



2024:DHC:9567



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 09.12.2024

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ARB.P. 1136/2024**KOTAK MAHINDRA PRIME LTD**

.....Petitioner

Through: Mr. Shankar Sen, Adv. along with
Ms. Richa Tuteja (AR)

versus

BERKLEY BEAUTY BRANDS PRIVATE LTD & ANR.

.....Respondents

Through: Ms. Akshaya Ganpath, Adv.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the A&C Act') seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties.
2. The disputes have arisen between the parties in the context of a Car Finance Agreement dated 31.03.2021, in terms of which the respondents availed a loan of Rs. 40,00,000/- for purchase of a vehicle.
3. The said loan facility was agreed to be repaid by the respondents with interest in sixty EMIs of Rs.85,976/- each.
4. The vehicle in question is duly hypothecated by way of exclusive charge in favour of the petitioner and as security for due repayment of the said loan facility.
5. On disputes having arisen between the parties, a Loan Recall Notice dated 11.04.2024 was sent by the petitioner to the respondents on account of



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the respondent's failure to clear the outstanding dues under the agreement in question or to surrender the vehicle.

6. Pursuant to the loan recall notice dated 11.04.2024, a petition under Section 9 of the A&C Act was filed by the petitioner seeking appointment of a receiver to take physical possession of the hypothecated vehicle. The said petition was allowed by the Hon'ble Court of Sh. Lokesh Kumar Sharma, DJ (Commercial), South District, Saket Court, Delhi vide order dated 09.05.2024.

7. Subsequently, notice of invocation of arbitration was sent by the petitioner to the respondent on 25.04.2024.

8. Admittedly, the agreement between the parties contains an Arbitration Clause as under:-

"31. Arbitration

All disputes, differences and/or claim arising out of these premises or in any way touching or concerning the same or as to constructions, meaning or effect thereof or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof shall be referred to the arbitration of a sole arbitrator to be nominated by the LENDER in the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the LENDER may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be conducted in English language and held at the place more particularly mentioned in the Schedule-I of the present agreement hereunder."

9. It is undisputed that the seat of Arbitration as contemplated in the agreement between the parties is Delhi and as such, this Court has jurisdiction to entertain the present petition.

10. Vide order dated 27.11.2024, it was recorded as under:-

"1. Learned counsel for the respondents submits that the respondents are desirous of amicably resolving the matter. It is



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submitted that the respondents are willing to give an undertaking that the outstanding EMIs shall be paid expeditiously and the future EMIs shall also be paid regularly, without fail.

2. Let the respondents join the proceedings virtually on the next date of hearing.

3. Learned counsel for the petitioner submits that the disputes in respect of which the present petition has been filed, can be resolved upon the respondents regularizing the loan amount by clearing the outstanding arrears, and upon the respondents giving an undertaking to this Court that they shall make regular and timely payment of all future EMIs.

4. List on 09.12.2024.”

11. Today, learned counsel for the respondent submits that since there is some controversy as regards the interest being charged by the petitioner, the respondent is not in a position to give the undertaking as referred to in the order dated 27.11.2024 for the purpose of amicably resolving the matter. She submits that an independent Sole Arbitrator be appointed by this Court to adjudicate the disputes between the parties.

12. Since the existence of the Arbitration Agreement is undisputed, there is no impediment in constituting an Arbitral Tribunal to adjudicate the disputes between the parties as contemplated in the Judgments of the Supreme Court in ***In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***, 2023 SCC OnLine SC 1666 and ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532.

13. Further, in terms of the Judgment in ***Perkins Eastman Architects DPC*** (supra), ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377, ***Bharat Broadband Network Limited v. United Telecoms Limited.***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the



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parties.

14. Accordingly, Mr. Kapil Dutta, Advocate (Mob. No.: +91 9811135509) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

16. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosures as required under Section 12 of the A&C Act.

17. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

18. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

19. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

20. The petition is allowed in the above terms.

SACHIN DATTA, J

DECEMBER 9, 2024/uk