IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Arb O.P.(Com. Div.)Nos.236, 237, 238, 239 and 240 of 2021

1. Mr.Sukhvinder Singh.
2. Mrs.Saminder Kaur,
   Both residing at:
   Block F, 5th Floor, Flat No. 502, Lokhra,
   NH 37, Near Hotel Bhargab Grand, Kamrup,
   Kamrup TLK, Assam-781 018.

... Petitioners in all OPs

vs.

1. Mahindra and Mahindra Financial Services Ltd.,
   Having its Registered Office at
   Gateway Building, Apollo Bunder,
   Mumbai-400 001.

2. Mr.C.Madanagopal,
   Old No.25, New No.34, 1st Floor,
   Karpagambal Nagar, Mylapore,
   Chennai 600 004.

... Respondents in all OPs

Prayer:

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to

a) terminate the appointment of the Second Respondent by the First Respondent in the impugned Arbitration proceedings bearing Ref Nos.AUG-

2020-NPA-P1/6027019/JR_W127/2020 for the loan agreement No.6027019 dated 22nd February 2019, AUG-2020-NPA-P1/5721681/JR_W62/2020 for the loan Agreement No.5721681 dated 13th October 2018, AUG-2020-NPA-P1/6032651/JR_W92/2020 for the loan Agreement No.6032651 dated 25th February 2019, AUG-2020-NPA-P1/5962031/JR_W115/2020 for the loan Agreement No.5962031 dated 22nd January 2019 and AUG-2020-NPA-P1/5917333/JR_W148/2020 for the loan Agreement No.5917333 dated 29th December 2018 respectively;

b) appoint an independent Sole Arbitrator to adjudicate the disputes between the parties which arise out of loan agreement bearing Nos.6027019 dated 22nd February 2019, 5721681 dated 13.10.2018, 6032651 dated 25th February 2019, 5962031 dated 22nd January 2019 and 5917333 dated 29th December 2018 respectively.

c) direct the respondents to pay the costs of this petition to the petitioner.

For petitioner in all OPs : Mr.P.S.Sridhar Raj

For respondent in all OPs : Mr.A.Prabhakaran for R1

COMMON ORDER

This common order will govern the captioned five 'Arbitration Original Petitions' ('Arb.OPs' for the sake of brevity).

2. Mr.P.S.Sridhar Raj, learned counsel for petitioners (two petitioners) in all the five captioned Arb.OPs is before this Virtual Court.

Mr.A.Prabhakaran, learned counsel with address for service at 50/103, 2nd Floor, Armenian Street, Chennai - 600 001 who is before this physical Court submits that he has entered appearance on behalf of the first respondent (claimant before the Arbitral Tribunal) and he has filed Vakalatnama in all the five captioned Arb.OPs on 28.02.2022 vide Diary Nos.6377, 6376, 6375, 6374 and 6373 of 2021.

3. As regards the second respondent (to be noted, second respondent is the sole Arbitrator who constituted the Arbitral Tribunal), Registry was unable to serve notice on the second respondent. This has been recorded in the earlier proceedings dated 22.02.2022, which reads as follows:

> '*Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 08.02.2022.*
>
> *2.As regards requisitioning of records from the Arbitral Tribunal, Registry has put up notes saying that the Arbitrator is not attending the office and therefore, Registry is unable to serve notice.*
>
> *3.Position regarding service on the first respondent is not clear. Registry to verify and do the needful in the next listing. List one week hence.*
>
> *4.List on 01.03.2022.*'

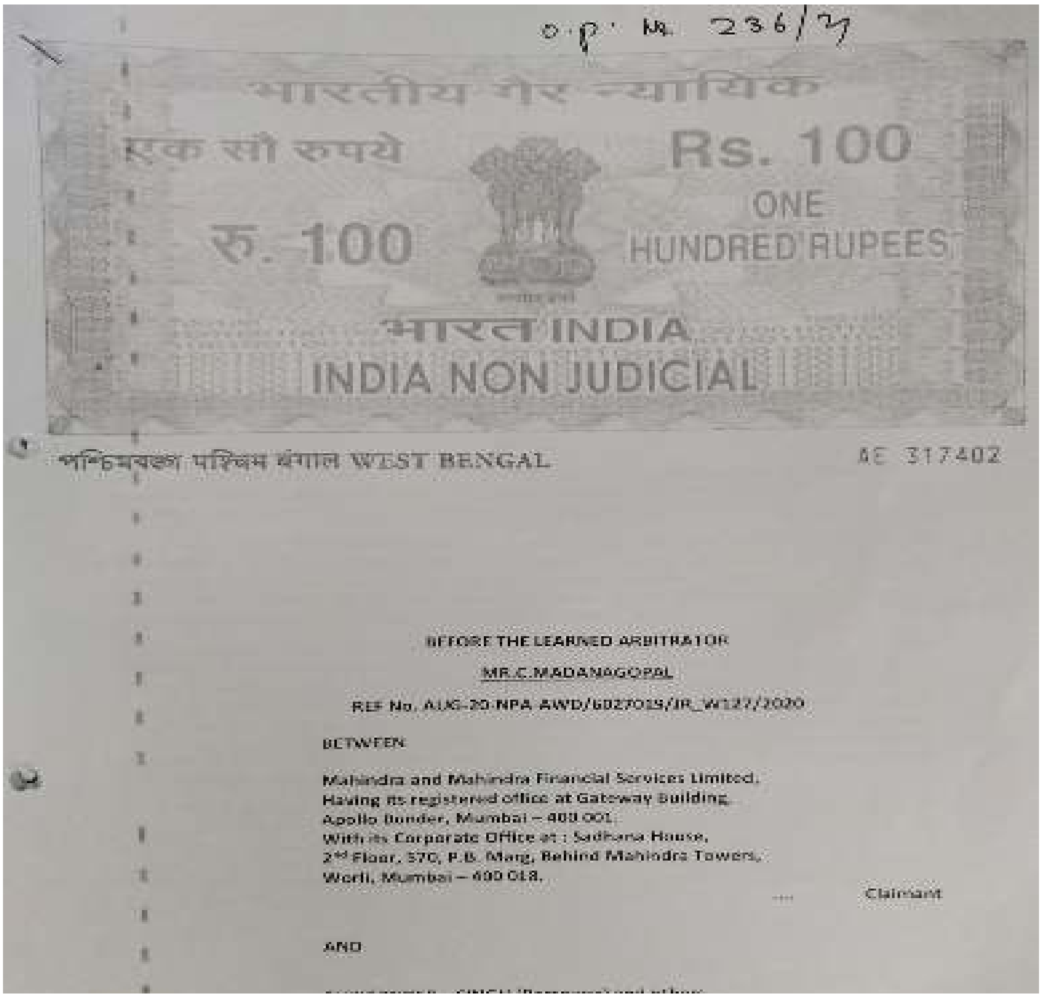
4. Captioned five Arb.OPs have been presented in this Court on 30.09.2021 under Section 14(1)(a) read with Section 11(6) of 'The

Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity. The prayer is for termination of mandate of the second respondent. The case of the petitioners (in a nutshell) is that they had no notice either about the invocation of the arbitration or the nomination of the Arbitrator (second respondent), the petitioners came to know about the arbitral proceedings only when they received interim orders dated 13.10.2020 made in C.M.Nos.185, 163, 175, 181 and 188 said to have been made by the second respondent purportedly under Section 17 of the A and C Act. There is a reference to a demand legal notice dated 04.09.2020 prior to this (paragraph 10 of the petition in the captioned Arb.OP) but copies of the same have not been placed before this Court.

5. It may not be necessary to dilate any further on facts or grounds on which captioned Arb.OPs are predicated as learned counsel for first respondent submits on instructions that the second respondent (sole Arbitrator) has made a final award on 18.02.2021 itself which is prior to the date of presentation of captioned Arb.OPs. To be noted, as already alluded to supra, captioned Arb.OPs were presented in this Court on 30.09.2021.

