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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-02-2026

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THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Arb.O.P.No.720 of 2025

and

Arb Appln Nos. 739 and 740 of 2025

Vivriti Capital Limited (Formerly Vivriti Capital Private Limited)
Having its registered office at Prestige Zackria Metropolitan, No.200/1-8, 2nd Floor, Block 1, Anna Salai, Chennai 600 002 Rep.by its Authorised Signatory Noyal James.

..Petitioner(s)

Vs

1. Gensol Electric Vehicles Private Limited
Having its registered office at Gat No.877, Next to Mahindra Towers Khed, Nighoje, Chakan Pune, Maharashtra 410 501.

..Respondent in all the applications

2. Mr.Anmol Jaggi

..2nd Respondent in Arb.O.P.No.720 of 2025

**Arb.O.P.No.720 of 2025**

Prayer: This Application is filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator in terms of Clause 26 of the Master General Terms Agreement dated 03.08.2024 and Clause 13 of the Personal Guarantee to adjudicate all the disputes between the petitioner and the respondents.

Arb Appln No. 739 of 2025

Prayer: This Application is filed under Order XIV Rule 6 of O.S. Rules read with Section 9(1)(ii)(d) of the Arbitration and Conciliation Act, 1996, to allow the Receiver to obtain from the Respondent and Statutory Auditor of the Respondent documents such as Physical Verification Reports, Current and Fixed Assets Reports, Quarterly Assets Reports along with Schedules signed by the Statutory Auditor to identify the assets, its location and take custody of the same in accordance to the schedule to this Application.

Arb Appln No. 740 of 2025

Prayer: This Application is filed under Order XIV Rule 6 of O.S. Rules read with Section 9(1)(ii)(d) of the Arbitration and Conciliation Act, 1996, to appoint the Authorised Officer of the applicant as the Receiver of current assets and movable assets more fully described in the schedule to this application and allow the applicant to take possession of the same by break open the premises including police protection.



For Petitioner(s): Mr.Jose John
for M/s.King & Partridge

For Respondent(s): Mr.Gautam.S.Raman for R1
No appearance for R2

COMMON ORDER

All these applications can be taken up together, and a common order can be passed in this case.

2. Application Nos.739 and 740 of 2025 have been filed seeking for an appointment of a Receiver to take possession of the hypothecated assets and hand over the same to the applicant, and also for verification of the reports, current and fixed assets reports and quarterly assets reports along with schedules signed by the statutory Auditor, so as to enable the Receiver to identify the assets and its location and take custody of the same.

3. Arb.O.P.No.720 of 2025 has been filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as “the Act”) seeking for appointment of a Sole Arbitrator in terms of Clause 26 of the Master



General Terms Agreement dated 03.08.2024 and Clause 13 of the Personal Guarantee, to adjudicate all disputes between the petitioner and the respondents.

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4. The applications filed in Arb. Application Nos.739 and 740 of 2025 were heard on 07.08.2025 and the following order came to be passed by this Court:-

These applications have been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking for the following reliefs:-

a) Application No.740 of 2025 has been filed seeking for appointment of the Authorized Officer of the applicant as the Receiver and, allow him to take possession of the hypothecated assets and, also permit him to break open the premises, if required, and also seek police protection and handover possession of the hypothecated assets to the applicant.

b) Application No.739 of 2025 has been filed seeking to allow the Authorized Officer of the applicant, if appointed as a Receiver to obtain from the respondent and its Statutory Auditor, documents such as physical verification reports, current and fixed assets reports and quarterly assets reports along with schedules signed by the Statutory Auditor, to enable the Receiver to identify the assets, its location and take custody of the same.

2. At the outset, this Court makes it clear that the question of appointment of the applicant's own Employee as a Receiver as prayed for in these applications does not arise as the said Employee will not be a neutral person, therefore, if at all only an Advocate Commissioner can be appointed for the relief sought for in these applications.

3. The respondent had availed financial facilities from the applicant under the following agreements:-

- a) Facility Agreement dated 03.08.2024.
- b) Master General Terms agreement dated 03.08.2024.
- c) Deed of Hypothecation dated 03.08.2024.



d) Master Hypothecation Agreement dated 03.08.2024.

