



Arb. O.P. (Com. Div.) No.506 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

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Tata Capital Limited,
Represented herein by its Authorized Representative/
Power Agent,
Mr.Manoj.M,
1st Floor, Centennial Square,
6A, Dr. Ambedkar Salai, Kodambakkam,
Chennai – 600 024.
Having its registered office at,
Tower A,1101, Penninsula Business Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400 013. ... Petitioner

vs.

1. M/s.Mark Associates
Proprietorship firm of Mr.Renji Kurien Thukalankachipillil,
IX/411-B Near Infopark,
Kusumagiri P.O., Kakkanad,
Ernakulam,
Kerala 682 030.
Email: accounts@markgroup.net.in
markcochin@hpclubes.in

Also at:

Mr.Renji Kurien Thukalankachipillil,
Proprietor of M/s.Mark Associates,



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Residing at 817A91, E7/C, Heera Vasthugramam,
9, Kakkanadu,
Thirukakkara Panchayath,
Erunakulam,
Kerala 682 030.

Also at:
2/214, M/s. Mark Associates,
Proprietorship Firm of Mr. Renji Kurien Thukalankachipillil,
Valakkavu Kainoor,
Thrissur, Kerala - 680 751

Also at:
Landmark, Mark Valley,
Nelson Mandela Road,
Mulamthuruthy, Ernakulam,
Kerala - 682 314

Also at:
1/405 E, Mark Logistics,
Nelson Mandela Road,
Mulamthuruthy, Ernakulam,
Kerala - 682 314

Also at:
1/405 G, Mark Associates,
Proprietorship Firm of Mr. Renji Kurien Thukalankachipillil,
Nelson Mandela Road, Mulamthuruthy,
Ernakulam,
Kerala - 682 314

Also at:
1/405 I to L, Mark Logistics,
Nelson Mandela Road, Mulamthuruthy,
Ernakulam,
Kerala - 682 314



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Also at:

1/405 M, Trade House,
Nelson Mandela Road,
Mulamthuruthy,
Ernakulam,
Kerala - 682 314

2. Mr. Renji Kurien Thukalankachipillil,
Proprietor of M/s. Mark Associates,
Residing at 817A91, E7/C, Heera Vasthugramam,
9, Kakkanadu, Thirkakkara, Panchayath,
Ernakulam,
Kerala - 682 030.

3. Mrs. Siji Renji,
W/o Mr. Renji Kurien Thukalankachipillil,
Residing at 817A91, E7/C, Heera Vasthugramam,
9, Kakkanadu, Thirkakkara, Panchayath,
Ernakulam,
Kerala - 682 030

... Respondents

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 for the following reliefs :-

a) Appoint an Arbitrator to adjudicate the disputes between the Petitioner and the respondents in terms of the Agreement for Channel Finance Facility, dated 13th October 2022.

b) Direct the Respondent to pay the costs; and

c) Grant such further reliefs as this Court may deem fit under the circumstances of the case and thus render justice.



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For petitioner : Mr.C. Balakrishnan
For respondents : Ms.N. Sumipriya for R1

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator by this Court.

2. There seems to be a dispute arising out of the Loan cum Guarantee agreement, dated 13.10.2022 entered into between the petitioner and the respondents. In the said agreement there exists an arbitration clause, which is extracted hereunder :-

12. Arbitration :

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or affect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitration to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 17 of Annexure 1 hereto of the Agreement

The Party Invoking the arbitration (Claimant) shall address a notice to the other Party ("Respondent") suggesting the names of not more than three arbitrators, all of whom shall be either retired judges of



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the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years relevant experience. The Respondent shall either :

- (i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (10) days from the date of notice ("Notice Period"); or
- (ii) Convey objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties.

In the event, the Respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Obligor/s.

3. The petitioner has also issued notice to the respondents on 02.02.2024 as per Section 21 of the Arbitration and Conciliation Act calling upon the respondents to agree for arbitration. Since there was no



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response from the respondents, the petitioner has filed this petition under

Section 11 of the Arbitration and Conciliation Act seeking for appointment of an arbitrator by this Court. Till date, no counter has been filed by the respondents in this petition.

4. While deciding an application under Section 11 of the Arbitration and Conciliation Act, this Court will have to only consider the prime facie existence of an arbitration agreement between the parties. On a prima facie consideration, this Court finds that there exists an arbitration clause in the contract viz., Loan cum Guarantee Agreement, which is the subject matter of the dispute between the parties which has been extracted supra. The petitioner has also complied with the statutory requirements of Section 21 of the Arbitration and Conciliation Act by issuing a notice on 02.02.2024 to the respondents requesting them to agree for arbitration. The respondents have also not replied to the same. Since there is no consensus between the parties with regard to the name of the arbitrator, this Court will have to necessarily appoint an arbitrator to decide the dispute between the parties arising out of the Loan cum and Guarantee Agreement, dated 13.10.2022.



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5. For the foregoing reasons, this Arbitration Original Petition is

allowed as prayed for by issuing the following directions :-

a) This Court appoints Mr.Naveen Kumar Murthy, the learned Advocate, who is having office at S2, 2nd Floor, Singapore Plaza, No.164, New No.337, Linghi Chetty Street, Chennai – 600 001 (naveenimmo@gmail.com) (Mobile No.98847 40424) as the sole Arbitrator to adjudicate the dispute between the parties arising out of the aforesaid agreement.

(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

10.02.2025

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Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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ABDUL QUDDHOSE, J.

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