6. Responding to the above, learned counsel for petitioners submits that the copies of the five arbitral awards have not been delivered to the petitioners notwithstanding the legal position that it is statutorily imperative vide sub-section (5) of Section 31 of A and C Act. This submission is recorded.

7. Photocopies of the five arbitral awards (all dated 18.02.2021) placed before this Court by learned counsel for first respondent are as follows:



O.P. No. 236/21

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

भारत INDIA

INDIA NON JUDICIAL

পশ্চিমবঙ্গ पश्चिम बंगाल WEST BENGAL AE 317402

BEFORE THE LEARNED ARBITRATOR

MR.C.MADANAGOPAL

REF No. AUG-20-NPA AWD/6027019/IR_W127/2020

BETWEEN

Mahindra and Mahindra Financial Services Limited,
Having its registered office at Gateway Building,
Apollo Bunder, Mumbai – 400 001
With its Corporate Office at : Sadhana House,
2nd Floor, 570, P.B. Marg, Behind Mahindra Towers,
Worli, Mumbai – 400 018.
.... Claimant

AND

REF NO. AUG-20-NPA-AWD/6027019/38_W127/2020

1. SUKHVINDER SINGH (Borrower)
BLOCK F, 5TH FLOOR, FLAT NO.502, LOKHRA, NH 37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

2. SAMINDER KAUR (Co-Borrower)
BLOCK F, 5TH FLOOR, FLAT NO.502, LOKHRA, NH37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

Respondents

AWARD

1. Certain disputes arose between the Claimant and the Respondents in respect of the Loan Agreement No.**6027019** dated **2/22/2019** because of which the Claimant has invoked the Arbitration Clause in the Loan Agreement for redressal of the dispute.

2. By a letter dated **04-Sep-20** the Claimant requested this Tribunal to accept the Arbitration in the dispute between the parties above mentioned along with the copy of the Loan agreement, Statement of Claim and the annexures including Statement of Account. A copy of the letter dated **04-Sep-20** invoking Arbitration Clause addressed to the Respondents were also forwarded to this Tribunal under cover of the said letter.

3. Pursuant to the receipt of the aforesaid letter after having satisfied that the Loan Agreement executed between the parties, contained an Arbitration Clause, the Tribunal entered upon the reference and vide letter **dated 21-Sep-20** served, Statement of Claim and Commencement of Arbitration proceedings. Considering the pandemic situation due to Covid-19, Respondents were advised to submit their written submissions either through registered post or to the mail-id of this Tribunal or to seek a virtual hearing to submit their reply in response to the **Statement** of Claim filed by the Claimant with in 21 days from the date of Arbitration Commencement letter.

4. This Tribunal's notice dated **21-Sep-20** and copy of the Statement of Claim along with Application for Interim Relief under Section 17 of the Arbitration and Conciliation Act, filed by the Claimant before the Tribunal, were duly served on the respondents by RPAD, at the address furnished by the Respondents. Despite service of notice, Respondents did not respond to the notices, despite having all options to participate in the Arbitration proceedings with in the stipulated time.

REF NO. AUG-20-NPA-AWD/6027019/JR_W127/2020

5. Respondents failed to participate in the proceedings within the stipulated time. Tribunal considered Interim Application filed along with the Statement of Claim seeking Seizure and Sale Permission by the Claimant, after evaluating the Claim, Tribunal passed an Order dated **13-Oct-20** on the Interim Application filed by the Claimant. In order to give one more opportunity to the Respondents, Tribunal vide its notice dated **13-Oct-20** directed the respondents to file their defense either by post or mail along with necessary enclosures in support of their defense, failing which the Tribunal is constrained to pass an appropriate Award based on submissions and documents made available.

6. The Tribunal vide its notice dated **13-Oct-20**, again directed the Respondents to participate in the proceedings, by various modes mentioned, including virtual hearing and also sent the Roznama of the proceedings

7. Knowing the fact that, in the absence of participation in the proceedings or any by not filing any sort of defense, the matter will be decided ex-parte, the Respondents failed to participate in the proceedings. Hence, this Tribunal, was constrained to proceed ex-parte with the reference as provided under Section 25(B) of the Arbitration and Conciliation Act 2015. The Claimant did not file any report on the execution of the Interim Order granted by this Tribunal.

8. From the Statement of Claim and the compilation of the documents submitted by the Claimant along with the pleading and the documents, it is observed that the Claimant, is a Non-Banking Finance Company incorporated and registered under the Companies Act, 1956, interalia carrying on the business of extending financial assistance for purchase of Automobile Products and provides loan against the security of such Assets. At the request of the Respondents, on **2/22/2019** the Claimant advanced and lent a loan of **Rs.4500000**/- for the purchase of vehicle **LIUGONG CLG 921DI HYDRAUL** Bearing Registration No.**UNREG061200**, Engine No.**84439413** and Chassis No.**CLG921DZJJE061200** more so fully described in Schedule 2 of the Loan Agreement (for sake of brevity hereinafter referred to as "the said vehicle") to the Respondents on the terms and conditions of the Loan Agreement No.**6027019** executed between the parties. The said loan amount is repayable together with interest in periodical installments, the details of which is set out in Schedule 1 and 2 of the Loan Agreement. The Claimant signed the Agreement as "Lender" and the Respondents as the "Borrower(s)" in respect of the said loan (for sake of brevity hereinafter referred to as "the said Agreement").

9. The salient features of the said Agreement provides that, the amount lent and advanced by the Claimant, to the Respondents to purchase the said vehicle, would be repaid by the Respondents along with interest thereon as specified in the Schedule 1 of the Loan Agreement. The installments were to be paid by the Respondents as set out in the Schedule 1 and 2 of the said Agreement. The Respondents also undertook to pay additional Finance Charges @3% p.m. on the amount outstanding beyond the due periodical installment date. In pursuance of the said Agreement, the Respondents hypothecated the said vehicle in favour of the Claimant, to secure all amounts due and payable to the Claimant under the said Agreement. As per the terms and conditions of the Agreement, the Claimant is entitled to enforce the hypothecated Asset in event of default in repayment of the loan, and also bring the hypothecated Asset for sale. Arbitration Clause of the Loan Agreement provides for a dispute resolution mechanism by an Arbitrator to be appointed by the Claimant and to be held in accordance with the provisions of the Arbitration and Conciliation Act. The Respondents had also executed a Demand Promissory Note in favour of the Claimant, to repay the loan, as agreed in the Loan Agreement.

REF NO: AUG-20-NPA-AWD/6027019/JR_W127/2020

10. The case of the Claimant is that the Respondents were very irregular in the repayment and committed default in payment of the installments. Despite continuous follow up and reminders by the Claimant, the Respondents did not pay the dues.

11. On **25-Aug-20** the Claimant sent a Recall Notice to the Respondents, calling upon them to pay the entire loan amount along with outstanding installments and delayed payment charges. Despite the said notice, the Respondents neither replied nor complied with the demands made therein by the Claimant, in view of this disagreement and the nonfulfillment of the obligations arising out of Loan Agreement by the Respondents, the Claimant was constrained to initiate Arbitral Proceedings and referred the matter to Sole Arbitrator.

12. As per the Statement of Claim filed by the Claimant on **04-Sep-20** the Respondents owes a sum of **Rs.4743435/-** as on **25-Aug-20** with further interest at the rate of 3% per month from **25-Aug-20** till the date of repayment.

13. In order to substantiate the claim of the Claimant, the Claimant had placed following material evidence before the Tribunal:

a. Loan Agreement No.**6027019** executed by the parties.

b. Demand Promissory Note.

c. Vehicle Document-RC Book / Invoice copy of the hypothecation asset

d. Recall Notice date **25-Aug-20** and Invocation Notice Dated **04-Sep-20.**

e. Statement of Account.