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e) Corporate Guarantee executed by the 1st respondent in favour of the applicant on 03.08.2024.

f) Personal Guarantee executed by one Anmol Singh Jaggi in favour of the applicant on 03.08.2024.

4. The applicant has lent a sum of Rs.5,00,00,000/- to the respondent under the aforementioned agreements. According to the applicant, from March 2025 onwards, the respondent has committed default in the repayment of the loan to the applicant under the aforementioned agreements. The applicant also claims that, on account of fraudulent transactions committed by the respondent, SEBI through its interim order dated 15.04.2025 issued interim directions against the respondent and their associate companies. The applicant has also sent a default notice to the respondent on 17.04.2025, pursuant to the interim directions issued by the SEBI through its interim order dated 15.04.2025. No reply was sent by the respondent to the default notice dated 17.04.2025 sent by the applicant. The applicant claims that the respondent having committed default in the repayment of the loan to the applicant, the assets hypothecated by the respondent with the applicant have to be surrendered to the applicant as per the terms and conditions of the respective loan agreements.

5. The learned counsel for the applicant also drew the attention of this Court to the various clauses contained in the respective agreements entered into by the respondent with the applicant and would submit that the respondent having defaulted in the repayment of the loan to the applicant as per the terms and conditions of the agreement, they have to surrender the hypothecated assets to the applicant. The learned counsel for the applicant also drew the attention of this Court to the various orders passed by the Delhi High Court against the holding company of the respondent namely, Gensol Engineering Limited, wherein, a party receiver was appointed to repossess the assets belonging to the holding Company of the respondent on account of the default committed by the said holding Company in the repayment of the loan. The learned counsel for the applicant seeks for similar directions from this Court in these applications as well. The learned counsel for the applicant would also submit that the respondent is indebted to various creditors and an investigation with regard to alleged fraud is also being conducted pursuant to the directions issued by SEBI.



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6. On the other hand, the respondent has filed a counter before this Court stating as follows:-

a) Even before the respondent committed default, the applicant had terminated the contract and had re-called the loan.

b) Even before the respondents had committed default, the applicant had realized a sum of Rs.23,98,658/- from the cash collateral amount of Rs.42,50,000/- given by the respondent at the time of availing the loan.

c) The applicant is already protected through the orders passed by this Court in O.A.No.421 of 2024 dated 29.04.2025 as this Court has granted an order of interim injunction restraining them from alienating / encumbering the hypothecated assets.

d) Simultaneous proceedings have been initiated by the applicant under the Insolvency and Bankruptcy Code before the National Company Law Tribunal, Bombay against the respondent and therefore, there is no necessity for this Court to grant interim protection in favour of the applicant as prayed in these applications before initiating arbitration.

7. The learned counsel for the first respondent also drew the attention of this Court to the relevant documents filed by the applicant to substantiate the aforementioned contentions.

Discussion:

8. Admittedly, as on date, the respondent is a defaulter in the repayment of the loan to the applicant as per the terms and conditions of the respective loan agreements referred to supra. Though the learned counsel for the first respondent would submit that, as on the date, when the loan contract was terminated by the applicant, the respondent was not a defaulter, it is an admitted fact that as on this date, the respondent is a defaulter in the repayment of the loan as they have failed to pay monthly installments payable to the applicant as per the terms and conditions of the respective loan agreements from March, 2025 onwards. According to the applicant's statement of account, a sum of Rs.1,11,70,660/- is due and payable by the respondent to the applicant as per the terms and conditions of the respective loan agreements. However, the same is disputed by the learned counsel for the first respondent.



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9. Even though this Court had granted an interim order of injunction in O.A.No.421 of 2024 dated 29.04.2025 restraining the respondent from alienating / encumbering the hypothecated assets, this Court is of the considered view that since SEBI has already issued interim directions against the very same respondent on account of the alleged fraudulent transactions committed by the respondent and as on date, the applicant is also not having any security to recover its dues, and that too when a *prima facie* consideration, this Court finds that the respondent is a defaulter in the repayment of the loan, necessarily this Court will have to protect the interest of the applicant.

