant : Mr.D.Pradeep Kumar

For Respondents : Mr.Vishnu Mohan [R1 to R4]
Ms.Nandhini Agarwal [R5]
R9 & R10 [give up]
R7, R8, R11 to R13-*set exparte*

ORDER

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 [for brevity, hereinafter referred to as 'the Act'] for prohibiting the garnishees from making the payment of a sum of Rs.1,71,20,121.97 to the respondent or to their men, agents, representatives or to anyone claiming on respondents' behalf and restrain the respondents or their men, agents, representatives or anyone claiming on respondents' behalf from receiving the sum of Rs.1,71,20,121.97/- or any amount from the garnishees and further direct the garnishees to deposit the sum of Rs.1,71,20,121.97/- or any amount to the credit of the above application.

2. Heard Mr.D.Pradeep Kumar, learned counsel for the applicant, Mr.Vishnu Mohan, learned counsel for the respondents 1 to 4 and Ms.Nandhini Agarwal, learned counsel for the fifth respondent.

3. The case of the applicant is that they are in the business of providing financial facilities, invoice discounting etc. The respondents 1 to 4 approached the applicant and sought invoice discounting facility. The first respondent entered into invoice discounting agreement dated 04.10.2022 and availed the facility for a sum of Rs.3,00,00,000/- on terms

and conditions set out in the agreement. The respondents 2 to 4 are the guarantors. The tenure of the facility was for 12 months and the credit period was 120 days and the interest rate is 10%. It was agreed that the respondents will pay penal charges in the event of any default.

4. The first respondent availed the facility and the amount was disbursed during the period from 28.06.2024 to 30.09.2024. The respondents defaulted in the repayment of the amount. Hence, the applicant sent a notice dated 05.02.2025 recalling the facility, but the respondents did not pay the amount due to the applicant. As on 05.03.2025, the applicant is claiming for a sum of Rs.1,71,20,121.97 under the agreement along with interest.

5. The applicant was in the progress of taking steps to initiate arbitration proceedings. In the meantime, the applicant has approached this Court seeking for a garnishee order on the ground that the respondents 1 to 4 have raised several invoice/bills with the garnishees and the garnishees are liable to pay several amounts to respondents 1 to 4 and the applicant wants to prohibit the garnishees from making such payment to the respondents 1 to 4 to the tune of Rs.1,71,20,121.97.

6. A counter affidavit has been filed by the first respondent.

The first respondent has taken a stand that the applicant has referred to the agreement dated 04.10.2022, whose term expired and whereas, the so called disbursement that was made subsequently in the year 2024 is not covered by the said agreement and therefore, the very reliance placed upon by the applicant on the agreement dated 04.10.2022 goes against the case of the applicant and as a result, the application filed under sections 9 of the Act is not maintainable. The first respondent has taken a further ground that the applicant has not made out a *prima facie* case and the balance of convenience is not in favour of the applicant and if any such garnishee order is passed, the respondents will be in irreparable hardship and therefore, the present application does not meet the standards for passing an interim order under Section 9 of the Act.

7. It is also stated that the trigger notice under Section 21 of the Act was issued on 11.06.2025 for appointment of an arbitrator. Thus, if at all the applicant has any right to claim for such interim measure, it can be done by way of filing an application before the Arbitral Tribunal. Thus, the respondents have sought for dismissal of this application.

8. The fifth respondent has filed a counter affidavit and taken a

stand that no amount is due and payable by the fifth respondent to the first respondent.

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

10. When the matter came up for hearing on 31.07.2025, this Court after hearing the counsel for the first respondent passed the following order:

"Pleadings are complete in this application. The first respondent/borrower has claimed that this application is not maintainable for the following reasons:

(a) The period of the contract, namely, Invoice Discounting Agreement dated 04.10.2022, is only for a period of 12 months from 04.10.2022 as seen from the schedule to the said agreement. However, disbursal was done to the first respondent only in the year 2024, which is beyond the period stipulated under the Invoice Discounting Agreement dated 04.10.2022.