14. The Tribunal after studying the documents submitted by the Claimant and after considering, all the facts and circumstances of the case and after examining and evaluating the pleading submitted by the Claimant observed as below.

a. That it is clear that the Respondents and the Claimant entered into a Loan Agreement.

b. That it is clear, that the Respondents had availed the loan for the purchase of a vehicle which is proved after perusal of the loan documents namely, the Loan Agreement, Demand Promissory Note, Invoice copy of the vehicle with due hypothecation in favour of the Claimant as submitted by the Claimant.

c. That it is proved that, as per the Statement of Account submitted by the Claimant, the Respondents failed to repay the loan installments as stipulated under the said Agreement and the schedule thereto.

d. It is also observed and proved from the Statement of Accounts submitted by the Claimant and the terms of the agreement the Respondents are under obligation to pay penal charges at the rate of 3% per month on the delayed installments for the period of delay. As per Statement of Account submitted by the Claimant, the Respondents are liable to pay sum of **Rs.4743435/-** along with further interest.

Mr. C. Madanagopal

REF NO. AUG-20-NPA-AWD/6027019/38 W177/2020

- The hypothecation of the said vehicle in favour of the Claimant is proved. It is also proved that the Claimant is entitled to enforce the security on the hypothecated Asset and is entitled to take the possession of the vehicle and bring the same for sale and realize the dues. The Claim of the Claimant is within the purview of the limitation.

15. It is also observed that the Respondents has chosen to remain absent inspite of the notices from this Tribunal and therefore this Tribunal decided to proceed ex-parte.

16. The Tribunal after considering all the above facts and statements made by the Claimant is convinced of the claims of the Claimant and that the Claimant has beyond reasonable doubts established its claim and in view of this, the Tribunal passed the following Award against the Respondents:

a. The claim petition is allowed.

b. The Respondents do hereby pay to the Claimant a sum of **Rs.4743435/-** along with interest at the rate 3% per month on overdue Installments from the date of its due till the date of payment and at contractual rate of interest on the outstanding principle from loan recall **25-Aug-20** till the date of this Award, thereafter at the rate of 1.5% per month from the date of this award till the date of payment.

c. The Claimant is further directed to adjust any amount paid by the Respondents during the pendency of this Arbitration Proceedings from the Award Amount.

d. The Claimant is also directed to adjust the sale proceeds of the hypothecated vehicle based on the Interim Order passed by the Tribunal which is made absolute.

e. Respondents are directed to pay a sum of Rs.5000/- (Five Thousand only) towards cost.

Date: 18.02.21
Place: Kolkata

Mr. C. Madanagopal
Arbitrator

MR.C.MADANAGOPAL
ARBITRATOR

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100

ONE HUNDRED RUPEES

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INDIA NON JUDICIAL

পশ্চিমবঙ্গ पश्चिम बंगाल WEST BENGAL

AE 317414

BEFORE THE LEARNED ARBITRATOR

MR.C.MADANAGOPAL

REF No. AUG-20-NPA-AWD/5721681/JR_W52/2020

BETWEEN

Mahindra and Mahindra Financial Services Limited,
Having its registered office at Gateway Building,
Apollo Bunder, Mumbai – 400 001.
With its Corporate Office at : Sadhana House,
2nd Floor, 570, P.B. Marg, Behind Mahindra Towers,
Worli, Mumbai – 400 018.

.... Claimant

AND

SUKHVINDER SINGH (Borrower) and others

... Respondents

REF NO. AUG-20-NPA-AWD/5721681/3R_W62/2020

1. SUKHVINDER SINGH (Borrower)
BLOCK F, 5TH FLOOR, FLAT NO 502, LOKHRA, NH 37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

2. SAMINDER KAUR (Co-Borrower)
BLOCK F, 5TH FLOOR, FLAT NO 502, LOKHRA, NH37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

Respondents

AWARD

1. Certain disputes arose between the Claimant and the Respondents in respect of the Loan Agreement No.**5721681** dated **10/13/2018** because of which the Claimant has invoked the Arbitration Clause in the Loan Agreement for redressal of the dispute.

2. By a letter dated **04-Sep-20** the Claimant requested this Tribunal to accept the Arbitration in the dispute between the parties above mentioned along with the copy of the Loan agreement, Statement of Claim and the annexures including Statement of Account. A copy of the letter dated **04-Sep-20** invoking Arbitration Clause addressed to the Respondents were also forwarded to this Tribunal under cover of the said letter.

3. Pursuant to the receipt of the aforesaid letter after having satisfied that the Loan Agreement executed between the parties, contained an Arbitration Clause, the Tribunal entered upon the reference and vide letter dated **21-Sep-20** served, Statement of Claim and Commencement of Arbitration proceedings. Considering the pandemic situation due to Covid-19, Respondents were advised to submit their written submissions either through registered post or to the mail id of this Tribunal or to seek a virtual hearing to submit their reply in response to the Statement of Claim filed by the Claimant with in 21 days from the date of Arbitration Commencement letter.

4. This Tribunal's notice dated **21-Sep-20** and copy of the Statement of Claim along with Application for Interim Relief under Section 17 of the Arbitration and Conciliation Act, filed by the Claimant before the Tribunal, were duly served on the respondents by RPAD, at the address furnished by the Respondents. Despite service of notice, Respondents did not respond to the notices, despite having all options to participate in the Arbitration proceedings with in the stipulated time.

Respondents failed to participate in the proceedings within the stipulated time. Tribunal
5. Respondents failed to participate in the proceedings with the Statement of Claim seeking Seizure and considered Interim Application filed along with the Statement of Claim seeking Seizure and Sale Permission by the Claimant, after evaluating the Claim, Tribunal passed an Order dated 13-Oct-20 on the Interim Application filed by the Claimant. In order to give one more opportunity to the Respondents, Tribunal vide its notice dated **13-Oct-20** directed the respondents to file their defense either by post or mail along with necessary enclosures in support of their defense, failing which the Tribunal is constrained to pass an appropriate Award based on submissions and documents made available.

6. The Tribunal vide its notice dated **13-Oct-20**, again directed the Respondents to participate in the proceedings, by various modes mentioned, including virtual hearing and also sent the Romname of the proceedings.

7. Knowing the fact that, in the absence of participation in the proceedings or any by not filing any sort of defense, the matter will be decided ex-parte, the Respondents failed to participate in the proceedings. Hence, this Tribunal, was constrained to proceed ex-parte with the reference as provided under Section 25(B) of the Arbitration and Conciliation Act 2015. The Claimant did not file any report on the execution of the Interim Order granted by this Tribunal.

8. From the Statement of Claim and the compilation of the documents submitted by the Claimant along with the pleading and the documents, it is observed that the Claimant, is a Non-Banking Finance Company incorporated and registered under the Companies Act, 1956, interalia carrying on the business of extending financial assistance for purchase of Automobile Products and provides loan against the security of such Assets. At the request of the Respondents, on **10/13/2018** the Claimant advanced and lent a loan of **Rs.4760000**/- for the purchase of vehicle **LIUGONG CLG 922D HD EXCAV** Bearing Registration No.**UNREG107839**, Engine No.**90050768** and Chassis No.**LGC922DZHJC107839** more so fully described in Schedule 2 of the Loan Agreement (for sake of brevity hereinafter referred to as "the said vehicle") to the Respondents on the terms and conditions of the Loan Agreement No.**5721681** executed between the parties. The said loan amount is repayable together with interest in periodical installments, the details of which is set out in Schedule 1 and 2 of the Loan Agreement. The Claimant signed the Agreement as "Lender" and the Respondents as the "Borrower(s)" in respect of the said loan (for sake of brevity hereinafter referred to as "the said Agreement").