10. In fact, during the course of the submissions made by the learned counsel for the first respondent, today, this Court had requested the learned counsel for the first respondent to get instructions as to whether the respondent will be in a position to pay the arrears of installments due as on date, as a condition to avoid re-possession of the hypothecated assets from the respondent. However, on instructions, he would report to this Court that since the Bank accounts of the respondent have already been attached, it is not possible for the respondent to pay any amount to the applicant as on date. It is, therefore, clear that the respondent is not in a position to pay the arrears of installments as on date i.e., the admitted sum payable by the respondent, as on date, to the applicant.

11. Even though the applicant has sought for the relief of re-possession of assets from the respondent through these applications, this Court is of the considered view that, for the present, this Court deems it fit to only direct the Advocate Commissioner to take inventory of the assets which are hypothecated to the applicant as per the respective loan agreements entered into by the respondent with the applicant on 03.08.2024. The respondent claims that the monthly installments payable to the applicant as per terms and conditions of the respective loan agreements up to May, 2025 have been paid. However, when it is an admitted fact that the respondent has not paid the monthly installments due and payable to the applicant as per terms and conditions of the respective loan agreements from May, 2025 onwards, this Court is of the considered view that no prejudice will be caused to the respondent, if inventory is taken of the hypothecated assets from the respondent's premises to protect the interest of the applicant, who has lent money to the respondent only based on the hypothecated assets.



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12. As observed earlier, this Court is not appointing a party receiver as prayed for in these applications and is appointing only an Advocate Commissioner as he alone will be a neutral person for the purpose of taking inventory of the assets, which were taken as security by the applicant for the purpose of lending money to the respondent under the respective loan agreements referred to supra.

13. For the foregoing reasons, since the applicant has made out a *prima facie* case for appointment of an Advocate Commissioner to take inventory and they have also established balance of convenience and irreparable hardship, this Court is appointing **Mr. Antony R. Julian,**
th
Advocate, Address: No.1202, 12 Floor, Casa Grand, Monte Carlo, Saidapet, Little Mount, Chennai – 15, Mobile No. 7838910776 as Advocate Commissioner to take inventory of the assets, which were given as security by the respondent towards the monies lent by the applicant.

14. The respondent is directed to co-operate with the applicant as well as the Advocate Commissioner for the effective implementation of this order by identifying the assets and handing over copies of all relevant documents as disclosed in Arb.Appln.No. 739 of 2025 for the purpose of identifying the assets and its location. The Advocate Commissioner is also allowed to obtain Police aid, if he so requires for the purpose of executing the warrant of commission. The Advocate Commissioner shall submit the inventory report on the next hearing date i.e., 11.09.2025. The applicant shall pay an initial remuneration of Rs.50,000/- to the Advocate Commissioner forthwith.

15. The Registry is directed to issue warrant of commission to the Advocate Commissioner by **11.08.2025**.

Post on 11.09.2025.”

5. Pursuant to the above order, the applications were again listed for hearing on 16.09.2025 and the following order came to be passed by this Court:-



Pursuant to the order passed by this Court on 07.08.2025, an Advocate Commissioner was appointed. The Advocate Commissioner has submitted an interim report dated 16.09.2025. The Advocate Commissioner has taken a stand that he did not receive full co-operation on the side of the respondent. The learned Advocate Commissioner also brought to the notice of this Court the request made by the Advocate Commissioner on 26.08.2024 for the information on the inventory of the hypothecated assets of the respondent as per the earlier order passed by this Court on 07.08.2025.

2. The learned counsel appearing on behalf of the respondents submitted that a date can be fixed by the Advocate Commissioner and he can visit the premises and whatever information has been sought for by the Advocate Commissioner through letter dated 26.08.2025 will be acted upon and the Advocate Commissioner will be permitted to take the inventory of the assets remaining in the property.

3. In the light of the above submission, the learned Advocate Commissioner shall fix a date and inform the same to the parties and on that date, all necessary co-operation shall be given to the Advocate Commissioner to complete his task under the warrant as per the request made by the Commissioner through letter dated 26.08.2025.

