



Arb.O.P.(Com.Div.) No.365 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2025

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Arb.O.P.(Com.Div.) No.365 of 2025

M/s.AVR Service Station
Proprietor Mr.Viji Kumaravel
Having its registered office at
No.135, S.No.354/A1, Mathur Village
Sriperumbudur Taluk
Kanchipuram District 602 105

.. Petitioner

Vs.

M/s.Rajalakshmi Travels
Rep. by its Partners
Mr.Sengodagounder Shanmugam
Mrs.Jayalakshmi
Mr.Shanmugam Arulmurugan
No.10, Sri Ram Nagar, Nemili Road
Sriperumbudur, Chennai
Tamil Nadu 602 105

.. Respondent

Petition filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the agreement for diesel supply dated 01.02.2020 and to direct the respondent to pay costs.

For Petitioner : Ms.Anu Narendran

For Respondent : Mr.K.Senthoo Pandi



ORDER

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This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for brevity, hereinafter referred to as “the Act”), to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent, in terms of the agreement of diesel supply dated 01.02.2020.

2. When this petition came up for hearing on 09.07.2025, this Court 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.

2. There seems to be a dispute between the petitioner and the respondent arising out of the Agreement for Supply of Diesel dated 01.02.2020. There exists an arbitration clause in the said agreement, which is re-produced hereunder:

'5. Any dispute between the parties that cannot be settled amicably may be referred by either party to arbitration. The venue of arbitration shall be at Chennai. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof. Each party to the dispute shall appoint one Arbitrator each and the two Arbitrators so appointed, shall appoint the third or the Presiding Arbitrator (Umpire). The arbitration proceedings shall be conducted in English language. The arbitral award shall be final and binding upon the parties and judgment may be entered thereon, upon the application of either party and both the parties hereby agree to the Court at Chennai having exclusive jurisdiction.'

3. The petitioner, in terms of the arbitration clause, has nominated its Arbitrator through its notice invoking arbitration on 05.02.2025. The



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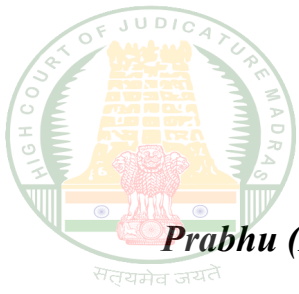
notice has also been received by the respondent, but the respondent has failed to nominate its Arbitrator. Under those circumstances, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for the appointment of an Arbitrator on behalf of the respondent. The Arbitral Tribunal, as seen from the arbitration clause, comprises of three members and one to be appointed by each party and the other to be appointed by both the respective parties.

4. 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 also nominated its Arbitrator and the respondent has not nominated its Arbitrator and since the petitioner has complied with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996, this Court is issuing notice to the respondent returnable by 30.07.2025. Private notice is also permitted.“

3. Pursuant to the above order, notice was served on the respondent and the respondent is represented through counsel.

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

5. The main objection that was raised on the side of the respondent is that clause 5 of the agreement merely gave an option to the parties to refer the dispute for arbitration. Therefore, if one of the parties does not consent, the parties cannot be referred to arbitration. To substantiate this submission, the learned counsel for the respondent relied upon the earlier order passed by this Court in ***M.Arumugam Vs. M/s.CP Foods rep. by its Partner S.Manikanda***



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Prabhu (Arb.O.P.(Com.Div.) No.142 of 2025 decided on 22.09.2025).

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6. *Per contra*, learned counsel for the petitioner submitted that merely because the term “may be referred” is used in clause 5, that, by itself, need not be the determining factor and that the entire clause must be read as a whole to understand the purport of the said clause which makes it mandatory for both the parties to resolve the dispute before the Arbitrator. To substantiate her submission, the learned counsel relied upon the order passed in ***M/s.Aditya Energy Holdings rep. by its Partner L.Uday Mehta Vs. M/s.Enrich Energy Private Ltd. rep. by its Managing Director Ankit Kanchal (Arb.O.P.(Com.Div.) No.322 of 2025 decided on 23.09.2025).***

7. The above submissions revolves around clause 5 of the agreement which has already been extracted in its entirety in the order dated 09.07.2025, extracted in paragraph 2 *supra*.

8. I had an occasion to deal with both the orders that were relied upon by either side in interpreting the term “may”, used in an arbitration clause.