9. The salient features of the said Agreement provides that, the amount lent and advanced by the Claimant, to the Respondents to purchase the said vehicle, would be repaid by the Respondents along with interest thereon as specified in the Schedule 1 of the Loan Agreement. The installments were to be paid by the Respondents as set out in the Schedule 1 and 2 of the said Agreement. The Respondents also undertook to pay additional Finance Charges @3% p.m. on the amount outstanding beyond the due periodical installment date. In pursuance of the said Agreement, the Respondents hypothecated the said vehicle in favour of the Claimant, to secure all amounts due and payable to the Claimant under the said Agreement. As per the terms and conditions of the Agreement, the Claimant is entitled to enforce the hypothecated Asset in event of default in repayment of the loan, and also bring the hypothecated Asset for sale. Arbitration Clause of the Loan Agreement provides for a dispute resolution mechanism by an Arbitrator to be appointed by the Claimant and to be held in accordance with the provisions of the Arbitration and Conciliation Act. The Respondents had also executed a Demand Promissory Note in favour of the Claimant, to repay the loan, as agreed in the Loan Agreement.

REF NO. AUG-20-NPA-AWD/5721681/20_W027/2020

10. The case of the Claimant is that the Respondents were very irregular in the repayment and committed default in payment of the installments. Despite continuous follow up and reminders by the Claimant, the Respondents did not pay the dues.

11. On **25-Aug-20** the Claimant sent a Recall Notice to the Respondents, calling upon them to pay the entire loan amount along with outstanding installments and delayed payment charges. Despite the said notice, the Respondents neither replied nor complied with the demands made therein by the Claimant. In view of this disagreement and the nonfulfillment of the obligations arising out of Loan Agreement by the Respondents, the Claimant was constrained to initiate Arbitral Proceedings and referred the matter to Sole Arbitrator.

12. As per the Statement of Claim filed by the Claimant on **04-Sep-20** the Respondents owes a sum of **Rs.4721579**/- as on **25-Aug-20** with further interest at the rate of 3% per month from **25-Aug-20** till the date of repayment.

13. In order to substantiate the claim of the Claimant, the Claimant has placed following material evidence before the Tribunal:

a. Loan Agreement No **5721681** executed by the parties.

b. Demand Promissory Note.

c. Vehicle Document-RC Book / Invoice copy of the hypothecation asset.

d. Recall Notice date **25-Aug-20** and Invocation Notice Dated **04-Sep-20**.

e. Statement of Account.

14. The Tribunal after studying the documents submitted by the Claimant and after considering all the facts and circumstances of the case and after examining and evaluating the pleading submitted by the Claimant observed as below;

a. That it is clear that the Respondents and the Claimant entered into a Loan Agreement.

b. That it is clear, that the Respondents had availed the loan for the purchase of a vehicle which is proved after perusal of the loan documents namely, the Loan Agreement, Demand Promissory Note, Invoice copy of the vehicle with due hypothecation in favour of the Claimant as submitted by the Claimant.

c. That it is proved that, as per the Statement of Account submitted by the Claimant, the Respondents failed to repay the loan installments as stipulated under the said Agreement and the schedule thereto.

d. It is also observed and proved from the Statement of Accounts submitted by the Claimant and the terms of the agreement the Respondents are under obligation to pay penal charges at the rate of 3% per month on the delayed installments for the period of delay. As per Statement of Account submitted by the Claimant, the Respondents are liable to pay sum of **Rs.4721579**/- along with further interest.

REF NO: AUG-20-NPA-AWD/5723881/28 W62/2026

e. The hypothecation of the said vehicle in favour of the Claimant is proved. It is also proved that the Claimant is entitled to enforce the security on the hypothecated Asset and is entitled to take the possession of the vehicle and bring the same for sale and realize the dues. The Claim of the Claimant is within the purview of the limitation.

15. It is also observed that the Respondents has chosen to remain absent inspite of the notices from this Tribunal and therefore this Tribunal decided to proceed ex parte.

16. The Tribunal after considering all the above facts and statements made by the Claimant is convinced of the claims of the Claimant and that the Claimant has beyond reasonable doubts established its claim and in view of this, the Tribunal passed the following Award against the Respondents:

a. The claim petition is allowed.

b. The Respondents do hereby pay to the Claimant a sum of **Rs.4721579**/- along with interest at the rate 3% per month on overdue Installments from the date of its due till the date of payment and at contractual rate of interest on the outstanding principle from loan recall **25-Aug-20** till the date of this Award, thereafter at the rate of 1.5% per month from the date of this award till the date of payment.

c. The Claimant is further directed to adjust any amount paid by the Respondents during the pendency of this Arbitration Proceedings from the Award Amount.

d. The Claimant is also directed to adjust the sale proceeds of the hypothecated vehicle based on the Interim Order passed by the Tribunal which is made absolute.

e. Respondents are directed to pay a sum of Rs.5000/- (Five Thousand only) towards cost.

Date: 18-02-21
Place: Kolkata

MR.C.MADANAGOPAL
ARBITRATOR

O.P. No. 238/21

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

भारत INDIA

INDIA NON JUDICIAL

পশ্চিমবঙ্গ पश्चिम बंगाल WEST BENGAL AE 317408

BEFORE THE LEARNED ARBITRATOR

<u>MR.C.MADANAGOPAL</u>

REF No. AUG-20-NPA-AWD/6032651/JR_W92/2020

BETWEEN

Mahindra and Mahindra Financial Services Limited,
Having its registered office at Gateway Building,
Apollo Bunder, Mumbai – 400 001
With its Corporate Office at : Sadhana House,
2nd Floor, 570, P.B. Marg, Behind Mahindra Towers,
Worli, Mumbai – 400 018. ... Claimant

AND

SUKHVINDER SINGH (Borrower) and others ... Respondents

REF NO. AUG-20-NPA-AWD/6032651/JR_W92/2020

1. **SUKHVINDER SINGH (Borrower)**
   BLOCK F, 5TH FLOOR, FLAT NO 502, LOKHRA, NH 37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

2. **SAMINDER KAUR (Co-Borrower)**
   BLOCK F, 5TH FLOOR, FLAT NO 502, LOKHRA, NH37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

Respondents

AWARD

1. Certain disputes arose between the Claimant and the Respondents in respect of the Loan Agreement No **6032651** dated **2/25/2019** because of which the Claimant has invoked the Arbitration Clause in the Loan Agreement for redressal of the dispute.

2. By a letter dated **04-Sep-20** the Claimant requested this Tribunal to accept the Arbitration in the dispute between the parties above mentioned along with the copy of the Loan agreement, Statement of Claim and the annexures including Statement of Account. A copy of the letter dated **04-Sep-20** invoking Arbitration Clause addressed to the Respondents were also forwarded to this Tribunal under cover of the said letter.

3. Pursuant to the receipt of the aforesaid letter after having satisfied that the Loan Agreement executed between the parties, contained an Arbitration Clause, the Tribunal entered upon the reference and vide letter dated **21-Sep-20** served, Statement of Claim and Commencement of Arbitration proceedings. Considering the pandemic situation due to Covid-19, Respondents were advised to submit their written submissions either through registered post or to the mail-id of this Tribunal or to seek a virtual hearing to submit their reply in response to the Statement of Claim filed by the Claimant with in 21 days from the date of Arbitration Commencement letter.

4. This Tribunal's notice dated **21-Sep-20** and copy of the Statement of Claim along with Application for Interim Relief under Section 17 of the Arbitration and Conciliation Act, filed by the Claimant before the Tribunal, were duly served on the respondents by RPAD, at the address furnished by the Respondents. Despite service of notice, Respondents did not respond to the notices, despite having all options to participate in the Arbitration proceedings with in the stipulated time.