4. Post this application under the caption for filing report on 07.10.2025.

6. The applications were again listed for hearing on 07.10.2025 and the following order came to be passed by this Court:-

“When the matter was taken up for hearing today, the learned Advocate Commissioner submitted that pursuant to the earlier order passed on 16.09.2025, an email was sent on the very same day to the respondent to provide information based on the earlier email sent by the learned Advocate Commissioner on 26.08.2025. It seems that there was no proper response on the side of the respondent.



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2. The learned counsel for the first respondent submitted that the official of the respondent company had addressed an email directly to the learned counsel for the first respondent and the same has been informed to the learned Advocate Commissioner.

3. In this considered view of this Court, when a specific direction was given by the Court, the respondent is duty bound to comply with the same. Hence, the concerned official belonging to the respondent company shall co-operate with the learned Advocate Commissioner and produce all the available details to the learned Advocate Commissioner by 14.10.2025.

4. On receipt of the same, if necessary, it will be left open to the learned Advocate Commissioner to once again visit the factory premises for taking inventory.

5. Further report shall be filed before the next date of hearing.

Post this case on 28.10.2025.”

7. During the pendency of the above applications, Arb.O.P.No.720 of 2025 was filed by the applicant for appointment of a Sole Arbitrator to adjudicate the dispute between the parties arising out of the Master General Terms Agreement dated 03.08.2024 and the Personal Guarantee dated 03.08.2025.

8. In the light of the series of orders that were passed in the applications, the learned Advocate Commissioner visited the property and three reports have been filed by the learned Advocate Commissioner dated 16.09.2025, 07.10.2025 and 28.10.2025, along with relevant documents.



9. The learned counsel for the applicant submitted that whatever assets are identified, can be handed over to the applicant and that the same will be kept in safe custody, else those assets will become scrap, since the respondent Company has ceased operations.

10. The learned counsel for the first respondent raised objections with respect to the above submission made by the learned counsel for the applicant and submitted that the first respondent will keep the assets identified by the Advocate Commissioner in safe custody.

11. In the considered view of this Court, the assets have already been identified by the Advocate Commissioner, and three reports have been filed. Hence, for the present, those assets shall not be alienated by the respondent. If ultimately the applicant wants to take possession of those assets, it will be left open to the applicant to move an application under Section 17 of the Act before the sole Arbitrator and the same will be considered on its own merits and in accordance with law. If the Sole Arbitrator is unable to effectively deal with the situation due to the constraints of the Arbitral Tribunal, it will be left open to the applicant to approach this Court by filing an application under Section 9 of the Act.



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12. Coming to the petition filed in Arb.O.P.No.720 of 2025, the said petition has been filed pursuant to Clause 26 of the Master General Terms Agreement dated 03.08.2024 and Clause 13 of the Personal Guarantee dated 03.08.2025.

13. The Trigger Notice under Section 21 of the Act was issued by the applicant on 02.05.2025 and the relevant portions in the Trigger Notice are extracted hereunder:-

*7. We hereby call upon and demand the Borrower to pay to VCL immediately but no later than 1 (One) day from the date of this Loan Recall Notice, the Outstanding Due Amounts in relation to the Facility more particularly detailed in Annexure I hereto ("**Outstanding Amounts**") together with further interest, default interest, penal charges, premia, costs charges etc thereon at the contractual rates until payment/ realization of the Outstanding Amounts. The aforesaid amounts are exclusive of any contingent liabilities that may arise in future for VCL, which will be added to the abovementioned Outstanding Amounts together with further interest and other charges thereon.*

8. CAPITAL Further, due repayment of Outstanding Due Amounts under the Facility is guaranteed by the vide Personal 100002 Corporate Guarantor vide Corporate Guarantee and Personal Guarantor Guarantee. The Corporate Guarantor and the Personal Guarantor are hereby called upon to make the payments of the Outstanding Amounts forthwith VCL has a right to take all necessary steps/legal actions for realizing its dues and for enforcing the Securities. Corporate Guarantee and Personal Guarantee provided by the respective Obligors, solely at their risk as to costs and consequences.

