Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 18-11-2026**

CORAM

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**Arb O.P No. 42 of 2026**
**and Application No.2521 of 2026**

*CNR: {HCMA010970932026}*

Case QR

1. Fathima Moulasab Tonnimiranawar,
   W/o.Moulasab, B Gudihal, Kolghatgi,
   Dharwad, Karnataka-580 114.

2. Moulasab R Tonnimiranavar,
   S/o.Rajesab, B Gudihal, Kolghatgi, Dharwad,
   Karnataka-580 114.

3. Sayyed Rizwan Moulasab Tonnimiranwar,
   S/o.Moulasab, B Gudihal, Kolghatgi, Dharwad,
   Karnataka-580 114.

..Applicant(s)

Vs

M/s.Five Star Business Finance Limited,
Rep. by its Authorized Signatory,
Corporate office. New No.27, Old No.4,
Taylors Road, Kilpauk, Chennai-600 010.

..Respondent(s)

PRAYER: Petition filed under Section 34 (3) of the Arbitration and Conciliation Act, 1996, to set aside the Arbitral Award dated 01.08.2024 passed by the Sole Arbitrator in Arbitration Case No.245 of 2024 with costs and pass such further or other orders.

For Applicant(s): Mr.R.Jai Gandhi

For Respondent(s): No appearance



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**ORDER**

This Arbitral Original Petition is filed, challenging the arbitral award dated 01.08.2024 passed by the sole arbitrator in Arbitration Case No.245 of 2024.

2. Even though notice has been served on the respondent, none appears on behalf the respondent and opposes the prayer made.

3. Upon hearing the learned counsel for the petitioner, the first submission made is that the loan agreement dated 29.01.2019 contains a clause enabling the Managing Director to appoint an Arbitrator. The said clause was incorporated after the amendment to the Arbitration and Conciliation Act, 1996, and therefore, there cannot be any unilateral appointment of an Arbitrator. The respondent, on its own, chose to unilaterally nominate the Arbitrator through an institution by name, the Council for National and International Commercial Arbitration. Such an action could be justified only if the parties had agreed to institutional arbitration.

4. In this case, the Arbitrator was unilaterally appointed, which is directly contrary to the dictum laid down by the Hon'ble Supreme Court of India in ***Bhadra International (India) Pvt. Ltd. and Others Vs. Airports Authority of India***[1]. Therefore, the arbitral award is liable to be set aside.

[1] (2026) SCC OnLine SC 7



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5. Secondly, the learned counsel for the petitioner would submit that no notice invoking arbitration was issued to the petitioner in accordance with Section 21 of the Arbitration and Conciliation Act, 1996. Further, the petitioner was not put on notice either with regard to the appointment of the Arbitrator or the independency of the Arbitrator, nor was any notice issued to the petitioner regarding the arbitral hearings.

6. Even in the arbitral proceedings, the Arbitrator has recorded the following in paragraph No.2:

> 06.06.2024 The authorized representative for the claimant appeared. The notice along with the claim statement and documents which sent to the respondents 1 & 3 were returned as Refused and the same was sent to the 2nd respondent vide Postal Registration No.RT077214563IN. The respondents were also notified to file their statement of defence through e-mail, if any and credentials were also shared for video conferencing. Inspite of the same, neither the respondents nor their counsel appeared. The respondents were called absent. In any event, this tribunal is of the view to provide the respondents a final opportunity to file their objections, if any. Hence the matter was adjourned to 11.07.2024.

7. Thus, the learned counsel for the petitioner would submit that, even though it was contended that the petitioner had refused to receive the notice, no affidavit of proof of service was filed, and the Arbitral Tribunal proceeded to pass the award solely on the basis of the registration slip. It is the specific



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contention of the petitioner that no such notice was ever sent to them. Further, no returned postal cover has been marked or referred to in the arbitral award.

8. It can be seen that, from the categorical pleadings contained in the Original Petition and the submissions made by the learned counsel for the petitioner, sufficient grounds have been made out for setting aside the arbitral award. As stated *supra*, the petition has not been contested by the respondent. Accordingly, upon finding that the Arbitrator was appointed unilaterally and that the award was passed without affording an opportunity of hearing to the petitioner, I am of the view that the petitioner is entitled to succeed.

9. In view thereof, the Arbitration O.P.No.42 of 2026 shall stand allowed on the following terms:-

(i) the award of the sole arbitrator bearing reference A.C.P. (CNICA-FIVE-STAR) No. 245 of 2024 dated 01.08.2024 shall stand set aside;

(ii) No costs. Consequently, the connection application(s), if any shall stand closed.

**18-11-2026**

Neutral Citation: Yes/No

JER



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**D.BHARATHA CHAKRAVARTHY, J.**

**JER**

**Arb O.P No. 42 of 2026**

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