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Arb.O.P (Com.Div.) No.24 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Arb.O.P (Com.Div.) No.24 of 2024

M/s. Mercedes-Benz Financial
Services India Pvt. Ltd.
[Formerly known as M/s.Daimler
Financial Services India Pvt Ltd]
Having its registered office inter alia at
5th Floor, Plot 8, Baashyam Willow Square
9 & 10, First Street, Thiru Vika Industrial
Estate, Guindy, Chennai – 600032.
Branch Office at
E-3, Midc Chakan, Phase III, Chakan
Industrial Area, Kuruli & Nighoje
Pune – 410501.

...Petitioner

-VS-

1. M/s. Shree Bharat Motors Limited
Represented by Managing Director
NH-5, Pahal Bhubaneswar
Odisha – 752101.

2. Jay Prakash Didwania
3. Om Prakash Didwania
4. Dev Prakash Didwania
5. Anita Didwania

...Respondents



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PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate and resolve the disputes through arbitral proceedings between the parties.

For Petitioner : Mr. S.Namasivayam
for Mr. S.Balakrishnan

For Respondents : M/s. Rupikaa Srinivasan
for Mr. Aniruth Krishnan

ORDER

This Arbitration Original Petition has been filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate and resolve the disputes through arbitral proceedings between the parties.

2. Heard Mr. S.Namasivayam, learned counsel for the petitioner and M/s. Rupikaa Srinivasan, learned counsel for the respondents.



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3. Mr. S.Namasivayam, learned counsel for the petitioner would submit that the dispute between the parties had arisen as early as in the year 2022 and that he had also filed an application in Arbitration O.P. No. 510 of 2022 seeking for an appointment of an Arbitrator.

4. At the request of the respondents and the consent of the petitioner, this Court was pleased to refer the dispute to the Mediation. During the several rounds of negotiations, the parties have agreed to settle the dispute and the agreement was reduced in writing by Memorandum of Understanding on 27.03.2023. Since the respondents had defaulted in honouring the Memorandum of Understanding, the present application is again moved before this Court for appointment of an arbitrator.

5. Ms.Rupikaa Srinivasan, learned counsel for the respondents would submit that the respondents had made an offer of settling the dispute at Rs. 10 crores in all and therefore, would request this Court to direct the applicant to consider the offer made by the respondents.



6. The learned counsel for the petitioner on the other hand would highly refute that no such offer had been made, and that the petitioner would not be willing to settle for the said amount since even before the Mediation, the respondent has admitted to pay has liability accepted at Rs. 33,84,97,978.04.

7. Heard the submissions made by the respective counsels.

8. The learned counsel for the respondents had not disputed that the dispute was subject matter of the arbitration clause under the agreement between the parties. The request of the respondents counsel was only to refer the matter again for Mediation. Since already this Court had referred the matter to mediation and admittedly, the respondents had defaulted in the understanding that has arrived at between the parties, I do not propose to entertain the claim of the respondents again to refer the matter for Mediation or any form of Conciliation. It is always open to the respondents to seek mediation even before the Arbitrator. Since there is no dispute with regard to the clause of arbitration under the agreement, I am inclined to appoint **Hon'ble Mr. Justice N.Kirubakaran**, Former



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Judge, Madras High Court, residing at No.36, II Cross Street, Rayala Nagar, Ramapuram, Chennai – 600089 as Sole Arbitrator to enter upon the dispute between the petitioner and the respondents.

9. The learned Sole Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Sole Arbitrator to endeavour to decide the dispute as expeditiously as possible.

10. Accordingly, this Arbitration Original Petition is ordered.

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Index :Yes/No

Maya



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K.KUMARESH BABU, J.
Maya

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