9. In the event, Borrowers and/or Guarantors fail to comply their respective payment obligations under this notice, it shall be presumed that disputes have arisen between the Borrower/Corporate Guarantor/Personal Guarantor and VCL under MGTA/respective Corporate Guarantee and Personal Guarantee, and this notice may be treated as a notice invoking arbitration under Clause 26



of MGTA for the Borrowers and under clause 13 of respective Corporate Guarantee and Personal Guarantee.”

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14. It will also be relevant to extract Clause 26 of the Master General Terms Agreement dated 03.08.2025 hereunder:-

“26. GOVERNING LAW, ARBITRATION AND JURISDICTION

This MGTA and the Facility Documents are and will be governed by and construed in accordance with the laws of India. The Parties agree to submit to the exclusive jurisdiction of the courts and tribunals of Chennai, India. The Borrower irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of these courts and tribunals, and irrevocably waives any objection now or in future, to the laying of the venue of any proceedings in the courts or tribunals in Chennai and any claim that any such proceedings have been brought in an inconvenient forum. The submission to the exclusive jurisdiction of the courts Chennai, India is for the benefit of the Lender only and will not (and will not be construed so as to) limit the right of the Lender to take proceedings in any other court of competent jurisdiction, nor shall the taking of proceedings by the Lender in any one or more jurisdictions preclude the taking of proceedings by the Lender in any other jurisdiction (whether concurrently or not) if and to the extent permitted by Applicable Law.

In the event of a dispute arising between the Parties hereto with respect to any of the Facilities, either Party shall be free to refer the dispute to a sole arbitrator mutually appointed by both the Parties and the arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996. Alternatively, the Parties can refer to an arbitral institution which renders services in the nature of appointment of arbitrators and/or conduct of arbitration proceedings. The Parties hereto agree to the appointment of a sole arbitrator by such an arbitral institution and shall be governed by the arbitration proceedings as per the provisions of the Arbitration and Conciliation Act, 1996 and the rules of such arbitral institution.

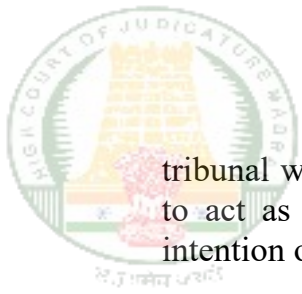


The seat and venue of arbitration proceedings as per this Clause 26 shall be Chennai and be conducted in the English language. The arbitration award shall be final, conclusive and binding on the Parties. including the costs of arbitration proceedings and attorneys' costs.”

15. Clause 13 of the Personal Guarantee Agreement dated 03.08.2024 is in *pari materia* with the above Clause; hence, there is no necessity to extract the same again.

16. The learned counsel for the first respondent submitted that the Trigger Notice dated 02.05.2025 issued by the petitioner is not in line with the arbitration clause found in the above two agreements and hence, based on that Trigger Notice, a Sole Arbitrator cannot be appointed. The learned counsel, in order to substantiate his submission, placed reliance upon the judgment of the Apex Court in the case of ***Adavya Projects Pvt. Ltd. Vs. M/s.Vishal Structural Pvt. Ltd. & Ors.*** in ***Civil Appeal No.5297 of 2025, dated 17.04.2025***. The learned counsel specifically placed reliance upon paragraph Nos.16 and 17 of the said judgment, which are extracted hereunder:-

“16. As has been stated above, a [Section 11](#) application can be preferred by a party when the procedure for appointment stipulated in the arbitration agreement fails. It is relevant that [Section 11](#) falls under Part I, Chapter III of the ACA that deals with “Composition of arbitral tribunal”. The statutory scheme, along with the clear wording of [Section 11\(6\)](#), evidences that the purpose of this application is for the court to take “necessary measure”, in the absence of any other means in the arbitration agreement, “for securing the appointment” of the arbitral tribunal. By constituting the arbitral



tribunal when there is a deadlock or failure of the parties or the appointed arbitrators to act as per the arbitration agreement, the court only gives effect to the mutual intention of the parties to refer their disputes to arbitration.

