IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 10TH DAY OF NOVEMBER 2025 / 19TH KARTHIKA, 1947

AR NO. 68 OF 2025

PETITIONER:

SIGMATIC NIDHI LIMTED
HAVING ITS REGISTERED OFFICE AT VI/269, SIGMA BUILDING, CHETTUPUZHA P.O, ELTHURUTH JUNCTION, THRISSUR 680 012.
THE PETITIONER COMPANY IS REPRESENTED BY ITS MANAGING DIRECTOR JOSEPH.E.A.

BY ADVS.
SHRI.P.PAULOCHAN ANTONY
SHRI.SREEJITH K.

RESPONDENTS:

1 **SURESH KUMAR**
S/O UNNIKRISHNAN
CHAKIYATH HOUSE
AYYANTHOLE P.O. THRISSUR,
PIN – 680003.

2 **MADHAVAN NAIR**
S/O ACHUTHAN NAIR
THOTTAPILLY HOUSE
PONNORE P.O EDAKKALATHUR THRISSUR,
PIN – 680552.

3 **SUBHA SURESH KUMAR**
W/O. SURESH KUMAR
CHAKIYATH HOUSE
AYYANTHOLE P.O THRISSUR,
PIN – 680003.

BY ADV SRI.V.A.JOHNSON (VARIKKAPPALLIL)

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 10.11.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

[CR]

S.MANU, J.

A.R.No.68 of 2025

Dated this the 10th day of November, 2025

ORDER

Petitioner is a Limited Company carrying on the business of providing financial assistance. The respondents approached the company for financial assistance. First respondent is the borrower and 2nd and 3rd respondents are co-borrowers. Annexure A2 is a document signed by the respondents which is in the form of an agreement, but not signed by any representative of the petitioner. It contains an arbitration clause.

2. Respondents committed default in repaying the loan amount. The petitioner company invoked the arbitration clause and an Arbitrator was appointed. An award was passed on 2.5.2023. Thereafter, E.P.No.551/2023 was filed before the

District Court for execution of the award. Respondents entered appearance and filed their objection. By Annexure A6 order dated 1.3.2024 the Execution Application was dismissed for the reason that the appointment of the Arbitrator was not in accordance with the provisions of the Arbitration and Conciliation Act,1996.

3. Since the execution petition was dismissed on the basis of the finding that the appointment of the Arbitrator was not in accordance with the provisions of the Act, which virtually nullifies the award, the petitioner company approached this Court in this Arbitration Request for appointment of an Arbitrator. Respondents entered appearance through their counsel.

4. Respondents did not object to appointment of Arbitrator by this Court. However, it was noticed that Annexure A2 document which contains the arbitration clause was not signed by any representative of the petitioner and hence it

became indispensable to analyse the issue as to whether there was a proper agreement between the parties for referring the dispute to arbitration.

5. Learned counsel for the petitioner, Mr.Paulochan Antony, submitted that Annexure A2 was signed by the respondents and that they had not raised any dispute, either in the previous arbitration proceedings or in the instant case, regarding the existence of a binding arbitration agreement. He further submitted that it is clear from the other documents produced that the parties acted on the basis of the Annexure A2 agreement, and therefore, from the facts and circumstances, it can be inferred that there was consensus between the parties and that Annexure A2 was treated as binding by both sides. He hence contended that the arbitration clause in Annexure A2 is valid and that this Court can act on the basis of the same. Further, the learned counsel contended that under the provisions of the Arbitration and Conciliation Act, 1996, there is

no requirement that an arbitration agreement shall always be signed. The learned counsel referred to the following judgments of the Hon'ble Supreme Court:

1. **Govind Rubber Limited v. Louis Dreyfus Commodities Asia Private Limited.** [(2015) 13 SCC 477].
2. **Mahanagar Telephone Nigam Ltd. v. Canara Bank and Others** [(2020) 12 SCC 767].
3. **Glencore International AG v. M/S. Shree Ganesh Metals** [2025 SCC OnLine SC 1815].

