



2024:DHC:8370



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 22.10.2024+ **ARB.P. 1150/2024**

CARS 24 FINANCIAL SERVICES PRIVATE LIMITED....Petitioner

Through: Mr. Anurag Arora, Adv. (through v/c)
versusSANJAY MATHEWS PROPRIETOR OF M/S BENKUS MOTORS
AND ANR.Respondents

Through: None.

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

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'A&C Act') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of a Credit Facility Agreement dated 30.07.2021 entered into between the petitioner and the respondents, in terms of which the respondent no.1 was the borrower, whereas the respondent no.2 was the co-borrower.
3. Disputes have arisen between the parties on account of alleged default on the part of the respondents in paying the tranches/instalments under the aforesaid agreement.
4. The agreement between the parties contains an Arbitration Clause as under-



2024:DHC:8370



“15.2. Arbitration: Any dispute under this Agreement shall be settled by binding arbitration conducted in English with the seat of arbitration in New Delhi before a single arbitrator appointed by Lender and its sole discretion, as per the Arbitration and Conciliation Act, 1996.”

5. Disputes having arisen between the parties, a “Finance/Credit Facility Recall Notice-cum-Proposal” dated 09.05.2024 was issued by the petitioner to the respondents for appointment of a Sole Arbitrator.
6. *Vide* the said communication, the petitioner, referring to the failure on the part of the respondents in making the requisite payment in terms of the Credit Facility Agreement, *inter alia*, proposed constitution of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties. However, no response to the aforesaid notice was sent by the respondents.
7. Consequently, the petitioner has approached this Court, through the present petition, seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
8. It is noticed that the aforesaid communication dated 09.05.2024, whereby the arbitration was invoked, was delivered to the respondents, as is evident from the postal receipt filed by the petitioner. Yet no reply thereto was given by the respondent.
9. In the present proceedings, notice was issued on 01.08.2024. The petitioner has taken the requisite steps to serve the respondents at its known address. The communication sent to the said address *via* speed post was returned with the notation, “item returned refused”. In addition, the respondent has also been served *via* email at *sanjaymathews69@gmail.com* and *via* whatsapp at *+918178282807* and *+919910359445*. As such, the petitioner has discharged its onus to effect service on the respondent. It is



2024:DHC:8370



noticed that Section 3 of the Arbitration and Conciliation Act, 1996 contemplates that a written communication is deemed to have been received if it is sent to the addressee's last known place of business or mailing address by any means which provides a record of the attempt to deliver it.

10. In the aforesaid circumstances, the matter has been taken up for hearing and disposal.

11. Since the existence of the arbitration clause is evident from a perusal of the Credit Facility Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd.* (2017) 8 SCC 377, *Bharat Broadband Network Limited v. United Telecoms Limited* 2019 SCC OnLine SC 547 and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666.

12. Accordingly, Mr. Himanshu Goel, Advocate (Mob. No.: 9810215487) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

13. Prior to adjudication of the dispute on merits, the learned Sole Arbitrator is requested to encourage the parties to arrive at a settlement through mediation or any procedure as may be considered appropriate by the learned Arbitrator, as contemplated under Section 30(1) of the A&C Act.

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



2024:DHC:8370



15. The learned Sole Arbitrator shall be entitled to fee in accordance with IV Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
16. The parties shall share the arbitrator's fee and arbitral costs, equally.
17. 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.
18. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.
19. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 22, 2024/sl