REF NO. AUG-20-NPA-AWD/6032651/JR_W92/2020

5. Respondents failed to participate in the proceedings within the stipulated time, Tribunal considered Interim Application filed along with the Statement of Claim seeking Seizure and Sale Permission by the Claimant, after evaluating the Claim. Tribunal passed an Order dated **13-Oct-20** on the Interim Application filed by the Claimant. In order to give one more opportunity to the Respondents, Tribunal vide its notice dated **13-Oct-20** directed the respondents to file their defense either by post or mail along with necessary enclosures in support of their defense, failing which the Tribunal is constrained to pass an appropriate Award based on submissions and documents made available.

6. The Tribunal vide its notice dated **13-Oct-20,** again directed the Respondents to participate in the proceedings, by various modes mentioned, including virtual hearing and also sent the Roznama of the proceedings.

7. Knowing the fact that, in the absence of participation in the proceedings or any by not filing any sort of defense, the matter will be decided ex-parte, the Respondents failed to participate in the proceedings. Hence, this Tribunal, was constrained to proceed ex-parte with the reference as provided under Section 25(B) of the Arbitration and Conciliation Act 2015. The Claimant did not file any report on the execution of the Interim Order granted by this Tribunal.

8. From the Statement of Claim and the compilation of the documents submitted by the Claimant along with the pleading and the documents, it is observed that the Claimant, is a Non-Banking Finance Company incorporated and registered under the Companies Act, 1956, interalia carrying on the business of extending financial assistance for purchase of Automobile Products and provides loan against the security of such Assets. At the request of the Respondents, on **2/25/2019** the Claimant advanced and lent a loan of **Rs.1500000**/- for the purchase of vehicle **JCB JS200 TRACKED EXCAVAT** Bearing Registration No.**UNREG1309471**, Engine No.**62936284** and Chassis No.**1309471** more so fully described in Schedule 2 of the Loan Agreement (for sake of brevity here nafter referred to as "the said vehicle") to the Respondents on the terms and conditions of the Loan Agreement No.**6032651** executed between the parties. The said loan amount is repayable together with interest in periodical installments, the details of which is set out in Schedule 1 and 2 of the Loan Agreement. The Claimant signed the Agreement as "Lender" and the Respondents as the "Borrower(s)" in respect of the said loan (for sake of brevity hereinafter referred to as "the said Agreement").

9. The salient features of the said Agreement provides that, the amount lent and advanced by the Claimant, to the Respondents to purchase the said vehicle, would be repaid by the Respondents along with interest thereon as specified in the Schedule 1 of the Loan Agreement. The installments were to be paid by the Respondents as set out in the Schedule 1 and 2 of the said Agreement. The Respondents also undertook to pay additional Finance Charges @3% p.m. on the amount outstanding beyond the due periodical installment date. In pursuance of the said Agreement, the Respondents hypothecated the said vehicle in favour of the Claimant, to secure all amounts due and payable to the Claimant under the said Agreement. As per the terms and conditions of the Agreement, the Claimant is entitled to enforce the hypothecated Asset in event of default in repayment of the loan, and also bring the hypothecated Asset for sale. Arbitration Clause of the Loan Agreement provides for a dispute resolution mechanism by an Arbitrator to be appointed by the Claimant and to be held in accordance with the provisions of the Arbitration and Conciliation Act. The Respondents had also executed a Demand Promissory Note in favour of the Claimant, to repay the loan, as agreed in the Loan Agreement.

REF NO. AUG-20-NPA-AWD/6032651/JR_W92/2020

10. The case of the Claimant is that the Respondents were very irregular in the repayment and committee default in payment of the installments. Despite continuous follow up and reminders by the Claimant, the Respondents did not pay the dues.

11. On **25-Aug-20** the Claimant sent a Recall Notice to the Respondents, calling upon them to pay the entire loan amount along with outstanding installments and delayed payment charges. Despite the said notice, the Respondents neither replied nor complied with the demands made therein by the Claimant, in view of this disagreement and the nonfulfillment of the obligations arising out of Loan Agreement by the Respondents, the Claimant was constrained to initiate Arbitral Proceedings and referred the matter to Sole Arbitrator.

12. As per the Statement of Claim filed by the Claimant on **04-Sep-20** the Respondents owes a sum of **Rs.1346989/-** as on **25-Aug-20** with further interest at the rate of 3% per month from **25-Aug-20** till the date of repayment.

13. In order to substantiate the claim of the Claimant, the Claimant had placed following material evidence before the Tribunal.

a. Loan Agreement No.**6032651** executed by the parties.

b. Demand Promissory Note.

c. Vehicle Document-RC Book / Invoice copy of the hypothecation asset.

d. Recall Notice date **25-Aug-20** and Invocation Notice Dated **04-Sep-20.**

e. Statement of Account.

14. The Tribunal after studying the documents submitted by the Claimant and after considering, all the facts and circumstances of the case and after examining and evaluating the pleading submitted by the Claimant observed as below:

a. That it is clear that the Respondents and the Claimant entered into a Loan Agreement.

b. That it is clear, that the Respondents had availed the loan for the purchase of a vehicle which is proved after perusal of the loan documents namely, the Loan Agreement, Demand Promissory Note, Invoice copy of the vehicle with due hypothecation in favour of the Claimant as submitted by the Claimant.

c. That it is proved that, as per the Statement of Account submitted by the Claimant, the Respondents failed to repay the loan installments as stipulated under the said Agreement and the schedule thereto.

d. It is also observed and proved from the Statement of Accounts submitted by the Claimant and the terms of the agreement the Respondents are under obligation to pay penal charges at the rate of 3% per month on the delayed installments for the period of delay. As per Statement of Account submitted by the Claimant, the Respondents are liable to pay sum of **Rs.1346989/-** along with further interest.

Mr. C. Madanagopal

REF NO. AUG-20-NPA-AWD/6032651/JR_W92/2020

e. The hypothecation of the said vehicle in favour of the Claimant is proved. It is also proved that the Claimant is entitled to enforce the security on the hypothecated Asset and is entitled to take the possession of the vehicle and bring the same for sale and realize the dues. The Claim of the Claimant is within the purview of the limitation.

15. It is also observed that the Respondents has chosen to remain absent inspite of the notices from this Tribunal and therefore this Tribunal decided to proceed ex-parte.

16. The Tribunal after considering all the above facts and statements made by the Claimant is convinced of the claims of the Claimant and that the Claimant has beyond reasonable doubts established its claim and in view of this, the Tribunal passed the following Award against the Respondents.

a. The claim petition is allowed.

b. The Respondents do hereby pay to the Claimant a sum of **Rs.1346989**/- along with interest at the rate 3% per month on overdue Installments from the date of its due till the date of payment and at contractual rate of interest on the outstanding principle from loan recall **25-Aug-20** till the date of this Award, thereafter at the rate of 1.5% per month from the date of this award till the date of payment.

c. The Claimant is further directed to adjust any amount paid by the Respondents during the pendency of this Arbitration Proceedings from the Award Amount.

d. The Claimant is also directed to adjust the sale proceeds of the hypothecated vehicle based on the Interim Order passed by the Tribunal which is made absolute.

e. Respondents are directed to pay a sum of Rs.5000/- (Five Thousand only) towards cost.

Date: 18-02-21
Place: Kolkata

MR. C. MADANAGOPAL
Arbitrator

MR.C.MADANAGOPAL
ARBITRATOR

O.P. No. 239/21.