(b) The arbitration clause contained in the Invoice Discounting Agreement dated 04.10.2022 will not cover the claim made by the applicant in this application, since the period of 12 months prescribed under the Invoice Discounting Agreement dated 04.10.2022 has already come

> *to an end.*
>
> *2. The learned counsel for the applicant seeks time to get further instructions. Post the matter on 11.08.2025."*

11. Pursuant to the above order, the applicant has filed additional typed set of papers. In the additional typed set of papers, the applicant has relied upon the amendment to invoice discounting agreement dated 07.12.2023. As per this agreement, the applicant is trying to establish that the period of the agreement expires one year from 07.12.2023 and the entire terms and conditions as contained in the original agreement dated 04.10.2022 was made part and parcel of this agreement and it is during the subsistence of this agreement, the disbursement was made to the first respondent from 28.06.2024 to 30.09.2024.

12. The learned counsel appearing on behalf of the respondents 1 to 4 submitted that the period of 12 months of the invoice discounting agreement dated 04.10.2022 has already come to an end and at the best, the amendment to invoice discounting agreement dated 07.12.2023 can only be taken to be a complete replacement or novation of the earlier agreement or in other words, a new agreement was entered into between

the parties and in this agreement, there is no arbitration clause. Therefore, the arbitration clause that was contained in the earlier agreement cannot be read into the amendment agreement dated 07.12.2023.

13. In order to substantiate the above submission, the learned counsel relied upon the judgment of the Apex Court in the case of ***NBCC (India) Limited Vs. Zillion Infra projects Private Limited*** reported in ***2024 7 SCC 174*** and specific reliance was placed upon paragraph 17 of the judgmnet, which is extracted hereunder:

> *"17. It could thus be seen that this Court has held that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract(where such reference is made), only by a specific reference to arbitration clause. It has further been held that where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract(which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the*

arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also."

14. In answer to the above submission, the learned counsel for the applicant submitted that consensus *ad-idem* between the parties should be understood from the amendment to the invoice discounting agreement dated 04.10.2022, which was entered into between the parties on 07.12.2023. The learned counsel emphasised on clause (4) of the agreement and for proper appreciation, the same is extracted hereunder:

"4. Other than the replacement of schedule with the one provided herein below all other terms and conditions of the Earlier agreement (except for those which are inconsistent with the amendments/modifications carried out herein) shall remain in full force/effect and binding upon the parties, unless otherwise modified in writing by the parties."

15. The learned counsel submitted that it is not a case where there was a mere reference to the earlier agreement dated 04.10.2022 and the parties had specifically agreed that the entire terms and conditions of the earlier agreement will remain in force/effect and it will be binding upon the parties in this agreement and what was amended was only the period of the agreement and the schedule to the agreement and everything

else remained intact. The learned counsel therefore submitted that the judgment of the Apex Court that was relied upon by the learned counsel for the respondents 1 to 4 will not apply to the facts of the present case.

16. On carefully considering the above submissions, it is necessary for this Court to bestow its attention on the specific terms of the amendment agreement dated 07.12.2023. In this agreement, there was a specific mention about the earlier agreement dated 04.10.2022, which was for a period of 12 months from 04.10.2022. That agreement, specifically contained an arbitration clause, which is clause No.27 in that agreement. While understanding the terms of the agreement, the Court need not trouble itself with the nomenclature given to the agreement and it is important to carefully understand the consensus *ad idem* between the parties. The parties have specifically agreed that except the replacement of the schedule from the earlier agreement, all other terms and conditions of the earlier agreement will remain in full force/effect and it will bind upon the parties. This would only meant that instead of physically incorporating all those terms and conditions in the amendment agreement, the parties have agreed to keep all those terms and conditions intact even in the amendment agreement and they have understood that by virtue of

this amendment agreement, only the schedule is changed and the tenure of the agreement is fixed for 12 months from 07.12.2023.

17. In the judgment that was relied upon by the learned counsel for the respondents 1 to 4, the Apex Court found that there was a mere reference to an earlier agreement and hence, the Apex Court by relying upon the earlier judgment in the case of ***M.R.Engineers & Contractors (P) Ltd., Vs. Som Datt Builders Ltd*** reported in ***2009 7 SCC 696*** came to a conclusion that such reference to an earlier agreement at the best will only provide for performance of the contract in terms of that agreement and the arbitration clause will not be automatically applied unless it is physically incorporated in the fresh agreement. In the case in hand, the parties have not merely referred to the earlier agreement but they have specifically agreed that the entire terms and conditions of the earlier agreement will remain in full force even in the amendment agreement dated 07.12.2023. Therefore, the respondents 1 to 4 cannot wriggle out of this agreement and take a stand that there is no arbitration clause in the agreement and consequently, the application is not maintainable under Section 9 of the Act.

