

AP/34/2023

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONRITHVIK BHATTACHARYA
VERSUS
CLASSIC AUTOMOBILES PVT. LTD. & ORS.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 16TH MARCH, 2023APPEARANCE:
Mr. Kamlesh Jha, Advocate
Mr. Debasish Mukhopadhyay, Advocate
Ms. Jeenia Rudra, Advocate
Mr. Thaneshwar Kumai, Advocate
....for the petitioner

The Court:- The affidavit of service filed by the applicant is taken on record. The respondents have refused the service, hence, they are treated to be served.

This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of arbitrator to resolve the dispute between the parties.

Learned counsel for the applicant has pointed out that the respondents had taken financial assistance from the bank and had committed default and thereafter one time settlement was arrived at and for the purpose of assigning the one time settlement, respondent had approached the applicant. Accordingly, MoU dated 30th June, 2017 was entered into between the parties which contained the following arbitration clause:-

“6. DISPUTE RESOLUTION

Any dispute arising out of the transaction contemplated in terms of this MOU which the parties thereto have not succeeded in resolving amicably, shall be resolved by arbitration pursuant to the Arbitration and Conciliation Act, 1996. The place of arbitration shall be Kolkata and the language of the arbitration shall be English. The Company and the Lender shall jointly appoint a sole arbitrator. If they do not agree on a sole arbitrator within 30 (thirty) days of the date of service of notice of arbitration by the Person initiating arbitration, the Company and the Lender shall each appoint one arbitrator within 7 (seven) days. The third arbitrator shall be the Chairman of the arbitral tribunal and shall be appointed by the two arbitrators appointed within 10 (ten) days by the Company and the

Lender or, if the arbitrators are unable to agree, in accordance with the Arbitration and Conciliation Act, 1996.”

He has further submitted that the respondents had committed default in compliance of the condition of the MoU, therefore, invoking the arbitration clause, the applicant had served the notice dated 19th February, 2022 in terms of Section 21 of the Act proposing the name of three arbitrators for appointment of sole arbitrator out of them. But in spite of service of the said notice, there was no response received from the respondents.

Before this Court also, no one has appeared for the respondent to controvert the above plea of the applicant. Hence, on the basis of uncontroverted plea, a case for allowing the prayer for appointment of the sole arbitrator is made out.

Accordingly, AP is allowed and Mr. Ajeyo Matilal, [9433531346] a retired District Judge is appointed as the sole arbitrator to resolve the disputes between the parties, subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court, within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side, forthwith.

(PRAKASH SHRIVASTAVA, C.J.)