6. He fairly submitted that a contrary view was taken in **Raju J Vayalattu v. Veeteejay Motors Pvt. Limited** [2025 KHC 1754]. However, the learned counsel submitted that the judgments of the Hon'ble Supreme Court referred above were not brought to the attention of the Court while rendering the order.

7. The issue springing up for consideration is as to whether Annexure A2 can be accepted as an agreement

comprising an arbitration clause mutually agreed, despite the petitioner not having signed it.

8. Section 7 of the Act deals with Arbitration agreement. The same is extracted for ready reference:-

> "**7. Arbitration agreement**.—(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
>
> (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
>
> (3) An arbitration agreement shall be in writing.
>
> (4) An arbitration agreement is in writing if it is contained in—
>
> (a) a document signed by the parties;
>
> (b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or
>
> (c) an exchange of statements of claim and defence in which the existence of the

agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

9. Sub-section (3) mandates that an arbitration agreement shall be in writing. Sub-section (4) qualifies the previous sub-section. An arbitration agreement is 'in writing', if it falls within any of the sub-clauses of sub-section (4). Clause (a) speaks about a document signed by the parties. Nevertheless, clauses (b) and (c) spread out the scope of arbitration agreement 'in writing' by reckoning an exchange of letters, telex, telegrams or other means of telecommunication which provided a record of the agreement or even an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other as sufficient. Therefore, plain reading of sub-section (4) gives

the impression that not only a document signed by the parties can be considered as an arbitration agreement 'in writing' and other communications as provided under clause (b) or even non-denial of existence of the agreement by an opposite party in its defence to a statement of claim can be construed as an arbitration agreement 'in writing'.

10. Though it was long before the present statutory regime came into force, the Hon'ble Supreme Court in **Jugal Kishore Rameshwardas v. Goolbai Hormusji** [(1955) 2 SCC 187] held as under:-

> "12. It may be argued that if the contract note is only intimation of a sale or purchase on behalf of the constituent, then it is not a contract of employment, and that in consequence, there is no agreement in writing for arbitration as required by the Arbitration Act. But it is settled law that to constitute an arbitration agreement in writing it is not necessary that it should be signed by the parties, and that it is sufficient if the terms are reduced to writing and the agreement of the parties

> thereto is established. Though the respondent alleged in her petition that she had not accepted the contract notes, Exhibit A, she raised no contention based thereon either before the City Civil Judge or before the High Court, and even in this Court the position taken up by her counsel was that Exhibit A constituted the sole repository of the contracts, and as they were void, there was no arbitration clause in force between the parties. We accordingly hold that the contract notes contained an agreement in writing to refer disputes arising out of the employment of the appellant as broker to arbitration, and that they fell outside the scope of Section 6 of Act 8 of 1925, that the arbitration proceedings are accordingly competent, and that the award made therein is not open to objection on the ground that Exhibit A is void."

11. In **Govind Rubber Limited v. Louis Dreyfus Commodities Asia Private Limited** [(2015) 13 SCC 477] same issue was considered by the Hon'ble Supreme Court. Appellant before the Apex Court contended that it had not

signed the agreement and therefore it cannot be reckoned as a party to the agreement. The Hon'ble Supreme Court rejected the contention. Provisions of Section 7 of the Act were analysed and it was held as under:-

> "14. So far as the first contention made by the learned counsel for the appellant that since the appellant did not sign the agreement, it cannot be said to be a party to the agreement, we would like to refer Section 7 of the Arbitration and Conciliation Act, which reads as under:
>
> > "7.Arbitration agreement.—(1) In this Part, **'arbitration agreement'** means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
> >
> > (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
> >
> > (3) An arbitration agreement shall be in writing.