9. In the case in ***M/s.Aditya Energy Holdings*** referred *supra*, the arbitration clause contained the word “may”, whereby, the parties therein, if

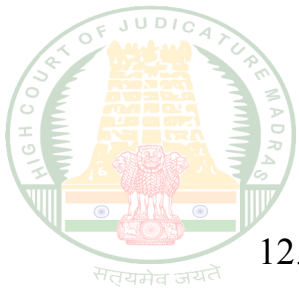


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they were not able to resolve the dispute amicably, may refer the dispute for arbitration. While dealing with the same, this Court considered the entire clause viz., the relevant clause in Land Development Agreement and also in Wrap Agreement and came to a conclusion that the parties therein had agreed to resolve their dispute only through arbitration.

10. In the judgment in the case of **M.Arumugam** referred *supra*, this Court, while interpreting the relevant clause in the Offer Letter, came to a conclusion that the said clause only gave the option to both the parties to refer the dispute to arbitration. If, ultimately, one of the parties does not consent, the Court cannot act upon the said clause and by relying upon the earlier judgments of the Apex Court, held that the relevant clause was not indicative of a binding agreement between the parties to seek for the redressal of the *inter se* dispute through arbitration.

11. The common thread in the above orders centers around the understanding of the intention of the parties, while entering into an agreement and the manner in which they want to settle the dispute. The usage of the term “may”, “shall”, etc. by itself, is not a determinating factor. The Court has to necessarily read the entire clause as a whole, before arriving at a conclusion.

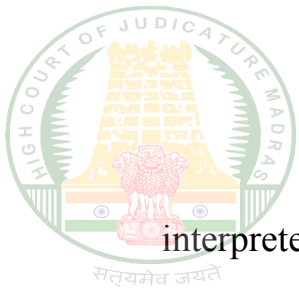


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12. In the case in hand, clause 5 starts with the term “any dispute between the parties that cannot be settled amicably may be referred by either party to arbitration”. If this clause had stopped there without any further addition, obviously, the option was available to the parties to refer the dispute to arbitration and in the absence of consent from one of the parties, there would be no binding agreement to mandate both the parties to resolve the dispute through arbitration. However, the following sentences speak about the intention of the parties to conduct arbitration proceedings in line with the Act by appointing an arbitral tribunal consisting of three members. It also makes it clear that the arbitral award shall be final and binding upon the parties and Chennai was chosen as the seat of arbitration.

13. Learned counsel for the respondent submitted that the sentences that follow the first portion of clause 5 will have an effect, only if the parties opt for referring the dispute to arbitration. If one of the parties does not consent, the subsequent sentences will carry no meaning and that will not, by itself, convert the said clause into a mandatory clause, mandating the parties to resolve the dispute through arbitration.

14. This Court is not able to agree with the said submission made by the learned counsel for the respondent. This Court cannot dissect the clause and read it in the manner in which the learned counsel for the respondent has



interpreted the same. The *consensus ad idem* between the parties can be

understood, only if the entire clause 5 is read as a whole. This clause does not provide for any other manner of dispute resolution between the parties and the only mode that has been prescribed is, by referring the dispute to the arbitral tribunal to resolve the dispute. The mandatory nature of this clause becomes even more evident, when the final sentence is taken into consideration, which makes it clear that the arbitration award shall be final and binding upon both the parties. Therefore, on a cumulative reading of clause 5, this Court holds that clause 5 provides for the mechanism of resolving the dispute only through arbitration process. This Court further holds that there is existence of an arbitration clause in the agreement and this agreement is in line with Section 7 of the Act.

15. Insofar as the appointment of arbitral tribunal is concerned, the clause concerned contemplates a three member tribunal. Considering the fact that the total claim itself is for approximately Rs.1.16crores, this Court is of the view that a sole arbitrator can be appointed, in order to cut down cost. Learned counsel appearing on either side also consented for the appointment of a sole arbitrator.



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16. In the light of the above discussion, this Court is inclined to appoint a sole arbitrator and accordingly, **Mr.Arun Anbumani, Advocate (E.No.MS.1355/2003) (Mobile No.98410 56005), residing at Old No.59, New No.17, Ayyavoo Street, Shenoy Nagar, Chennai-30 (having office at No.284, IV High Court Law Chambers), is appointed as sole Arbitrator** and the learned Arbitrator shall adjudicate the disputes between the parties and render an award. The fees of the learned Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

This application is disposed of in the above terms. No costs.

06.10.2025

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Index : Yes/No

Neutral Citation : Yes/No



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N. ANAND VENKATESH, J.

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