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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1135/2023

TATA CAPITAL FINANCIAL SERVICES LIMITED Petitioner

Through: Mr. Savyasachi Sahai, Mr.

Vishwajeet Singh Shekhawat, Advts.

versus

M/S MALHOTRA AUTO PARTS

... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

02.02.2024

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1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator for adjudication of the disputes arising out of Loan cum Guarantee Agreement dated 31.07.2019 between the parties.
2. Clause 12 of the said agreement contains the arbitration Clause which reads as under:-

“12. Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities 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, the same shall be settled by arbitration to be held at the place as mentioned at Serial No. 17 of Annexure 1 hereto, in accordance with the Arbitration and Conciliation Act, 1996, or any statutory



amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors.”

3. On the last date, notice was issued to the respondent, however, the service report is awaited.
4. Mr. Shekhawat, learned counsel for the petitioner draws my attention to the Loan Application, wherein the email address of the respondent is shown as deepakmalhotra787@gmail.com.
5. The learned counsel for the petitioner has handed over a copy of the email dated 17.01.2024 addressing the summons as well as the petition to the said email address. The learned counsel states that the said email has not bounced.
6. For the said reasons, I am of the view that the respondent has been served through email.
7. Mr. Shekhawat, learned counsel further states that the petitioner has merged with Tata Capital Limited vide order of the NCLT, Mumbai dated 24.11.2023 in C.P.(CAA)/260/MB/2023 connected with C.A.(CAA)/178/MB/2023, and the rights and obligations of the petitioner have been transferred to Tata Capital Limited.
8. The documents handed over in Court today, including the amended memo of parties, are taken on record.
9. In view of the facts noted above, since the amounts due and payable to the petitioner have not been paid, in terms of Clause 12 of the Loan



cum Guarantee Agreement, there are disputes which are required to be adjudicated by the Arbitrator.

10. It is stated by Mr. Shekhawat, learned counsel that there are some problems in transferring the fees to DIAC and hence, requests that the matter may not be referred to DIAC.
11. At his request, Mr. Mr. A.P.S. Ahluwalia, Sr. Adv. (Mob. No. 9810294209 is appointed as an Arbitrator to adjudicate the disputes between the parties. The remuneration of the learned Arbitrator shall be paid in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
12. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
13. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
14. The parties shall approach the learned Arbitrator within two weeks from today.
15. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 2, 2024 / (MS)

Click here to check corrigendum, if any