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Arb.O.P (Com.Div.) No. 77 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

**THE HON'BLE MR. JUSTICE M.SUNDAR**

**Arb.O.P (Com.Div.) No. 77 of 2022**

H.P.Mohammed Madar  
S/o.Pakeer Shahib

... Petitioner

**Vs.**

M/s.Daimlar Finance Services (India) Pvt Ltd.,  
Represented by its Authorised Signatory  
Regd.Office Plot No.8, 5th Floor  
Bashyam Window Square 9 & 10  
1st Street, Thiru Ve.Ka Industrial Estate  
Guindy, Chennai - 600 032

... Respondent

Arbitration Original Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to resolve the disputes as per the Agreement No.20142414 dated 13.03.2019 entered into between the petitioner and the respondents.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.M.Arunachalam

**ORDER**



In the captioned 'Arbitration Original Petition' ('Arb.OP' for the sake of brevity), Mr.V.Srikanth, learned counsel for sole petitioner and Mr.M.Arunachalam, learned counsel for lone respondent are before this Court.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 22.02.2022, 08.03.2022 and 10.03.2022, which read as follows:

**' Proceedings dated 22.02.2022**

*Mr.V.Srikanth, learned counsel for petitioner is before this physical Court on behalf of the petitioner.*

*2. Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 11.02.2022 under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity] with a prayer for appointment of an Arbitrator.*

*3. Adverting to typed set of papers, learned counsel submits that 'an agreement captioned 'LOAN AGREEMENT FOR THE FACILITY FOR PURCHASE OF/AGAINST PRODUCTS' dated 13.03.2019' [hereinafter 'said agreement' for the sake of convenience and clarity] is the nucleus of the captioned Arb OP. Learned counsel also submits that said agreement also bears*



reference No.20142414.

4. Adverting to Clause 85 of said agreement (page No.13 of typed set of papers), learned counsel submits that this clause captioned 'Dispute Resolution' serves as an arbitration agreement between the parties being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. To be noted, there is a reference to Clause 11 Miscellaneous in paragraph No.14 at page No.9 of captioned Arb OP. To be noted, Clause Nos.85 and 84 fall under a main Clause 11 captioned 'Miscellaneous'. Clauses 85 and 84 are captioned 'Dispute Resolution' and 'Governing Law' respectively.

5. Learned counsel submits that disputes i.e., arbitrable disputes erupted between the petitioner and respondent qua said agreement, a trigger notice dated 03.01.2022 was issued suggesting a member of the Bar as a sole Arbitrator. This notice has been duly received by the noticee (respondent) on 05.01.2022 but there is neither response nor reply. This has necessitated the presentation of the captioned Arb OP in this Court on 11.02.2022 is learned counsel's say. Learned counsel submits that 30 days from the date of receipt of trigger notice elapsed on 04.02.2022.

6. Prima facie case for issue of notice made out.

7. Issue notice to respondent returnable in a fortnight i.e., returnable by 08.03.2022. Private notice permitted. Private notice through all electronic modes of communications (subject to proof being demonstrated) also permitted.



*8. List on 08.03.2022.'*

**'Proceedings dated 08.03.2022**

*Mr.V.Srikanth, learned counsel for petitioner is before this Court. Sole respondent has been duly served and Mr.M.Arunachalam, learned counsel who is before this Court submits that he has instructions to enter appearance on behalf of the lone respondent. Learned counsel requests for a short accommodation to get instructions and revert to this Court.*

*2. List the matter day-after-tomorrow i.e., 10.03.2022.'*

**'Proceedings dated 10.03.2022**

*Re-notified.*

*List on 17.03.2022'*

3. Adverting to aforementioned earlier proceedings, learned counsel for respondent submits that captioned Arb.OP has become infructuous as arbitral proceedings were triggered and arbitral award itself was made by 'Arbitral Tribunal' ('AT' for the sake of brevity) on 31.07.2021 vide 'arbitral award bearing reference Claim Petition No.CDN/DFS/236/2020' (hereinafter 'said award' for the sake of convenience).



4. Learned counsel for respondent placed a copy of said award before this Court by way of a typed-set of papers dated 09.03.2022 and counsel for petitioner has been favoured with a copy.

5. Learned counsel for petitioner on instructions from the petitioner submits that the petitioner had neither received notices from the AT nor was said award served on the petitioner notwithstanding the statutory requirement under Section 31(5) of A and C Act. This submission is recorded.

6. Be that as it may, the course now left open to the petitioner is to assail said award under Section 34 of A and C Act. If the petitioner chooses to present a petition under Section 34 of A and C Act, the Registry shall process the same by taking 17.03.2022 (today when a legible copy of said award has been furnished to the learned counsel for petitioner) as the reckoning date qua receipt of arbitral award for the purpose of sub-section (3) of Section 34 of A and C Act. It is made clear that the rights of the respondent to dispute this either by producing requisite material or by making a plea for the requisition of records of AT in the Section 34 Court are preserved.



Arb.O.P (Com.Div.) No. 77 of 2022

7. Though obvious it is made clear that this Court has not expressed any opinion or view on the merits of the matter in this order.

8. Captioned Arb.OP is disposed of as closed with the above observation albeit with directive to the Registry and preserving the rights of the parties in the manner indicated above. There shall be no order as to costs.

17.03.2022

Speaking order: Yes/No

Index: Yes/No

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Arb.O.P (Com.Div.) No. 77 of 2022

**M.SUNDAR.J.,**

gpa

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**17.03.2022**