> (4) An arbitration agreement is in writing if it is contained in—
>
> (a) a document signed by the parties;
>
> (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
>
> (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
>
> (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

15. A perusal of the aforesaid provisions would show that in order to constitute an arbitration agreement, it need not be signed by all the parties. Section 7(3) of the Act provides that the arbitration agreement shall be in writing, which is a mandatory requirement. Section 7(4) states that the arbitration agreement shall be in writing, if it is a document signed by all the parties. But a perusal of clauses (b) and (c) of Section 7(4) would

show that a written document which may not be signed by the parties even then it can be arbitration agreement. Section 7(4)(b) provides that an arbitration agreement can be culled out from an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.

16. On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. Section 7(4)(c) provides that there can be an arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties

is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties. Therefore, signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under Section 7(5) of the Act.

17. We are also of the opinion that a commercial document having an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it. On the principle of construction of a commercial agreement, Scrutton on Charter Parties (17th Edn., Sweet & Maxwell, London, 1964) explained that a commercial agreement has to be construed, according to the sense and meaning as collected in the first place from the terms used and understood in the plain, ordinary and popular sense (see Article 6 at p. 16). The learned author also said that the agreement has to be interpreted "in order to effectuate the immediate intention of the parties". Similarly, Russell on Arbitration (21st Edn.) opined, relying on Astro Vencedor Compania Naviera S.A. v. Mabanaft GmbH [(1970) 2 Lloyd's Rep 267], that the court should, if the circumstances allow, lean in favour of giving effect to the arbitration clause to which the

parties have agreed. The learned author has also referred to another judgment in Paul Smith Ltd. v. H and S International Holdings Inc. [(1991) 2 Lloyd's Rep 127] in order to emphasise that in construing an arbitration agreement the court should seek to "give effect to the intentions of the parties". (See p. 28 of the book.)

18. The Apex Court also in Union of India v. D.N. Revri and Co. [(1976) 4 SCC 147 : AIR 1976 SC 2257], held that a commercial document between the parties must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. The learned Judges clarified it by saying: (SCC p. 151, para 7)

> "7. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be

> gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation."

12. It is also apposite to refer to the following paragraphs from the judgment of the Hon'ble Supreme Court in **Mahanagar Telephone Nigam Ltd. v. Canara Bank and others** [(2020) 12 SCC 767]:-

> "9.2. The arbitration agreement need not be in any particular form. What is required to be ascertained is the intention of the parties to settle their disputes through arbitration. The essential elements or attributes of an arbitration agreement is the agreement to refer their disputes or differences to arbitration, which is expressly or impliedly spelt out from a clause in an agreement, separate agreement, or documents/correspondence exchanged between the parties.
>
> 9.3. Section 7(4)(b) of the 1996 Act, states that an arbitration agreement can be derived from exchange of letters, telex, telegram or other means of

communication, including through electronic means. The 2015 Amendment Act inserted the words "including communication through electronic means" in Section 7(4)(b). If it can prima facie be shown that parties are ad idem, even though the other party may not have signed a formal contract, it cannot absolve him from the liability under the agreement [Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd., (2015) 13 SCC 477 : (2016) 1 SCC (Civ) 733].

9.4. Arbitration agreements are to be construed according to the general principles of construction of statutes, statutory instruments, and other contractual documents. The intention of the parties must be inferred from the terms of the contract, conduct of the parties, and correspondence exchanged, to ascertain the existence of a binding contract between the parties. If the documents on record show that the parties were ad idem, and had actually reached an agreement upon all material terms, then it would be construed to be a binding contract. The meaning of a contract must be gathered by adopting a common sense approach, and must not be allowed to be thwarted by a pedantic and legalistic interpretation. [Union of India v. D.N. Revri &

Co., (1976) 4 SCC 147].

9.5. A commercial document has to be interpreted in such a manner so as to give effect to the agreement, rather than to invalidate it. An "arbitration agreement" is a commercial document inter partes, and must be interpreted so as to give effect to the intention of the parties, rather than to invalidate it on technicalities.