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

ONE HUNDRED RUPEES

रु. 100

भारत INDIA

INDIA NON JUDICIAL

পশ্চিমবঙ্গ पश्चिम बंगाल WEST BENGAL

AE 317404

BEFORE THE LEARNED ARBITRATOR

MR.C.MADANAGOPAL

REF No. AUG-20-NPA-AWD/5962031/JR_W115/2020

BETWEEN

Mahindra and Mahindra Financial Services Limited,
Having its registered office at Gateway Building,
Apollo Bunder, Mumbai – 400 001.
With its Corporate Office at : Sadhana House,
2nd Floor, 570, P.B. Marg, Behind Mahindra Towers,
Worli, Mumbai – 400 018.
.... Claimant

AND

SUKHVINDER SINGH (Borrower) and others .... Respondents

REF NO. AUG-20 NPA-AWD/5962031/JR_W115/2020

1. SUKHVINDER SINGH (Borrower)
   BLOCK F, 5TH FLOOR, FLAT NO 502, LOKHRA, NH 37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

2. SAMINDER KAUR (Co-Borrower)
   BLOCK F, 5TH FLOOR, FLAT NO 502, LOKHRA, NH37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

Respondents

AWARD

1. Certain disputes arose between the Claimant and the Respondents in respect of the Loan Agreement No.**5962031** dated **1/22/2019** because of which the Claimant has invoked the Arbitration Clause in the Loan Agreement for redressal of the dispute.

2. By a letter dated **04-Sep-20** the Claimant requested this Tribunal to accept the Arbitration in the dispute between the parties above mentioned along with the copy of the Loan agreement, Statement of Claim and the annexures including Statement of Account. A copy of the letter dated **04-Sep-20** invoking Arbitration Clause addressed to the Respondents were also forwarded to this Tribunal under cover of the said letter.

3. Pursuant to the receipt of the aforesaid letter after having satisfied that the Loan Agreement executed between the parties, contained an Arbitration Clause, the Tribunal entered upon the reference and vide letter dated **21-Sep-20** served, Statement of Claim and Commencement of Arbitration proceedings. Considering the pandemic situation due to Covid-19, Respondents were advised to submit their written submissions either through registered post or to the mail-id of this Tribunal or to seek a virtual hearing to submit their reply in response to the Statement of Claim filed by the Claimant with in 21 days from the date of Arbitration Commencement letter.

4. This Tribunal's notice dated **21-Sep-20** and copy of the Statement of Claim along with Application for Interim Relief under Section 17 of the Arbitration and Conciliation Act, filed by the Claimant before the Tribunal, were duly served on the respondents by RPAD, at the address furnished by the Respondents. Despite service of notice, Respondents did not respond to the notices, despite having all options to participate in the Arbitration proceedings with in the stipulated time.

REF NO. AUG-20-NPA-AWD/5962031/JR_W115/2020

5. Respondents failed to participate in the proceedings within the stipulated time, Tribunal considered Interim Application filed along with the Statement of Claim seeking Seizure and Sale Permission by the Claimant, after evaluating the Claim, Tribunal passed an Order dated **13-Oct-20** on the Interim Application filed by the Claimant. In order to give one more opportunity to the Respondents, Tribunal vide its notice dated **13-Oct-20** directed the respondents to file their defense either by post or mail along with necessary enclosures in support of their defense, failing which the Tribunal is constrained to pass an appropriate Award based on submissions and documents made available.

6. The Tribunal vide its notice dated **13-Oct-20**, again directed the Respondents to participate in the proceedings, by various modes mentioned, including virtual hearing and also sent the Roznama of the proceedings.

7. Knowing the fact that, in the absence of participation in the proceedings or any by not filing any sort of defense, the matter will be decided ex-parte, the Respondents failed to participate in the proceedings. Hence, this Tribunal, was constrained to proceed ex-parte with the reference as provided under Section 25(B) of the Arbitration and Conciliation Act 2015. The Claimant did not file any report on the execution of the Interim Order granted by this Tribunal.

8. From the Statement of Claim and the compilation of the documents submitted by the Claimant along with the pleading and the documents, it is observed that the Claimant, is a Non-Banking Finance Company incorporated and registered under the Companies Act, 1956, interalia carrying on the business of extending financial assistance for purchase of Automobile Products and provides loan against the security of such Assets. At the request of the Respondents, on **1/22/2019** the Claimant advanced and lent a loan of **Rs.4500000/-** for the purchase of vehicle **LIUGONG CLG 921DI HYDRAUL** Bearing Registration No.**UNREG900047**, Engine No.**81L84841582** and Chassis No.**LGI921DZVJN900047** more so fully described in Schedule 2 of the Loan Agreement (for sake of brevity hereinafter referred to as "the said vehicle") to the Respondents on the terms and conditions of the Loan Agreement No.**5962031** executed between the parties. The said loan amount is repayable together with interest in periodical installments, the details of which is set out in Schedule 1 and 2 of the Loan Agreement. The Claimant signed the Agreement as "Lender" and the Respondents as the "Borrower(s)" in respect of the said loan (for sake of brevity hereinafter referred to as "the said Agreement").

9. The salient features of the said Agreement provides that, the amount lent and advanced by the Claimant, to the Respondents to purchase the said vehicle, would be repaid by the Respondents along with interest thereon as specified in the Schedule 1 of the Loan Agreement. The installments were to be paid by the Respondents as set out in the Schedule 1 and 2 of the said Agreement. The Respondents also undertook to pay additional Finance Charges @3% p.m. on the amount outstanding beyond the due periodical installment date. In pursuance of the said Agreement, the Respondents hypothecated the said vehicle in favour of the Claimant, to secure all amounts due and payable to the Claimant under the said Agreement. As per the terms and conditions of the Agreement, the Claimant is entitled to enforce the hypothecated Asset in event of default in repayment of the loan, and also bring the hypothecated Asset for sale. Arbitration Clause of the Loan Agreement provides for a dispute resolution mechanism by an Arbitrator to be appointed by the Claimant and to be held in accordance with the provisions of the Arbitration and Conciliation Act. The Respondents had also executed a Demand Promissory Note in favour of the Claimant, to repay the loan, as agreed in the Loan Agreement.

REF NO. AUG-20-NPA-AWD/5962031/JR_W135/2020

10. The case of the Claimant is that the Respondents were very irregular in the repayment and committed default in payment of the installments. Despite continuous follow up and reminders by the Claimant, the Respondents did not pay the dues.

11. On **25-Aug-20** the Claimant sent a Recall Notice to the Respondents, calling upon them to pay the entire loan amount along with outstanding installments and delayed payment charges. Despite the said notice, the Respondents neither replied nor complied with the demands made therein by the Claimant, in view of this disagreement and the nonfulfillment of the obligations arising out of Loan Agreement by the Respondents, the Claimant was constrained to initiate Arbitral Proceedings and referred the matter to Sole Arbitrator.

12. As per the Statement of Claim filed by the Claimant on **04-Sep-20** the Respondents owes a sum of **Rs.4868509**/- as on **25-Aug-20** with further interest at the rate of 3% per month from **25-Aug-20** till the date of repayment.

13. In order to substantiate the claim of the Claimant, the Claimant had placed following material evidence before the Tribunal:

a. Loan Agreement No.**5962031** executed by the parties

b. Demand Promissory Note.

c. Vehicle Document-RC Book / Invoice copy of the hypothecation asset

d. Recall Notice date **25-Aug-20** and Invocation Notice Dated **04-Sep-20**.

e. Statement of Account

14. The Tribunal after studying the documents submitted by the Claimant and after considering, all the facts and circumstances of the case and after examining and evaluating the pleading submitted by the Claimant observed as below:

a. That it is clear that the Respondents and the Claimant entered into a Loan Agreement.

b. That it is clear, that the Respondents had availed the loan for the purchase of a vehicle which is proved after perusal of the loan documents namely, the Loan Agreement, Demand Promissory Note, Invoice copy of the vehicle with due hypothecation in favour of the Claimant as submitted by the Claimant.

c. That it is proved that, as per the Statement of Account submitted by the Claimant, the Respondents failed to repay the loan installments as stipulated under the said Agreement and the schedule thereto.

d. It is also observed and proved from the Statement of Accounts submitted by the Claimant and the terms of the agreement the Respondents are under obligation to pay penal charges at the rate of 3% per month on the delayed installments for the period of delay. As per Statement of Account submitted by the Claimant, the Respondents are liable to pay sum of **Rs.4868509**/- along with further interest.

