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ARB.O.P.(Com.Div) No.293 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.293 of 2023

M/s.Mercedes – Benz Financial Services India Pvt. Ltd.,
formerly known as M/s.Daimler Financial
Services India Private Limited,
5th Floor, Plot 8, Baashyam Willow Square,
9 & 10, First Street, Thiru vi ka Industrial Estate,
Guindy, Chennai – 600 032, Tamil Nadu, India.
Rep. by its Authorised Signatory,
Mr.Sadam Hussain S.

... Petitioner

Vs.

1. TRP Logistics Private Limited,
Rep. by its Managing Director,
Romaa Commercial Complex,
3rd Floor, 5/228 Irulapalyam Road,
Kuthambakkam – 600 124,
Near Romaa Paradise, Thiruvallur,
Tamil Nadu – 600 101.

2. Thukkuram Pillai P.
No.5/228, Chinna Amman Koil St.,
Kannapalayam Panjayeth,
Tiruvallur,
Tamil Nadu – 600 124.

... Respondents



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Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) r/w Section 15(2) of the Arbitration and Conciliation Act, 1996, praying to appoint/substitute a Sole Arbitrator to adjudicate upon the differences and disputes between the parties under the said Agreement dated 03.07.2017 in respect of Contract Nos.20133559 & 20133560.

For Petitioner : Mr.M. Arunachalam

For Respondents : Ms.K.C. Aarthi

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act (hereinafter referred to as 'the Act'), seeking for appointment of an Arbitrator by this Court.

2. The petitioner is a Non-Banking Financial Institution. The first respondent has availed a loan from the petitioner for the purchase of vehicle under the Loan cum Hypothecation cum Guarantee Agreement (hereinafter called as 'the said Agreement') dated 03.07.2017. There seems to be a dispute arising out of the same. The petitioner had earlier initiated arbitration in accordance with the arbitration clause available in the said Agreement



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dated 03.07.2017, by unilaterally appointing an Arbitrator. Since the respondents had raised objections with regard to the unilateral appointment of an Arbitrator, the petitioner has filed this petition under Section 11 of the Act, seeking for appointment of an Arbitrator by this Court.

3. The second respondent is a guarantor to the loan transaction and according to the petitioner, the respondents are jointly and severally liable to pay the dues of the petitioner arising out of the said Agreement dated 03.07.2017. The petitioner has invoked arbitration by issuing reference letter dated 07.09.2022 and appointed Mrs.P.J. Anitha, Advocate, as Sole Arbitrator. Pursuant to the said reference letter, the Arbitrator appointed by the petitioner unilaterally acted upon the reference but in view of the objections raised by the respondents, the Arbitrator had recused from the arbitration vide her Recusal Letter dated 05.05.2023. Since there was no consensus between the parties with regard to the name of the Arbitrator, the petitioner has filed this petition seeking for appointment of an Arbitrator.

4. A counter-affidavit has been filed by the respondents. In the said counter-affidavit, they have raised objections only on the merits of the



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petitioner's claim and they have not raised any objections with regard to the arbitrability of the dispute arising out of the said Agreement dated 03.07.2017. They have also admitted the fact that earlier, the petitioner had unilaterally appointed an Arbitrator who has recused herself from the arbitration by her communication dated 05.05.2023, based on the objections raised by the respondents with regard to the unilateral appointment.

5. Since the respondents have not raised any serious objection with regard to the arbitrability of the dispute arising out of the said Agreement dated 03.07.2017, since there is no consensus between the parties with regard to the name of the Arbitrator and since there is a valid arbitration clause available in the subject matter of dispute of the said Agreement dated 03.07.2017, this Court will have to necessarily appoint an Arbitrator under Section 11 of the Act.

6. The contentions raised in the counter-affidavit filed by the respondents are with regard to the merits of the petitioner's claim and does not deal with the arbitrability of the dispute. The merits of the petitioner's claim will have to be adjudicated only by the Arbitrator and not by this Court



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under Section 11 of the Act. This Court while deciding an application under Section 11 of the Act, will have to take a *prima facie* view with regard to the existence of the arbitration clause. In the case on hand, admittedly, there is an arbitration clause available in the said Agreement dated 03.07.2017, which is the subject matter of dispute between the parties.

7. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for, by issuing the following directions:-

- (a) This Court appoints Mrs.R. Rathna Thara, Advocate, having Office at No.9, Siddhi Vinayakar Koil Street, T. Nagar, Chennai – 600 017, Mobile No.:9840451276, as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of the Loan cum Hypothecation cum Guarantee Agreement dated 03.07.2017, on merits and in accordance with law.
- (b) The Arbitrator shall be paid her remuneration/fees in accordance with the IV Schedule of the Arbitration and Conciliation Act, 1996.



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ABDUL QUDDHOSE, J.

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(c) Both the parties shall equally share the Arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

08.09.2023

Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

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