9.6. In Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd. [(1963) 3 SCR 183 : AIR 1962 SC 1810], this Court while ascertaining the terms of an arbitration agreement between the parties, held that: (AIR p. 1820, para 30)

> "30. … If on a reading of the document as a whole, it can fairly be deduced from the words actually used therein, that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. The terms of a contract can be expressed or implied from what has been expressed. It is in the ultimate analysis a question of construction of the contract."
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> (emphasis supplied)

13. Very recently the Hon'ble Supreme Court considered the same issue again in **Glencore International AG v. M/s. Shree Ganesh Metals** [2025 SCC OnLine SC 1815]. Reference to the following paragraphs of the judgment is gainful:-

> "19. We are of the considered opinion that it was not necessary for the appellant to fall back upon the contract of 2012 in the light of the admitted facts that demonstrated, in no uncertain terms, that the parties duly accepted and acted upon Contract No.061-16-12115-S dated 11.03.2016. There is no denying the legal proposition that an arbitration agreement can be inferred even from an exchange of letters, including communication through electronic means, which provide a record of the agreement. The mere fact that Contract No.061-16-12115-S was not signed by respondent No.1 would not obviate from this principle when the conduct of the parties in furtherance of the said contract, clearly manifested respondent No.1's acceptance of the terms and conditions contained therein, which would include the arbitration agreement in clause 32.2 thereof.
>
> ….....

27. More relevant is the decision of this Court in **Govind Rubber Limited v. Louis Dreyfus Commodities Asia Private Limited** [(2015) 13 SCC 477], wherein this Court observed that a commercial document having an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it. Reference was made to **Scrutton on Charter Parties** (17th Edition, Sweet & Maxwell, London, 1964] in the context of principles relating to construction of a commercial agreement and it was observed that it has to be construed according to the sense and meaning as collected in the first place from the terms used and understood in the plain, ordinary and popular sense. It was further observed that the Court should, if the circumstances allow, lean in favour of giving effect to the arbitration clause to which the parties have agreed. As in the case on hand, one of the parties therein had not signed the contract agreement. However, at its request, the other party had changed the terms mentioned in the contract. Further, as is the case presently, the parties acted upon the said contract agreement and, in that factual scenario, this Court observed thus:

"16. On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. Section 7(4)(c) provides that there can be an arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties. Therefore, signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under Section 7(5) of the Act.

xxx xxx xxx

> 23. It is clear that for construing an arbitration agreement, the intention of the parties must be looked into. The materials on record which have been discussed herein above make it very clear that the appellant was prima facie acting pursuant to the sale contract issued by the respondent. So, it is not very material whether it was signed by the second respondent or not."

28. Further, in **Caravel Shipping Services Private Limited v. Premier Sea Foods Exim Private Limited** [(2019) 11 SCC 461], this Court affirmed and reiterated the legal position laid down in **Jugal Kishore Rameshwardas v. Goolbai Hormusji** [(1955) 2 SCC 187] to the effect that an arbitration agreement needs to be in writing though it need not be signed. Noting the fact that the requirement of the arbitration agreement being in writing has been continued in Section 7(3) of the Act of 1996, it was observed that Section 7(4) only added that an arbitration agreement could be found in the circumstances mentioned in the three sub-clauses that make up Section 7(4) but that did not mean that, in all cases, an arbitration agreement needs to be signed. It was held that the only pre-requisite is that it

should be in writing, as pointed out in Section 7(3). This legal principle would hold good equally for an arbitration agreement covered by Sections 44 and 45 of the Act of 1996."

14. Thus, the Hon'ble Supreme Court has consistently held in the context of Section 7 of the Arbitration and Conciliation Act, 1996 that for an arbitration agreement to be valid and binding, it is not always essential that the same shall be signed by all parties. Regarding arbitration agreements, the following principles are discernible from the judgments referred above;

i. The arbitration agreement need not be in any particular form.

ii. The essential elements or attributes of an arbitration agreement is the accord to refer the disputes or differences to arbitration, which is expressly or impliedly spelt out from a clause in an agreement, separate agreement or

documents/correspondence exchanged between the parties.

iii. A written document which may not be signed by the parties can also be an arbitration agreement.

iv. An arbitration agreement can be inferred from an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.

v. There can be an arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by another.

vi. If the identity of the parties is established and there is a record of agreement, it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties.

vii. Signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under Section 7(5) of the Act.

