

ODC-15

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[Commercial Division]

AP-COM/206/2024
[Old case no. AP/219/2021]

TATA CAPITAL FINANCIAL SERVICES LIMITED
VS
MOHAN MOTOR BUSINESS PVT LTD. AND ORS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 3rd May, 2024.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Avishek Guha, Adv.
Ms. Akansha Chopra, Adv.
Ms. Sonal Agarwal, Adv.

Mr. Rajarshi Dutta, Adv.
Ms. Ankita Chowdhury, Adv.
Mr. S. Bose, Adv.

The Court: This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996.

The disputes by and between the parties arise out of a Channel Finance Agreement dated 16 November, 2017.

It is submitted on behalf of the petitioner that pursuant to the said agreement, the petitioner had advanced facilities to the respondents. In view of the defaults committed by the respondents, there is an aggregate amount of approximately Rs. 5,65,50,135.31/- which has become due and payable.

On 18 March, 2021, the petitioner was compelled to issue a notice under Section 21 of the Arbitration and Conciliation Act, 1996. There has been no response to such notice.

During the pendency of this proceeding, a proceeding under section 95 of the Insolvency and Bankruptcy Code 2016 had also been initiated against the respondent nos. 2 and 3. Accordingly, because of the moratorium, the petitioner cannot proceed any further against the respondent nos. 2 and 3.

On behalf of the respondent nos. 2 and 3, a supplementary affidavit has been filed disclosing the fact that proceedings under the Insolvency Code are pending against the respondent nos. 2 and 3.

Clause 15 of the agreement provide as follows;

"DISPUTE RESOLUTION

If any dispute, difference or claim arises between the parties hereto in connection with this Agreement or the security hereof or as to the validity, interpretation, implementation or effect of the Facility Documents or as to the rights and liability of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents or otherwise in relation to the security hereof, the same shall be settled by arbitration to be held at the place as mentioned in Item No. 18 of the Schedule [I] in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to a person to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The Parties may agree to have their dispute resolved by fast track procedure specified in Section 29B of the Arbitration and Conciliation Act, 1996.

The Facility Documents shall be governed by the laws of India.

Notwithstanding anything contained hereinabove, the Lender reserves the right to, at its option, also enforce the security under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI ACT") or proceed to recover dues from the Dealer/s under the SARFAESI Act and/or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993"

Clause 17 of the agreement also provide as follows;

"JURISDICTION

The Dealer agrees that, subject to the provisions of clause XV above, the Courts as mentioned in item no. 19 of Schedule [I] in accordance with clause XV above only shall have the sole jurisdiction to entertain and try all matters arising from and out of this Agreement."

The Schedule to the agreement records that the place of arbitration and the Courts at Kolkata are to have jurisdiction.

In such circumstances, there are live arbitral disputes between the parties which are covered under the arbitration clause and pertain to the agreement.

Accordingly, Mr. Deepan Kumar Sarkar, Advocate is appointed as an Arbitrator, subject to the Arbitrator communicating his consent to the Registrar, Original Side of this Court within three weeks from date.

The Advocate on Record of the petitioner shall communicate this order to the Learned Arbitrator forthwith and positively within 10 days from the date of passing of this order.

With the aforesaid directions, AP-COM/206/2024 stands disposed of.

(RAVI KRISHAN KAPUR, J.)

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