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Arb..O.P(Com.Div). No.196 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P(Com.Div).No.196 of 2023

S.Sheerin Banu

... Petitioner

Vs.

Kotak Mahindra Prime Limited,
Represented by Manager/Executive legal,
1st Floor, CEEBROS Centre,
No.45, Montieth Road,
Egmore, Chennai – 600 008.

... Respondent

Prayer: Original Petition is filed under Section 34(2)a(iii) of Arbitration and Conciliation Act, 1996, praying to

a) set aside the Arbitral Award passed dated 31.12.2021 bearing No.ACP No.172 of 2021, passed by Mr.K.Thyagarajan, Advocate Chennai, as sole Arbitrator, it is entirety and

b) to direct the respondent to pay the costs.



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For Petitioner : Mr.M.M.Javadh
For Respondent : Ms.S.Lakshmi
for M/s.S.Rajini Ramadas

ORDER

The petitioner appears to have availed a loan from the respondent for purchase of a vehicle and has signed agreement dated 25.02.2020.

2.It is the specific case of the petitioner is that immediately after purchase of the vehicle lockdown was imposed and therefore the petitioner was unable to pay the loan amount for a period of five months. Thereafter, the petitioner has been regularly paying the amount. However, the respondents have unilaterally invoked the Arbitration clause by appointing an Arbitrator contrary to the provisions of the Arbitration and Conciliation Act, 1996 as amended in the year 2015 and contrary to the decision of the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC and another Vs. HSCC (India) Limited*** [2019 SCC Online SC 1517].

3.The learned counsel for the respondent submits that the impugned Award does not call for any interference as none of the grounds stipulated under Section 34 of the Arbitration and Conciliation Act, 1996 are attracted.



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4.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

5.The petitioner has not kept a copy of the loan agreement dated 25.02.2020, which is said to contain the clause for resolving the dispute through arbitration. The respondent has also come forward to file the same.

6.However, reading of the impugned Award indicates that the Arbitrator has been appointed by the respondent contrary to the provisions of the Arbitration and Conciliation Act, 1996 and the decision of the Hon'ble Supreme Court cited supra.

7.Considering the above, the impugned Award is set aside for passing denovo order, Court is inclined to appoint Ms.Poongkhulali Balasubramaniam, Advocate No.M-1, 'Vadhula', No.18, Brindavan Street, Mylapore, Chennai – 600 004 (Mobile No.9176568368) poongkhulali@tpchambers.in as an Arbitrator to decide the dispute between the petitioner and the respondent strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall charge fees either with mutual consent of



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parties or in accordance with the provisions of the Arbitration and Conciliation

Act, 1996.

8. This Arbitration Original Petition stands disposed of. No costs.

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Note: Registry is directed to transmit the order to Ms.Poongkhulali Balasubramaniam, Advocate, (Mobile No.9176568368).



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C.SARAVANAN, J.

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