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Arb.OP(Com.Div)No.210 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.OP(Com.Div)No.210 of 2024

M/s.Mercedes-Benz Financial Services India Private Limited,
Formerly known as M/s.Daimler Financial Services,
5th Floor, Plot 8, Baashyam Willow Square 9 & 10,
First Street, Thiru Vi Ka Industrial Estate,
Guindy, Chennai 600 032.
Represented by its Authorised Signatory

...Petitioner

Vs

1. Mr.Shashank Malik
2. Mr.Satender Kumar

....Respondents

Prayer:- This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate the dispute between the petitioner and the respondents as per the Loan Agreement Dated 30.03.2016 bearing Contract No.10119443; to direct the respondents to pay the cost of this petition.

For Petitioner : M/S.D.Pradeep Kumar

For Respondents : Notice served, No appearance



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ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate the dispute between the petitioner and the respondents as per the Loan Agreement Dated 30.03.2016, bearing Contract No.10119443.

2. The learned counsel for the petitioner submitted that, the respondents have approached the petitioner for loan facility for purchase of a vehicle viz., Mercedes-Benz CLA 200 CDI Sports. The petitioner and the respondents have entered into a Loan Agreement bearing Contract No.10119443, dated 30.03.2016 and availed finance facility for a sum of Rs.29,25,000/- for the purchase of aforesaid vehicle. Since the respondents were irregular in making the payments and had committed defaults, by a notice dated 17.01.2018, the loan agreement was terminated and the entire amount due under the agreement was called upon to be paid. However, the respondents have failed to make payment of the amount due under the aforesaid agreement. Therefore, the petitioner initiated Arbitration proceedings in Arbitration case No.186 of 2019 and an award was passed



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on 05.10.2019. Challenging the award dated 05.10.2019, the respondents have filed Arb.O.P.(Com.Div.)No.88 of 2021 before this Court. This Court, vide order dated 27.02.2023, set aside the award dated 05.10.2019, on the ground of unilateral appointment of Arbitrator. Thereafter, the petitioner issued the fresh notice dated 16.02.2024 for appointment of Sole Arbitrator. After the receipt of such notice, the respondents have failed to send any response. Therefore, finding no other option, the petitioner has filed the present O.P., for appointment of Sole Arbitrator to adjudicate the dispute arising out of the Loan Agreement, dated 30.03.2016. Relevant arbitration Clause contained in the loan agreement, reads 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 proceeding 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 attorneys' 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. An award of arbitration



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may be confirmed in a court of competent jurisdiction”.

3. Despite service of notice on the respondents and the name being printed in the cause list, there is no representation on behalf of the respondents.

4. In view of the above submission made by the learned counsel for the petitioner and on perusal of the documents, it appears that the present dispute arising out of loan agreement dated 30.03.2016 and in terms of provisions of aforesaid loan agreement, the present dispute can be arbitrable. Therefore, this Court is inclined to appoint an Arbitrator to resolve the dispute between the petitioner and the respondents in terms of loan agreement, dated 30.03.2016.

5. Accordingly, this Arbitration Original Petition is allowed, with the following directions:-

(a) Mr.K.V.Muthu Visakan, Advocate, Possessing Mobile No.9841235688, C-Block, No.10, Sunflower Apartment, Mandapam Cross Street, Kilpauk, Chennai 600 010, is appointed as a Sole Arbitrator to enter upon reference and



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adjudicate the disputes between the parties, arising out of the above said loan agreement.

- (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, 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 Respondents.

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Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Neutral Citation: Yes/No

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