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Arbitration Original Petition (Com.Div.) No.392 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2025

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Original Petition (Com.Div.) No.392 of 2025

1.M/s.Topaz Promoters

A registered Partnership Firm,
having office at No.14, Lynwood Lane,
Mahalingapuram, Nungambakkam,
Chennai - 600 034.
represented through its Partner,
Mr.S.Sivakumar

2.M/s.R V & Associates

A registered Partnership Firm,
having office at No.14, Lynwood Lane,
Mahalingapuram, Nungambakkam,
Chennai - 600 034.
represented through its Partner,
Mr.S.Sivakumar

.... Petitioners

Vs.

1.Vijay R. Vakaharia

S/o.Late Ramanlal Vakharlia
Hindu, Aged about 62 years,
Having office at
No.1, Whites Road, Royapettah,
Chennai - 600 014.

2.Vijay Kumar H.U.F,

represented by its Karta Mr.Vijay R. Vakharlia,
Hindu, Aged about 62 years,
Having office at
No.1, Whites Road, Royapettah,
Chennai - 600 014.

.... Respondents



Arbitration Original Petition (Com.Div.) No.392 of 2025

Arbitration Original Petition (Com.Div.) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint Mr.Yashod Vardhan, Senior Advocate, High Court, Madras, having office No.21(8), 7th Main Road, Raja Annamalaipuram, Chennai - 600 028 as Sole Arbitrator in terms of Arbitration Clause in MOU dated 10.01.2024, in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996, as the nominee arbitrator of the respondent.

For Petitioners : Mr.N.P.Vijay Kumar

For Respondents : Mr.S.K.Srinivasan

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [for brevity 'the Act'] for appointment of a Sole Arbitrator in terms of the Memorandum of Understanding dated 10.01.2024.

2. The case of the petitioners is that the respondents had approached the petitioners seeking financial assistance. The loan amount was disbursed to the tune of Rs.4.0069 crores. As a security for the said loan, the respondents have also pledged their documents. The loan amount was disbursed in two instalments on 19.09.2018 and 25.03.2019.

3. The respondents failed to repay the amount and as a result,



there were outstanding dues. Hence, the respondents approached the petitioners to settle the outstanding dues as a one time settlement. It is stated that the respondents, at that point of time, have sought release of the documents given as security. At this juncture, both parties entered into a Memorandum of Understanding dated 10.01.2024.

4. As per the terms and conditions, the respondents will have to fulfill the payment obligation and the petitioners also agreed to release the documents given to them as security.

5. The further case of the petitioners is that the respondents have failed to make payment as per the Memorandum of Understanding. The Memorandum of Understanding itself contemplates referring the dispute to the Sole Arbitrator. Hence, a trigger notice dated 12.11.2024 under Section 21 of the Act was issued by the petitioners by suggesting the name of a Sole Arbitrator. On receipt of the same, the respondents gave a reply on 09.12.2024 by denying the claims made by the petitioners. It is under these circumstances, the present petition came to be filed before this Court.

6. A common counter affidavit has been filed by respondents.



The respondents have taken a stand that the Memorandum of Understanding is a forged and fabricated document and therefore, the same cannot be relied upon for the purpose of referring the dispute to the Sole Arbitrator. It is further stated that this document was created on the connivance between the petitioner and one Mr.Lalit Surana, who is a Chartered Accountant, only with an intent to cheat and defraud the respondents. Therefore, apart from denying the liability, the respondents have also questioned the very Memorandum of Understanding dated 10.01.2024 stating that it is a forged and fabricated document and that the entire claim is vitiated by fraud. Accordingly, the respondents have sought for dismissal of this petition.

7. Heard Mr.N.P.Vijay Kumar, learned counsel for petitioners and Mr.S.K.Srinivasan, learned counsel for respondents.

8. This Court, after hearing the learned counsel appearing on either side on 27.10.2025, directed learned counsel for petitioners to produce the original copy of the Memorandum of Understanding dated 10.01.2024 to ascertain the genuineness of the document. Accordingly, the original Memorandum of Understanding dated 10.01.2024 was placed



before this Court.

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9. Learned counsel for respondents submitted that the Chartered Accountant had breached his fiduciary capacity and has misled the respondents and the respondents have never entered into any agreement with the petitioners and the respondents did not even know the petitioners. Therefore, learned counsel for respondents reiterated that the Memorandum of Understanding dated 10.01.2024 is vitiated by fraud and hence, no orders can be passed under Section 11 of the Act.

10. In the considered view of this Court, simple allegations of fraud need not foreclose a petition filed under Section 11 of the Act. However, serious allegations of fraud i.e. fraud as regards the very agreement itself may require scrutiny on a case to case basis. Useful reference can be made to the judgment of the Apex Court in ***Managing Director, Bihar State Food and Civil Supply Corporation Limited v. Sanjay Kumar*** [2025 SCC Online Sc 1604].

11. In view of the above, when a Court exercises its jurisdiction



under Section 11 of the Act, there is a small window of scrutiny with regard to considering as to whether the agreement itself has been created by means of playing fraud. However, a roving enquiry cannot be conducted in this regard and the Court can only consider the *prima facie* materials.

12. After hearing the learned counsel on either side, this Court wanted to satisfy itself as to whether there was any such Memorandum of Understanding between the parties and hence, directed learned counsel for petitioners to produce the original Memorandum of Understanding dated 10.01.2024. Accordingly, the same has been placed before this Court.

13. The specific case of the respondents is that signatures were subscribed in blank papers and the same has been misused by filling up those papers. That apart there is absolutely no communication between the petitioners and the respondents.

14. The original Memorandum of Understanding dated



10.01.2024 does not *prima facie* reveal that it is forged and fabricated document. Signatures are found in every page and whether the signatures were obtained in the blank papers and the matter was thereafter filled up is an issue, which can be gone into only by the Sole Arbitrator. Hence, the scrutiny made by this Court does not result in a definite conclusion that fraud has been played as regards the very agreement itself. More than this, this Court cannot conduct any roving enquiry while dealing with a petition under Section 11 of the Act.

15. In the light of the above discussion, this Court will keep this issue open and it is left open to the Sole Arbitrator to deal with specific grounds raised by the respondents on its own merits and in accordance with law.

16. On the materials placed before this Court, this Court finds that there is a valid agreement between the parties under Section 7 of the Act and it contains an arbitration clause.

N.ANAND VENKATESH, J.



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17. In the light of the above discussion, this Court appoints Mr.P.B.Sampath Kumar, Advocate, No.10, North Boag Road, CB Narasiman Road, 18th Street, T.Nagar, Chennai - 17 [Mobile No.93810 17455], as the Sole Arbitrator and the Sole Arbitrator is requested to adjudicate the arbitral disputes that had arisen between the parties and render arbitral award by 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 Sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

Accordingly, this petition is disposed of.

05.11.2025

gm

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