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Arb O.P(COM.DIV.) No. 214
2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 214 of 2025

M/s.Mercedes -Benz Financial Services
India Pvt .Ltd.,
5th Floor, Plot 8, Baashyam Willow
Square, 9 and 10, First Street,
Thiru vi ka Industrial Estate,
Guindy, Chennai 600032.
Tamil Nadu, India. Represented by its
Authorised Signatory

Petitioner

Vs

1. Ajit Dayashankar Mishra
Flat No.G-504,Rashmi Classic,CHSL,
New Link Road,Achole, Thane-401209,
Maharashtra.

2.Ritu Ajit Mishra
E 401, Rashmi Dhruvita Park, Vasai
Virar, Link Road, Near Sharaswat
Bank, Nalasopara East, Vasai, Palghar
Thane 401209, Maharashtra.

Respondent(s)

**PRAYER**

Petition filed Under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint a sole Arbitrator to adjudicate upon the differences and disputes between the parties under the loan Agreement and Unattested Deed of Hypothecation dated 29.09.2023 in respect of Contract No.10158418.

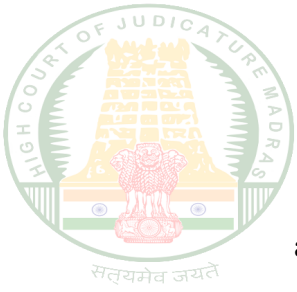
For Appellant(s): M.Arunachalam

For Respondent(s): R.Munuswamy

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [hereinafter referred as 'the Act'] for appointment of sole Arbitrator to adjudicate upon the differences/disputes between the petitioner and the respondents under the loan Agreement and Deed of Hypothecation dated 29.09.2023 .

2.The cause of action for filing the present application was captured by this Court in the order passed on 24.04.2025 and the same is extracted hereunder:



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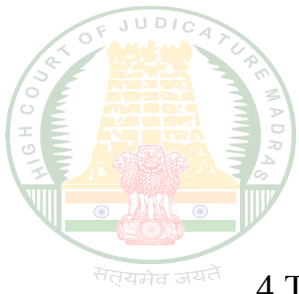


This petition has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this Court.

2. There seems to be a dispute between the petitioner and the respondent arising out of a loan agreement dated 29.09.2023. The loan agreement contains an arbitration clause. In accordance with the arbitration clause, the petitioner invoked arbitration by issuing notice to the respondents on 03.03.2025 to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996. No reply has been received for the same from the respondents.

3. Since there exists an arbitration clause in the contract 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 and since there is no consensus between the parties with regard to the name of the Arbitrator, this Court is issuing notice to the respondents returnable by 19.06.2025. Private notice is also permitted. Post the matter on 19.06.2025.

3.The 1st respondent has filed a counter affidavit. The 1st respondent has taken a stand that there is no cause of action for the petitioner to raise a dispute and hence, there is no occasion to appoint an arbitrator to resolve the dispute. It is further stated that neither the recall notice nor the notice under Section 21 of the Act, was served on the respondents. Accordingly, the respondents have sought for the dismissal of this petition.



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

5.The main contention that was raised by the learned counsel for the respondents is that the petitioner has concealed certain material facts and the present petition has been filed even without there being a cause of action as against the petitioner. The learned counsel for the respondents raised various factual issues while opposing for appointment of arbitrator.

6.In the considered view of this Court, the scope of judicial examination under Section 11 of the Act, has been succinctly captured by the Apex Court in the judgement in **BGM and M-RPL-JMCT (JV) .Vs. Eastern Coalfields Limited** reported in **(2025) 5 CTC 100** and the relevant portion is extracted hereunder:

15. The legal principles deducible from the above decision qua the scope of Referral Court's power under Section 11 of 1996 Act are as follows:

(a) Section 11 confines the Court's jurisdiction to the examination regarding the existence of an Arbitration Agreement.



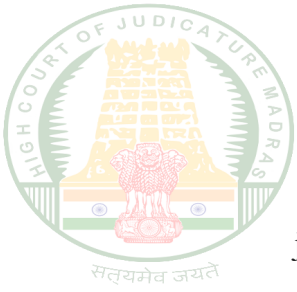
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(b) The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination.

(c) Referral Courts only need to consider one aspect to determine existence of an Arbitration Agreement - whether the underlying contract contains an Arbitration Agreement which provides for Arbitration pertaining to the disputes, which have arisen between the parties to the Agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an Arbitration Agreement on the basis of Section 7. Such a legal approach will help the Referral Court in weeding out prima facie non-existent Arbitration Agreements.

(d) The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an Arbitration Agreement. However, the expression "examination" does not connote or imply a laborious or contested inquiry.

(e) The burden of proving the existence of Arbitration Agreement generally lies on the party seeking to rely on such Agreement. Only prima facie proof of the existence of an Arbitration Agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of Arbitration Agreement. The determination of the existence and validity of an Arbitration Agreement on the basis of evidence ought to be left to the Arbitral Tribunal.

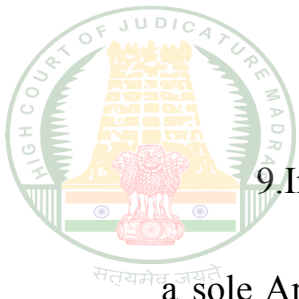


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(f) Section 16 provides that the Arbitral Tribunal can "rule on its jurisdiction, including the existence and validity of an Arbitration Agreement. A "ruling connotes adjudication of disputes after admitting evidence from the parties. Therefore, when the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the Arbitral Award is bound by such a prima facie view. If a prima facie view as to the existence of an Arbitration Agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth.

7. Section 11 confines the Court jurisdiction to examine regarding the existence of an arbitration agreement and such an agreement must be within the four corners of Section 7 of the Act. Apart from this the Court cannot enter into any other factual dispute between the parties.

8. In the case in hand, the parties have entered into an agreement dated 29.09.2023 and this agreement contains an arbitration Clause. The other issues regarding the merits of the case cannot be gone into in this petition. It will be left open to the respondents to raise all the issues before the learned arbitrator which will be dealt with on its own merits and in accordance with law.



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9. In the light of the above discussion, this Court is inclined to appoint a sole Arbitrator. Accordingly, Mr.T.Sai Krishnan, Advocate with address for service at No.48, II Floor, Vanguard House, Moore Street, Chennai 600 001, Mobile No.9840229542, (e-mail lawsbi@gmail.com) is appointed as sole Arbitrator and the Arbitrator is requested to enter upon reference qua the loan Agreement and Deed of Hypothecation dated 29.09.2023, 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 Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

10. Arb.OP (Com.Div). No.214 of 2025 is disposed of in the above terms.

There shall be no order as to costs.

08-09-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

KP

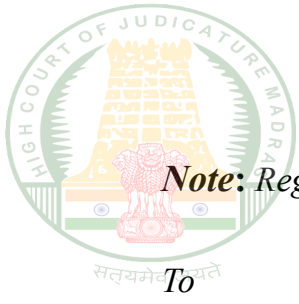


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Note: Registry is directed to communicate a copy of this order forthwith to

To

1. Mr.T.Sai Krishnan

No.48, II Floor,
Vanguard House
Moore Street, Chennai 600 001.
Mobile No.9840229542.
(e-mail lawsbi@gmail.com)

2. The Director

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

3.Ajit Dayashankar Mishra

Flat No.G-504,Rashmi Classic,CHSL,
New Link Road,Achole, Thane-
401209,Maharashtra

4.Ritu Ajit Mishra

E 401, Rashmi Dhruvita Park, Vasai
Virar, Link Road, Near Sharaswat
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