* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 6th January, 2023**
\+ ARB.P. 591/2022
TATA CAPITAL FINANCIAL SERVICES LIMITED
..... Petitioner
Through: Mr.Kushagra Aman, Advocate

Versus

SOLITAIRE AUTOMOTIVE & ORS. ..... Respondents
Through: Mr.P.S.Thakur, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner has filed the instant petition under section 11 of the Arbitration and Conciliation Act, 1996 seeking the following reliefs:

> *"a) appoint a sole arbitrator in accordance with Section 11 of Arbitration Act, 1996*
> *b) for costs of this Petition; and*
> *c) pass such and further orders as are just, fair and equitable in the facts and circumstances of the case."*

2. Learned counsel for the petitioner submits that the petitioner is a non-banking financial company that has been properly registered with the Reserve Bank of India. Its registered office is located at the Peninsula Business Park's Tower A on the 11th floor, Ganpatrao Kadam Marg in Lower Parel, Mumbai, 400013, and one of its branch offices is located at the 7th floor of the Videocon Tower in Block 7 E of the Jhandewalan Extension in Karol Bagh, New Delhi, 110055.

3. It has been submitted on behalf of the petitioner that respondent no. 1 operates as a partnership and has a place of business at A-60C, Sector-63, Noida, Uttar Pradesh - 201307. It is further submitted that through its partners, respondents no. 2 and 3, the respondent no. 1 made a request for the petitioner to approve a channel finance facility, claiming and assuring the petitioner that they were in a position to meet their financial commitments.

4. It has been submitted on behalf of the petitioner that in accordance with the terms and conditions outlined therein and repayable in the manner specified therein, the petitioner sanctioned a channel finance facility for a total amount of INR 1,50,00,000/- (Indian Rupees One Crore and Fifty Lacs only) via its sanction letter dated 27.06.2017 (Sanction Letter 1). This was based on the assurance and representations made by Respondent No. 1.

5. It has further been submitted on behalf of the petitioner that subsequently, the parties executed various other sanction letters for renewal of the Channel Finance Facility.

6. It is further the contention of the petitioner that under the channel financing and loan cum guarantee arrangements, respondent no. 1 has taken advantage of and used the facility provided by the petitioner. respondent no. 1 has, however, made defaults in the payments of the sums due and payable, along with interest, starting on 16th November, 2021.

7. It has further been submitted on behalf of the petitioner that, in accordance with Clause VI of the Loan cum Guarantee Agreement 1 and 2 and Clause 13 of the Master Terms and Conditions, the respondent No. 1's failure to make payments to the petitioner constitutes an event of default. According to Clause VI of the Channel Finance Agreements 1 and 2 and Clause 13 of the Master Terms and Conditions, the petitioner is entitled to recall the full outstanding loan amount as well as the dues in light of the defaults made by respondent No. 1's actions. The petitioner also claims that under the aforementioned Agreements, respondent No. 1 is also required to pay with additional applicable interest on defaulted principal over and above the regular rate of interest for the duration of the default. This is in the event that respondent No. 1 defaults on the payment of interest, repayment of principal amount, or payment of costs, charges, and expenses.

8. It has further been submitted that, respondents Nos. 2 and 3 have signed Letters of Guarantee Nos. 1 and 2 as well as Loan Cum Guarantee Agreement Nos. 1 and 2, jointly and severally guaranteeing, among other things, that respondent No. 1 will pay the petitioner all sums due and payable under the Channel Finance Agreement Nos. 1 and 2 and the Loan Cum Guarantee Agreement Nos. 1 and 2. As a result, respondents No. 2 and 3 have additionally assumed responsibility for paying the loan's principle amount, interest, and any further interest or penalties owed to the petitioner up to payment and/or realisation, jointly and/or severally.

9. In light of the submission made above, it has been contended by the petitioner that respondents, jointly and severally liable to make an immediate payment of Rs. 77,91,497/- (Rupees Seventy Seven Lakhs Ninety One Thousand Four Hundred and Ninety Seven only) due as on 23rd February, 2022.

10. It is submitted on behalf of the petitioner that in accordance with clause XV of the Channel Finance Agreement-2, Clause 12 of the Loan cum Guarantee Agreement 1 and 2 as well as Clause 29 of the Letter of Guarantee 2, executed between respondent Nos. 1 to 3 and the petitioner, the parties have agreed that in the event of any dispute, the dispute would be settled by Arbitration.

11. Learned counsel on behalf of the respondent vehemently opposed the averments made by the learned counsel for the petitioner, however it is duly accepted that disputes in question are arbitrable in nature, thus there is no objection if the instant dispute is referred by this Court to a sole arbitrator.

12. As agreed on behalf of the parties, it is evident that the parties intend the Court to refer the disputes to arbitration, by appointing a sole arbitrator. In view of the request made by the parties, to resolve the disputes arising under the said agreement, the said disputes and the differences arising between the parties are referred to arbitration, by appointing the sole arbitraror. Hence, the following Order:

ORDER

(i) Mr. Deviprasad Singh, (Former Judge Allahabad High Court) is appointed as sole arbitrator to adjudicate the disputes between the parties;

(ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;

(iii) The learned sole arbitrator shall be paid fees as prescribed under the Fourth Schedule of the Arbitration and Conciliation Act, 1996;

(iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;

(v) All contentions of the parties are expressly kept open;

(vi) A copy of the order be forwarded to the learned sole arbitrator on the following address:

Deviprasad Singh (Former Judge Allahabad High Court)
31, B, Laxmanpuri Colony,
Faizabad Road, Lucknow, U.P
Ph. No.+91 8005498811
E-mail ID – deviprasadsingh1953@gmail.com

13. The petition is disposed of in the aforesaid terms along with pending applications, if any.

(CHANDRA DHARI SINGH)
JUDGE

JANUARY 6, 2023
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