18. The above preliminary objection taken by the learned counsel for respondents 1 to 4 is held against the respondents and it is answered in favour of the applicant. The next issue is as to whether the garnishee order has to be passed as was sought for by the applicant in this application.

19. It is not in dispute that the disbursement was made to the first respondent from 28.06.2024 to 30.09.2024 and as on 05.03.2025, a total amount of Rs.1,71,20,121.97 was payable under the agreement. The trigger notice under Section 21 of the Act has been issued on 11.06.2025 and the parties are in the process of appointment of an Arbitrator. In the meantime, it came to the knowledge of the applicant that certain payments are going to be made to respondents 1 to 4 by the other respondents and hence, the applicant has sought for a garnishee order.

20. It is clear from the counter affidavit filed by the fifth respondent and also submission made by the learned counsel for the applicant that insofar as the respondents 5 and 6 are concerned, no amount is payable by them to the respondents 1 to 4. Insofar as the respondents 9 and 10 are concerned, notice was sent to them and it has

been returned and the service has not been effected. Thus, effectively it must be seen as to whether the payments that have to be made by respondents 7, 8, 11 to 13 to the respondents 1 to 4 has to be stopped by this Court considering the claim made by the applicant.

21. While deciding the application under Section 9 of the Act, the Court must only be satisfied that there is manifest intention to arbitrate on the side of the applicant. The law on this issue was settled by the Apex Court in the case of ***Firm Ashok Traders and Anr. Vs. Gurumukh Das Saluja and Ors.*** reported in ***2004 3 SCC 155***. As on 05.03.2025, a total amount of Rs.1,71,20,121.97 is due and payable by the first respondent to the applicant. The amount that was disbursed by the applicant to the first respondent is also evidenced by the purchase invoice and the discounting facility availed and the apprehension of the applicant is that if the amount that is due and payable to the first respondent by the other respondents is paid, it will leave no security for the applicant while seeking for recovery of the amount from the first respondent for whom respondents 2 to 4 stood as security.

22. Taking into consideration the facts and circumstances of the

case and the materials placed before this Court, now that the trigger notice has been issued by the applicant in June, 2025, the parties can proceed further with the process of appointing an arbitrator to resolve the dispute. It is brought to the notice of this court by the learned counsel appearing for the applicant that already the communication has been sent to the institution and the institution has to appoint the arbitrator.

23. *Per contra,* Mr.Vishnu Mohan, learned counsel for respondents 1 to 4 submitted that such unilateral appointment of the arbitrator cannot take place unless the respondents agree to the name suggested by the institution. Therefore, this issue is going to take some time.

24. The claim made by the applicant towards the invoice discounting facility that was utilised by the first respondent and the disbursement that was made by the applicant is borne out by records. Thus, the applicant has made out a *prima facie* case before this Court. If a garnishee order is not passed, the monies due and payable by the garnishees to the first respondent will be taken away by the first respondent and spent. To that extent, the balance of convenience is in

favour of the applicant. If the monies are kept as a security, the respondents 1 to 4 will not suffer any irreparable loss or hardship since the money can be withdrawn by the respondents if they ultimately succeed. On the other hand, if the monies are paid to the respondents, it will be utilised and thereby, the applicant will be deprived of an opportunity to secure some amount payable by the garnishees to the respondents and it will result in irreparable loss and hardship to the applicant. Hence, there shall be a garnishee order as against respondents 7, 8, 11 to 13, who shall withhold the payments due and payable to the applicant and they shall deposit the amount to the credit of this application and this interim order will be in force till the arbitrator is appointed and thereafter, it is left open to the parties to file an application before the Arbitrator under Section 17 of the Act seeking for appropriate interim relief.

N.ANAND VENKATESH, J.

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25. In the result, this application is allowed in the above terms.

04.09.2025

Neutral Citation:Yes/No
Speaking Order/Non-speaking order

Note: Send for reporting in journals.
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Arbitration Application No.488 of 2025