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Arb.O.P.(Comm.Div.) No.614 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2022

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.614 of 2022

M/s Mercedes Benz Financial Services India Pvt. Ltd.
(Formerly known as M/s Daimler Financial Services
(India private Limited),

Represented by its authorised Signatory
having its office inter alia at 5th floor,
Plot No.8, Baashyam Willow Square,
9 & 10, first street, Thiru Vi. Ka.Industrial Estate,
Guindy, Chennai 600 032.

... Petitioner

Vs.

1. M/s Krish Coal Movers,
rep. by its Proprietor Laxmi Goenka,
Gumadera, Jharsuguda, Belpahar – 768217.

2. Mr.Gopal Krishna Goenka,
Belapahad, Shtesanapada, Jharsuguda,
Belpahar Orissa – 768218.

... Respondents

PRAYER: Arbitration Original Petition filed under Section 15(1) of the Arbitration and Conciliation Act, 1996, praying to appoint a substituted Arbitrator to adjudicate and resolve the disputes through Arbitral Proceedings between the parties.



WEB COPY



Arb.O.P.(Comm.Div.) No.614 of 2022

For Petitioner : Mr.R.Balambigai Gowri

For Respondents : No appearance

ORDER

This Arbitration original petition has been filed to appoint a substituted Arbitrator to adjudicate and resolve the disputes through Arbitral Proceedings between the parties.

2. The case of the petitioner briefly as follows

The respondents approached the petitioner seeking financial assistance to purchase 24 vehicles. On executing all documents, the respondents were sanctioned 24 separate loans and they entered into loan agreements dated 26.11.2014, 30.07.2015 and 17.02.2016 with the petitioner. The total sanctioned amount is Rs.7,27,01,136/- and the same was disbursed to the respondents and each loan amounts has to be repaid in 61 EMI at Rs.82,144/- per month. Subsequently, the respondents committed breach of agreement and hence, three legal notices dated 25.05.2018 were sent to the respondents, by recalling the loans and to pay the remaining loan amount with interest.



WEB COURT

2.1. As per clause 85 of the loan agreements dated 26.11.2014, 30.07.2015 and 17.02.2016, if any dispute is arising between the parties, the same shall be resolved by a Sole Arbitrator to be appointed by the petitioner. Accordingly, the petitioner appointed a Sole Arbitrator to adjudicate the disputes, however, for personal reasons, the Arbitrator has rescued himself from the arbitration proceedings, vide order dated 26.10.2021. Hence this petition.

3. Notice served to the petitioner. Though the respondents' names are printed in the cause list, none appeared on behalf of them, which shows that the respondents are not interested in contesting the case.

4. The learned counsel for the petitioner submitted that, out of 61 installments, the respondents have paid only 16 installments and remaining installments have to be paid by them. He further submitted that after recalling notices dated 25.05.2018, the respondents paid only meager amounts and they have to pay a sum of Rs.2,75,80,618.24p. It is also submitted by him that, though a Sole Arbitrator Mr.G.Dharmaraj, Retired



District Judge was appointed, as per clause 85 of the loan agreements, due to certain personal reasons, he decided to recuse from hearing the matter and to that effect he gave an order of recusal dated 26.10.2021. Therefore, an Arbitrator may be appointed to substitute the place of the above said Arbitrator.

5. Heard the learned counsel for the petitioner and I have perused the materials on record.

6. The petitioner granted loan assistance to the respondents to purchase 24 Bharat Benz Cars under 24 separate loan agreements. It is the contention of the petitioner that out of 61 installments, the respondents paid only 13 installments and the remaining installments have to be paid. Further, it is contended by the petitioner that, inspite of loan recall notices dated 25.05.2018, there is an outstanding amount to the tune of Rs.Rs.2,75,80,618.24p , to be paid by the respondents, however, there is no response from the respondents.



7. The present dispute is arising between the parties out of the loan agreement and deed of Hypothecations dated 26.11.2014, 30.07.2015 and 17.02.2016. Section 85 of the above agreements reads as follows:

Dispute Resolution: All claims and disputes arising under or relating to this Loan Agreement are to be settled by binding arbitration in the state of Tamil Nadu, specifically Chennai or another location desired by the Lender. The arbitration shall be conducted on a confidential basis and shall be subject to the Arbitration and Conciliation Act, 1996 of India. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by single arbitrator appointed by the Lender. The arbitration proceeds shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction.



8. The method and manner of payment of installments are agreed by the respondents, under the loan agreements dated 26.11.2014, 30.07.2015 and 17.02.2016. However, the respondents have not complied with the terms and conditions of the agreement. As such, as per Arbitration Clause, as extracted above, an Arbitrator was appointed by the petitioner and since the Arbitrator refused to hear the matter, by order of recusal dated 26.10.2021, this Court is inclined to appoint an Arbitrator.

9. Accordingly, it is ordered as follows:

i) That Hon'ble Mr.Justice K.Kalyana Sundaram(Rtd.), residing at Flat No.406, 5th South Cross Street, Kapaleaswarar Nagar, Neelankarai, Chennai, Contact No.93810 11077 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes inter se the parties.

ii) That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order.



Arb.O.P.(Comm.Div.) No.614 of 2022

iii) That the learned Arbitrator appointed herein shall be at liberty to fix his remuneration and other incidental expenses, which shall be borne by the parties equally. In the event of non appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses, thereafter, the petitioner can recover the same directly from the respondent.

iv) The parties are at liberty to adjudicate all the issues before the Arbitrator.

07.12.2022

Index : Yes / No
Internet : Yes / No
mst

To

Hon'ble Mr.Justice K.Kalyana Sundaram(Rtd.),
Flat No.406, 5th South Cross Street,
Kapaleaswarar Nagar,
Neelankarai, Chennai.
Contact No.93810 11077



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Arb.O.P.(Comm.Div.) No.614 of 2022

KRISHNAN RAMASAMY, J.,
mst

Arb.O.P.(Comm.Div.) No.614 of 2022

07.12.2022