17. It is also relevant to note that while deciding such an application under [Section 11\(6\)](#), the High Court or this Court, as the case may be, undertakes a limited examination as per [Section 11\(6A\)](#). The court's jurisdiction is confined to a prima facie examination, without conducting a mini-trial or laborious and contested inquiry, into the existence of the arbitration agreement, i.e., whether there exists a contract to refer disputes that have arisen between the parties to arbitration. Further, any examination into the validity of the arbitration agreement must be restricted to the requirement of "formal validity", i.e., whether the requirements of a written agreement under [Section 7](#) of the ACA are satisfied. Beyond this, the court must leave it to the arbitral tribunal to "rule" on and adjudicate the existence and validity of the arbitration agreement on the basis of evidence adduced by the parties, in accordance with the principle under [Section 16](#) of the ACA."

17. The learned counsel also placed reliance upon the judgment of the Delhi High Court in the case of *Shriram Transport Finance Company Limited Vs. Narender Singh* reported in *2022 SCC OnLine Del 3412*, which in turn placed reliance upon the earlier judgment of the Delhi High Court in the case of *Alupro Building Systems (P) Ltd. Vs. Ozone Overseas (P) Ltd.*, reported in *2017 SCC OnLine Del 7228*. The relevant portions are extracted hereunder:-

"32. The judgment in Alupro Building case has aptly explained the relevance of a notice under Section 21 of the Act. It was held that the Act does not contemplate unilateral appointment of an arbitrator by one of the parties, there has to be a consensus for such appointment and as such, the notice under Section 21 of the Act serves an important purpose of facilitating such a consensus on the appointment of an arbitrator. It was further held in Alupro Building case that the parties may opt to waive the requirement of notice under Section 21 of the Act. However, in the absence of such a waiver, this provision must be given full effect to.

33. We are in agreement with the principles as expressed in the decision of Alupro Building case, which are enunciated below:



(i) The party to the arbitration agreement against whom a claim is made should know what the claims are. The notice under Section 21 of the Act provides an opportunity to such party to point out if some of the claims are time-barred or barred by law or untenable in fact or if there are counterclaims.

(ii) Where the parties have agreed on a procedure for appointment, whether or not such procedure has been followed, will not be known to the other party unless such a notice is received.

(iii) It is necessary for the party making an appointment to let the other party know in advance the name of the person who it proposes to appoint as an arbitrator. This will ensure that the suitability of the person is known to the opposite party including whether or not the person is qualified or disqualified to act as an arbitrator for the various reasons set forth in the Act. Thus, the notice facilitates the parties in arriving at a consensus for appointing an arbitrator.

(iv) Unless such notice of commencement of arbitral proceedings is issued, a party seeking reference of disputes to arbitration upon failure of the other party to adhere to such request will be unable to proceed under Section 11(6) of the Act. Further, the party sending the notice of commencement may be able to proceed under the provisions of sub-section 5 of Section 11 of the Act for the appointment of an arbitrator if such notice does not evoke any response.”

18. The learned counsel also placed reliance upon the judgment of the Telangana High Court in the case of ***Cipher Oncology Private Limited Vs. Unimed Health Care Private Limited*** reported in ***2025 SCC OnLine TS 212*** and the relevant portions are extracted hereunder:-

16. The curtains on this aspect were drawn by the Division Bench of the High Court of Delhi in *Shriram Transport Finance Company Limited* (supra). The relevant portion of the said judgment reads thus:-



32. The judgment in Alupro Building case [Alupro Building Systems (P) Ltd. v. Ozone Overseas (P) Ltd. 2017 SCC OnLine Del 7228] has aptly explained the relevance of a notice under Section 21 of the Act. It was held that the Act does not contemplate unilateral appointment of an arbitrator by one of the parties, there has to be a consensus for such appointment and as such, the notice under Section 21 of the Act serves an important purpose of facilitating such a consensus on the appointment of an arbitrator. It was further held in Alupro Building case [Alupro Building Systems (P) Ltd. v. Ozone Overseas (P) Ltd., 2017 SCC OnLine Del 7228] that the parties may opt to waive the requirement of notice under Section 21 of the Act. However, in the absence of such a waiver, this provision must be given full effect to.