15. As rightly pointed out by the learned counsel for the petitioner, the binding precedents referred above were not brought to the notice of the Court while rendering the judgment in **Raju J Vayalattu** (supra) and hence a different view was taken. Nevertheless, a reference may not be required in the light of authoritative pronouncements by the Hon'ble Apex Court.

16. It is also to be borne in mind that a commercial document having arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it.

17. Respondents have not filed any counter in this case disputing the validity of the arbitration clause. Learned counsel for the respondents submitted that they do not object to the appointment of the arbitrator; however, their liberty to raise all contentions including arbitrability of the dispute may be reserved for raising before the Arbitrator.

18. Annexure A4 award dated 2.5.2023 was passed by an arbitrator unilaterally appointed by the petitioner. The Execution Court concluded that the appointment was illegal and the award was hence unenforceable. Therefore, the said award is to be treated as set aside for the purpose of exclusion of limitation as provided under Section 43(4) of the Arbitration and Conciliation Act.

19. In view of the above discussion, I allow the arbitration request and issue the following directions:-

i. The Kerala High Court Arbitration Centre is directed to nominate a District Judge

(Retd.) from Panel-III, preferably from Thrissur, as the sole Arbitrator to resolve the disputes that have arisen between the petitioner and the respondents under Annexure A2 agreement.

ii. The learned Arbitrator may entertain all issues between the parties in connection with the said Agreements, including arbitrability as well as questions of jurisdiction and limitation, if any, raised by the parties. All contentions of the parties are left open and they are at liberty to raise their claims and counterclaims, if any, before the learned Arbitrator, in accordance with law.

iii. The Registry shall communicate the substance of this order to the Kerala High Court Arbitration Centre within ten days and the Centre shall inform the learned Arbitrator within a further period of one

week and shall obtain duly signed Form 3 as required under Rule 20(4) of the Kerala High Court (Arbitration Centre) Rules, 2025 and forward the same to this Court.

iv. Upon receipt of the Form 3, the Registry shall issue a certified copy of this order with a copy of the Form 3 appended to the Kerala High Court Arbitration Centre. The original of the Disclosure Statement shall be retained by the Kerala High Court Arbitration Centre.

v. The fees of the learned Arbitrator of the Kerala High Court Arbitration Centre shall be governed by Rule 28 of the Kerala High Court (Arbitration Centre) Rules, 2025. The manner in which the fees and costs payable by the parties shall be governed by Rule 27 of the Kerala High Court (Arbitration Centre) Rules, 2025.

vi. If the learned Arbitrator needs the assistance of an expert, then he is at liberty to seek such assistance in the course of the arbitration proceedings.

Sd/-

S.MANU,
JUDGE

skj

APPENDIX OF AR 68/2025

PETITIONER'S ANNEXURES

Annexure A1	**TRUE EXTRACT OF THE MINUTES OF THE MEETING DATED 22.02.2025**
Annexure A2	**TRUE COPY OF THE AGREEMENT DATED 19-12-2019**
Annexure A3	**TRUE OF THE LETTER OF APPOINTMENT DATED 12-9-2022**
Annexure A4	**COPY OF THE AWARD DATED 02.05.2023**
Annexure A5	**TRUE COPY OF THE EP IS PRODUCED HEREWITH AND MARKED AS ANNEXURE A5**
Annexure A6	**TRUE COPY OF THE ORDER DATED 1-3-2024**
Annexure A7	**A TRUE COPY OF THE JUDGMENT IN AR NO. 216/2023 DATED 13.02.2024**