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Arb. O.P(Com.Div).No.209 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

Arb. O.P(Com.Div).No.209 of 2024

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, TamilNadu, India.
Represented by its Authorized Signatory
Mr.Sadam Hussain S

...Petitioner

Vs.

1. Abhinav Constructions,
Rep. by its Partner
HIG 31, Sada Colony,
Jamnipali Korba, 495 677,
Chhattisgarh.
also at
MIG II/74,
Ravi Shankar Shukla Nagar,
Korba, 495 677,
Chhattisgarh.

2. Suman Kumar
MIG II/74, Ravi Shankar Shukla Nagar,
Korba, 495 677,
Chhattisgarh.

3. Mira Devi



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MIG II/74,
Ravi Shankar Shukla Nagar,
Korba, 495 677,
Chhattisgarh.

.... Respondents

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate upon the differences and disputes between the parties under the said Loan cum Hypothecation cum Guarantee Agreement dated 31.10.2019 along with Supplemental Agreements dated 13.10.2021 & 16.06.2023 in respect of contract bearing Nos.20144841, 20144842, 20144843, 20144844, 20144845 and 20144846.

For Petitioner : Mr.M.Arunachalam

For Respondents : M/s.S.R.N.Manusri
(Vakalath not filed)

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the Act') to appoint an Arbitrator to adjudicate upon the differences and disputes between the parties under the said Loan cum Hypothecation cum Guarantee Agreement dated 31.10.2019 along with Supplemental Agreements dated 13.10.2021 & 16.06.2023 in respect of contract bearing Nos.20144841, 20144842, 20144843, 20144844, 20144845 and 20144846.



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2. The learned counsel for the petitioner submitted that, the petitioner-company is rendering financial assistance for its prospective commercial business as well as individual customers i.e., by loan cum hypothecation agreement. The respondents have approached the petitioner-company for loan facility for the purpose of purchasing a vehicle viz., Bharat Benz BB HDT 2528C 16 cum vehicle. The first respondent as borrower along with the second respondent as co-borrower and third respondent as Guarantor entered into a Loan cum Hypothecation cum Guarantee Agreement dated 31.10.2019 and supplemental agreements dated 13.10.2021 & 16.06.2023 with the petitioner. Pursuant to which, the aforesaid agreements were executed and the amount was paid to the respondents. However, the respondents have committed default in repayment of loan amount along with interest as per the terms of above said loan agreements. Therefore, the petitioner on 21.03.2024 issued notice under Section 21 of the Act, calling upon the respondents to repay a sum of Rs.2,66,54,028/- along with interest. Despite the service of notice on the respondents, the respondents have failed to settle the aforesaid dues. Therefore, finding no other option, the petitioner has filed the present O.P., for appointment of Sole Arbitrator to adjudicate the dispute arisen out of the Loan cum



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Hypothecation cum Guarantee Agreement dated 31.10.2019 and supplemental agreements dated 13.10.2021 & 16.06.2023.

3. Ms.S.R.N.Manusri, learned counsel entered appearance on behalf of the respondents would submit that she has no objection for appointment of the Arbitrator.

4. Heard the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the materials available on record.

5. Upon hearing the learned counsel and on perusal of the records, this Court is of the considered view that the present dispute has arisen out of the Loan Agreement dated 31.10.2019 and Supplemental agreements dated 13.10.2021 & & 16.06.2023, and the same is arbitrable in terms of Clause 85 of the Loan Agreement dated 31.10.2019 and Clause 27 of the Loan cum Hypothecation cum Guarantee Agreement dated 31.10.2019. Relevant arbitration Clauses contained in the loan agreement dated 31.10.2019, which reads as follows:



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“The Clause 85 of the Loan Agreement dated 31.10.2019 is as follows:

"All claims and disputes arising under or relating to this loan agreement are to be settled by binding arbitration in the state of Tamil Nadu, specifically Chennai or another location as desired by the lender. The arbitration shall be conducted on a confidential basis and shall be subject to the Arbitration and Conciliation Act 1996 of India. Any decision or award as a result of any such arbitration proceedings shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses and reasonable attorney's fees. Any such arbitration shall be conducted by single arbitrator appointed by the lender. The arbitration proceeds shall include a written record of the arbitration hearing. The Parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction".

The Clause 27 of the Deed of Guarantee dated 31.10.2019 is as follows:

"All claims and disputes arising under or relating to this loan agreement are to be settled by binding arbitration in the state of Tamil Nadu, specifically Chennai or another location as desired by the lender. The arbitration shall be conducted on a confidential basis and shall be subject to the Arbitration and Conciliation Act 1996 of India. Any decision or award as a result of any such arbitration proceedings shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses and



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reasonable attorney's fees. Any such arbitration shall be conducted by single arbitrator appointed by the lender. The arbitration proceeds shall include a written record of the arbitration hearing. The Parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction".

6. In view of the above, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the parties arisen out of Loan cum Hypothecation cum Guarantee Agreement as well as the supplemental agreements as stated above.

7. Accordingly, this Court feels it appropriate to issue the following directions:-

(a) **The Hon'ble Mr.Justice M.Govindaraj, Former Judge, Madras High Court**, Possessing Mobile No.9444257157, 9444094403, residing at No.4/225, Sri Kapaleeswarar South 2nd Street, Neelangarai, Chennai 600 041, is appointed as a Sole Arbitrator to enter upon reference and adjudicate the disputes between the parties, arising out of the above said loan agreement and supplemental agreements.

(b) The Arbitrator shall initiate arbitration proceedings and after issuing notice to the parties concerned and upon hearing them, pass an award, on merits and in accordance with law and uninfluenced by any of the observations made in this order,



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within a period of six months from the date of receipt of a copy of this order.

- (c) The Arbitrator shall be paid fees and other incidental charges, as per the Schedule IV of the Act and the same shall be borne by both the parties equally. In the event of non-appearance of the Respondents, the Petitioner shall bear the entire remuneration and other expenses and thereafter, the Petitioner is at liberty to recover the same directly from the Respondent.

8. In the result, the Arbitration Original petition is allowed with the aforesaid directions. No costs.

25.07.2024

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Note: Issue order copy on 08.08.2024.



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Krishnan Ramasamy,J.,
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