Arbitrator

REF NO. AIG-20-NPA-AWD/5962031/JR-W115/2020

e. The hypothecation of the said vehicle in favour of the Claimant is proved. It is also proved that the Claimant is entitled to enforce the security on the hypothecated Asset and is entitled to take the possession of the vehicle and bring the same for sale and realise the dues. The Claim of the Claimant is within the purview of the limitation.

15. It is also observed that the Respondents has chosen to remain absent inspite of the notices from this Tribunal and therefore this Tribunal decided to proceed ex-parte.

16. The Tribunal after considering all the above facts and statements made by the Claimant is convinced of the claims of the Claimant and that the Claimant has beyond reasonable doubts established its claim and in view of this, the Tribunal passed the following Award against the Respondents:

a. The claim petition is allowed.

b. The Respondents do hereby pay to the Claimant a sum of **Rs.4868509**/- along with interest at the rate 3% per month on overdue Installments from the date of its due till the date of payment and at contractual rate of interest on the outstanding principle from loan recall **25-Aug-20** till the date of this Award, thereafter at the rate of 1.5% per month from the date of this award till the date of payment.

c. The Claimant is further directed to adjust any amount paid by the Respondents during the pendency of this Arbitration Proceedings from the Award Amount.

d. The Claimant is also directed to adjust the sale proceeds of the hypothecated vehicle based on the Interim Order passed by the Tribunal which is made absolute.

e. Respondents are directed to pay a sum of Rs.5000/- (Five Thousand only) towards cost.

Date: 18-02-21
Place: Kolkata

Mr. C. Madanagopal
Arbitrator

MR.C.MADANAGOPAL
ARBITRATOR

O.P. No 240/21

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

ONE HUNDRED RUPEES

रु. 100

भारत INDIA

INDIA NON JUDICIAL

পশ্চিমবঙ্গ पश्चिम बंगाल WEST BENGAL

AE 317400

BEFORE THE LEARNED ARBITRATOR

MR.C.MADANAGOPAL

REF No. AUG-20-NPA-AWD/5917333/JR_W148/2020

BETWEEN

Mahindra and Mahindra Financial Services Limited,
Having its registered office at Gateway Building,
Apollo Bunder, Mumbai – 400 001.
With its Corporate Office at : Sadhana House,
2nd Floor, 570, P.B. Marg, Behind Mahindra Towers,
Worli, Mumbai – 400 018.

.... Claimant

AND

SUKHVINDER SINGH (Borrower) and others

.... Respondents

REF NO. AUG-20-NPA-AWD/5917333/JR_WS48/2020

1. SUKHVINDER SINGH (Borrower)
BLOCK F, 5TH FLOOR, FLAT NO.502, LOKHRA, NH 37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

2. SAMINDER KAUR (Co-Borrower)
BLOCK F, 5TH FLOOR, FLAT NO.502, LOKHRA, NH37, NEAR HOTEL BHARGAB GRAND, KAMRUP, Kamrup, KAMRUP TLK, ASSAM_781018

Respondents

AWARD

1. Certain disputes arose between the Claimant and the Respondents in respect of the Loan Agreement No.**5917333** dated **12/29/2018** because of which the Claimant has invoked the Arbitration Clause in the Loan Agreement for redressal of the dispute.

2. By a letter dated **04-Sep-20** the Claimant requested this Tribunal to accept the Arbitration in the dispute between the parties above mentioned along with the copy of the Loan agreement, Statement of Claim and the annexures including Statement of Account. A copy of the letter dated **04-Sep-20** invoking Arbitration Clause addressed to the Respondents were also forwarded to this Tribunal under cover of the said letter.

3. Pursuant to the receipt of the aforesaid letter after having satisfied that the Loan Agreement executed between the parties, contained an Arbitration Clause, the Tribunal entered upon the reference and vide letter dated **21-Sep-20** served, Statement of Claim and Commencement of Arbitration proceedings. Considering the pandemic situation due to Covid-19, Respondents were advised to submit their written submissions either through registered post or to the mail-id of this Tribunal or to seek a virtual hearing to submit their reply in response to the Statement of Claim filed by the Claimant with in 21 days from the date of Arbitration Commencement letter.

4. This Tribunal's notice dated **21-Sep-20** and copy of the Statement of Claim along with Application for Interim Relief under Section 17 of the Arbitration and Conciliation Act, filed by the Claimant before the Tribunal, were duly served on the respondents by RPAD, at the address furnished by the Respondents. Despite service of notice, Respondents did not respond to the notices, despite having all options to participate in the Arbitration proceedings with in the stipulated time.

REF NO. AUG-20-NPA-AWD/5917333/IR_W148/2020

5. Respondents failed to participate in the proceedings within the stipulated time. Tribunal considered Interim Application filed along with the Statement of Claim seeking Seizure and Sale Permission by the Claimant, after evaluating the Claim, Tribunal passed an Order dated **13-Oct-20** on the Interim Application filed by the Claimant. In order to give one more opportunity to the Respondents, Tribunal vide its notice dated **13-Oct-20** directed the respondents to file their defense either by post or mail along with necessary enclosures in support of their defense, failing which the Tribunal is constrained to pass an appropriate Award based on submissions and documents made available.

6. The Tribunal vide its notice dated **13-Oct-20**, again directed the Respondents to participate in the proceedings, by various modes mentioned, including virtual hearing and also sent the Roznama of the proceedings.

7. Knowing the fact that, in the absence of participation in the proceedings or any by not filing any sort of defense, the matter will be decided ex-parte, the Respondents failed to participate in the proceedings. Hence, this Tribunal, was constrained to proceed ex-parte with the reference as provided under Section 25(B) of the Arbitration and Conciliation Act 2015. The Claimant did not file any report on the execution of the Interim Order granted by this Tribunal.

8. From the Statement of Claim and the compilation of the documents submitted by the Claimant along with the pleading and the documents, it is observed that the Claimant, is a Non-Banking Finance Company incorporated and registered under the Companies Act, 1956, interalia carrying on the business of extending financial assistance for purchase of Automobile Products and provides loan against the security of such Assets. At the request of the Respondents, on **12/29/2018** the Claimant advanced and lent a loan of **Rs.4500000**/- for the purchase of vehicle **LIUGONG CLG 921DI HYDRAUL** Bearing Registration No.**UNREG900034**, Engine No.**81K84831349** and Chassis No.**LGI921DZAJN900034** more so fully described in Schedule 2 of the Loan Agreement (for sake of brevity hereinafter referred to as "the said vehicle") to the Respondents on the terms and conditions of the Loan Agreement No.**5917333** executed between the parties. The said loan amount is repayable together with interest in periodical installments, the details of which is set out in Schedule 1 and 2 of the Loan Agreement. The Claimant signed the Agreement as "Lender" and the Respondents as the "Borrower(s)" in respect of the said loan (for sake of brevity hereinafter referred to as "the said Agreement").

9. The salient features of the said Agreement provides that, the amount lent and advanced by the Claimant, to the Respondents to purchase the said vehicle, would be repaid by the Respondents along with interest thereon as specified in the Schedule 1 of the Loan Agreement. The installments were to be paid by the Respondents as set out in the Schedule 1 and 2 of the said Agreement. The Respondents also undertook to pay additional Finance Charges @3% p.m. on the amount outstanding beyond the due periodical installment date. In pursuance of the said Agreement, the Respondents hypothecated the said vehicle in favour of the Claimant, to secure all amounts due and payable to the Claimant under the said Agreement. As per the terms and conditions of the Agreement, the Claimant is entitled to enforce the hypothecated Asset in event of default in repayment of the loan, and also bring the hypothecated Asset for sale. Arbitration Clause of the Loan Agreement provides for a dispute resolution mechanism by an Arbitrator to be appointed by the Claimant and to be held in accordance with the provisions of the Arbitration and Conciliation Act. The Respondents had also executed a Demand Promissory Note in favour of the Claimant, to repay the loan, as agreed in the Loan Agreement.