33. We are in agreement with the principles as expressed in the decision of Alupro Building case [Alupro Building Systems (P) Ltd. v. Ozone Overseas (P) Ltd. 2017 SCC OnLine Del 7228], which are enunciated below:

- (i) The party to the arbitration agreement against whom a claim is made should know what the claims are. The notice under Section 21 of the Act provides an opportunity to such party to point out if some of the claims are time-barred or barred by law or untenable in fact or if there are counterclaims.
- (ii) Where the parties have agreed appointment, whether or not such procedure has been on a procedure for followed, will not be known to the other party unless such a notice is received.
- (iii) It is necessary for the party making an appointment to let the other party know in advance the name of the person who proposes to appoint as an arbitrator. This will ensure that the suitability of the person is known to the opposite party including whether or not the person is qualified or disqualified to act as an arbitrator for the various reasons set forth in the Act. Thus, the notice facilitates the parties in arriving at a consensus for appointing an arbitrator.
- (iv) Unless such notice of commencement of arbitral proceedings is issued, a party seeking reference of disputes to arbitration upon failure of the other party to adhere to such request will be unable to proceed under Section 11(6) of the Act. Further, the party sending the notice of commencement may be able to proceed under the provisions of sub-section 5 of Section 11 of the Act for the appointment of an arbitrator if such notice does not evoke any response. (emphasis supplied)

17. Clause (iii) of paragraph No. 33 of the aforesaid judgment, in no uncertain terms, makes it clear that the necessity for a party making an appointment is to inform the other party in advance about the name of



person who is proposed to be appointed as an arbitrator. This condition is made so that the suitability of that person is known to the opposite side in advance and he can examine and decide about his suitability, etc.

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19. By placing reliance on all the above judgments, the learned counsel for the first respondent submitted that as per the arbitration clauses, the petitioner ought to have named an Arbitrator and informed the same to the respondents and if there was no response from the respondents, only then the petitioner could have invoked the jurisdiction of this Court under Section 11(6) of this Court. Whereas, the petitioner had merely expressed their intention to refer the dispute to arbitration and that will not satisfy the requirements under Clause 26 and 13 of the respective agreements.

20. Per contra, the learned counsel for the petitioner submitted that the judgments that were cited by the learned counsel for the first respondent will not apply to the facts and circumstances of the present case since in the case in hand, the parties will have to mutually appoint a Sole Arbitrator or refer the matter to an Arbitral Institution, which can appoint an Arbitrator and this scenario will arise only if the respondents had responded to the Trigger Notice issued under Section 21 of the Act. In the absence of the same, the petitioner has to necessarily knock the doors of this Court to appoint a Sole Arbitrator.



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21. The second respondent has been served with notice and an affidavit of service has also been filed on 23.01.2026. However, there is no appearance on behalf of the second respondent either in person or through counsel.

22. This Court has carefully considered the submissions made on either side.

23. On a careful reading of Clause 26 of the Master General Terms Agreement dated 03.08.2024 and Clause 13 of the Personal Guarantee dated 03.08.2024, it is seen that in the event of dispute between the parties, either party shall be free to refer the dispute to a Sole Arbitrator **mutually appointed by both parties.** (*Emphasis Supplied*)

24. In the present case, in the notice dated 02.05.2025, apart from the fact that the petitioner had recalled the loan, the petitioner had also called upon the respondents to comply with the respective payment obligations. In the absence of the same, the petitioner has also expressed their mind that this notice may be treated as a notice invoking arbitration under Section 21 of the Act.



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25. In the judgments that was cited by the learned counsel for the first respondent, the relevant arbitration clause provided that a particular party should nominate / appoint an Arbitrator and inform the same to the other party and in the event of refusal, neglect, inability, etc., of the person so appointed as the Arbitrator, the party concerned can appoint a new Arbitrator. In the light of this clause, the Delhi High Court came to a conclusion that the party ought to have named the person whom it proposes to appoint as an Arbitrator and in the absence of the same, the other party will not be in a position to know about the suitability of the person concerned and consequently, the parties will not be able to arrive at a consensus. Hence, it was held that the Trigger Notice was not in line with the arbitration clause concerned found in the agreement.

26. Every ratio will turn on the peculiar facts of the case. The judgment of the Delhi High Court took into consideration the relevant arbitration clause as found in the agreement and reached such a conclusion. That ratio cannot be mechanically incorporated in the present case since in the present case, the arbitration clause is not in *pari materia* the arbitration clause, which was taken into account by the Delhi High Court and in the present arbitration clause, the



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duty was not cast on the petitioner to name an Arbitrator and inform the same to the respondents. As per the arbitration clause, both the parties will have to mutually appoint a Sole Arbitrator or can refer to an Arbitral Tribunal, which in turn will appoint a Sole Arbitrator. Such mutual appointment will arise only if the respondents had responded to the notice issued by the petitioner on 02.05.2025. If there is no response from the respondents, the only other alternative that is left to the petitioner is to approach this Court seeking for an appointment of an Arbitrator. At the risk of repetition, this Court holds that the arbitration clause did not cast a duty on the petitioner to name an Arbitrator and it only contemplated a Sole Arbitrator appointed by mutual consent from both sides. Since there was no response from the respondents, there was no mutual consent on even appointment of an Arbitrator leave alone a named Arbitrator. In the result, the judgment of the Delhi High Court that was relied upon by the learned counsel for the first respondent cannot be applied to the facts of the present case.

27. Insofar as the judgment of the Telangana High Court in the case of ***Cipher Oncology Private Limited Vs. Unimed Health Care Private Limited***, cited supra, this Court respectfully does not agree with the finding of the Telangana High Court. In that case, the arbitration clause is somewhat similar to the arbitration clause found in this case. But however, the Telangana High Court



had incorporated the judgment of the Delhi High Court and held that in the absence of naming the Arbitrator, the Trigger Notice is unsustainable. With due respect, the judgment of the Delhi High Court will not apply to the facts of that case, but however, the Telangana High Court had chosen to follow the judgment of the Delhi High Court. Since I am not in agreement with that judgment and it only has a persuasive value, no further discussion is required.

28. In the light of the above discussion, this Court holds that the Trigger Notice dated 02.05.2025 is in line with the relevant arbitration clause found in both the agreements. This Court also finds that the Agreement between the parties is in line with Section 7 of the Act and both the Agreements contain arbitration clauses. The upshot of the above discussion, this Court is inclined to appoint an arbitrator and accordingly, ***Mr. Mukunth S. learned Senior Advocate, residing at M6/91, Sri Rams Mathrika, 28th Cross Street, Indira Nagar, Adyar, Chennai – 600 020. (Mobile No.9894030305),*** is appointed as the sole Arbitrator and the sole Arbitrator is requested to adjudicate the arbitral disputes that had arisen between the parties and render an arbitral award by holding sittings in the Madras High Court Arbitration Centre under the aegis of this Court as per Madras High Court Arbitration Proceedings Rules, 2017 and fee of the sole Arbitrator shall be in accordance with the Madras High Court



Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees)
Rules, 2017.

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29. Accordingly, Original Petition No.720 of 2025 and Arb. Application
Nos.739 and 740 of 2025 are disposed of. No costs.

09-02-2026

Index: Yes
Speaking Order : Yes
Neutral Citation: Yes

Asi

To

1. Mr. Mukunth S. Senior Advocate,
Residing at M6/91, Sri Rams Mathrika,
28th Cross Street, Indira Nagar, Adyar,
Chennai – 600 020. (Mobile No.9894030305).

2. Gensol Electric Vehicles Private Limited
Having its registered office at Gat No.877,
Next to Mahindra Towers Khed, Nighoje,
Chakan Pune, Maharashtra 410 501.



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Arb O.P. No. 720 of 2



N.ANAND VENKATESH J.

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**Arb.O.P.No.720 of 2025 and
Arb Appln Nos. 739 and 740 of 2025**

09-02-2026