REF NO. AUG-20 NPA-AWD/5917333/IR_W148/2020

10. The case of the Claimant is that the Respondents were very irregular in the repayment and committed default in payment of the installments. Despite continuous follow up and reminders by the Claimant, the Respondents did not pay the dues.

11. On **25-Aug-20** the Claimant sent a Recall Notice to the Respondents, calling upon them to pay the entire loan amount along with outstanding installments and delayed payment charges. Despite the said notice, the Respondents neither replied nor complied with the demands made therein by the Claimant, in view of this disagreement and the nonfulfillment of the obligations arising out of Loan Agreement by the Respondents, the Claimant was constrained to initiate Arbitral Proceedings and referred the matter to Sole Arbitrator.

12. As per the Statement of Claim filed by the Claimant on **04-Sep-20** the Respondents owes a sum of **Rs.4796473**/- as on **25-Aug-20** with further interest at the rate of 3% per month from **25-Aug-20** till the date of repayment.

13. In order to substantiate the claim of the Claimant, the Claimant had placed following material evidence before the Tribunal

a. Loan Agreement No.**5917333** executed by the parties.

b. Demand Promissory Note.

c. Vehicle Document-RC Book / Invoice copy of the hypothecation asset

d. Recall Notice date **25-Aug-20** and Invocation Notice Dated **04-Sep-20.**

e. Statement of Account.

14. The Tribunal after studying the documents submitted by the Claimant and after considering, all the facts and circumstances of the case and after examining and evaluating the pleading submitted by the Claimant observed as below;

a. That it is clear that the Respondents and the Claimant entered into a Loan Agreement.

b. That it is clear, that the Respondents had availed the loan for the purchase of a vehicle which is proved after perusal of the loan documents namely, the Loan Agreement, Demand Promissory Note, Invoice copy of the vehicle with due hypothecation in favour of the Claimant as submitted by the Claimant.

c. That it is proved that, as per the Statement of Account submitted by the Claimant, the Respondents failed to repay the loan installments as stipulated under the said Agreement and the schedule thereto.

d. It is also observed and proved from the Statement of Accounts submitted by the Claimant and the terms of the agreement the Respondents are under obligation to pay penal charges at the rate of 3% per month on the delayed instalments for the period of delay. As per Statement of Account submitted by the Claimant, the Respondents are liable to pay sum of **Rs.4796473**/- along with further interest.

Mr. G. Madanagopal

REF NO: AUG-20-NPA AWD/5917333/JR_W748/2020

c. The hypothecation of the said vehicle in favour of the Claimant is proved. It is also proved that the Claimant is entitled to enforce the security on the hypothecated Asset and is entitled to take the possession of the vehicle and bring the same for sale and realize the dues. The Claim of the Claimant is within the purview of the limitation.

15. It is also observed that the Respondents has chosen to remain absent inspite of the notices from this Tribunal and therefore this Tribunal decided to proceed ex parte.

16. The Tribunal after considering all the above facts and statements made by the Claimant is convinced of the claims of the Claimant and that the Claimant has beyond reasonable doubts established its claim and in view of this, the Tribunal passed the following Award against the Respondents:

a. The claim petition is allowed.

b. The Respondents do hereby pay to the Claimant a sum of **Rs.4796473**/- along with interest at the rate 3% per month on overdue Installments from the date of its due till the date of payment and at contractual rate of interest on the outstanding principle from loan recall **25-Aug-20** till the date of this Award, thereafter at the rate of 1.5% per month from the date of this award till the date of payment.

c. The Claimant is further directed to adjust any amount paid by the Respondents during the pendency of this Arbitration Proceedings from the Award Amount.

d. The Claimant is also directed to adjust the sale proceeds of the hypothecated vehicle based on the Interim Order passed by the Tribunal which is made absolute.

e. Respondents are directed to pay a sum of Rs.5000/- (Five Thousand only) towards cost.

Date: 18-02-21
Place: Kolkata

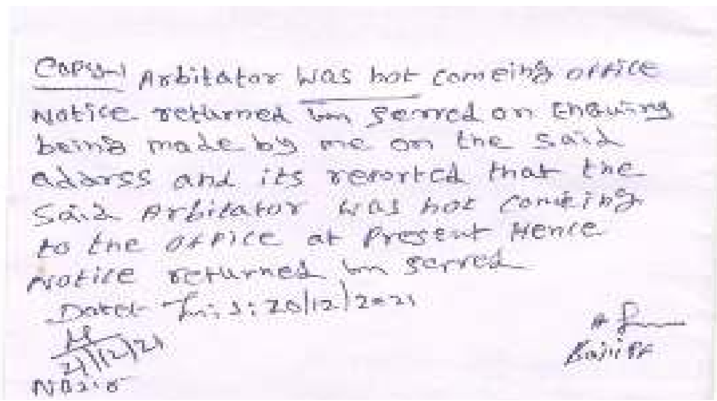
Mr. C. Madanagopal
Arbitrator

MR C.MADANAGOPAL
ARBITRATOR

8. In the light of the narrative thus far, this Court is of the considered view that it would be appropriate to protect / preserve the rights of the

petitioners to assail the aforementioned five arbitral awards *inter alia* under Section 34 of A and C Act. If the petitioners take this route, for the present, this day (01.03.2022) will be taken as the reckoning date for computation of limitation under Section 34(3) of the A and C Act owing to the assertion of leasrned counsel for petitioner as recorded in paragraph 4 supra but this is subject to rights and contentions of the first respondent. This is only for the limited purpose of Section 34 petitions being brought on Board before this Court. This Course is being adopted in this case particularly owing to the fact that the Court notice sent to the second respondent remains unserved for some time but was ultimately served and the endorsements qua Court notices read as follows:

'Endorsement made on 21.12.2021

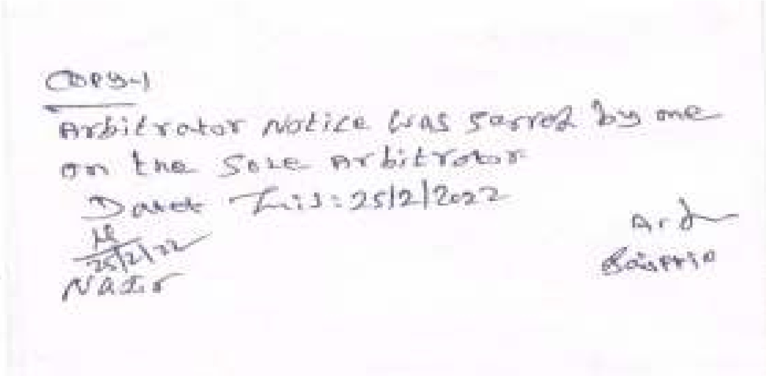


Copy:- Arbitator was hot comeing office
Notice returned un served on Enquiring
being made by me on the said
adarss and its reported that the
said Arbitator was hot comeing
to the office at Present Hence
notice returned un served
Dated this: 20/12/2021

21/12/21
N0318

Bailiff

'Endorsement made on 25.02.2022


Copy-1
Arbitrator Notice was served by me
on the Sole Arbitrator
Dated this: 25/2/2022
25/2/22
Nazir

However, the learned Arbitrator has not chosen to enter appearance or come before this Court.

9. All questions are left open. To be noted, all questions including the question raised in the captioned Arb.OPs are left open to be canvassed in the possible Section 34 challenge to the aforementioned five arbitral awards. Though obvious, it is made clear that all the rights and contentions of both sides are preserved.

Captioned five OPs are disposed of in the aforesaid manner. There shall be no order as to costs.

01.03.2022

Speaking/Non-speaking order
Index : Yes / No
gpa

M.SUNDAR. J

gpa

Arb O.P.(Com. Div.)Nos.236, 237, 238, 239 and 240 of 2021

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