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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1164/2024

KOTAK MAHINDRA PRIME LIMITED

.....Petitioner

Through: Mr. Ajay Uppal, Adv.

versus

AVINASH D

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

08.11.2024

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1. This a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator for adjudication of disputes between the parties.
2. The brief facts are that the respondent approached the petitioner seeking grant of a vehicle loan and hypothecation financing facility.
3. After considering the loan application, the petitioner granted loan to the tune of Rs. 15,16,662/- for a period of 60 months *vide* Agreement dated 29.04.2023 for purchasing vehicle bearing make/model No. Mahindra Scorpio Classic S11 MT 7S CC Registration No. HR05BK7575 and the same was hypothecated in favour of the petitioner by creating first charge thereon.
4. The arbitration clause is clause 32 of the said Agreement which reads as under:-



“All disputes, differences and/or claim arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect hereof 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 and 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 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.”

5. Since the respondent defaulted in making the payment, Loan Recall Notice dated 16.05.2024 was issued by the petitioner to the respondent and subsequently, on 27.05.2024, the petitioner invoked arbitration.
6. The Loan Application Form shows the mobile number of the respondent as 7988624001.
7. On 05.08.2024, this Court issued notice to the respondent.
8. As per the service report, the respondent has been served at the above mobile number through Whatsapp.
9. Despite service, there is nobody appearing on behalf of the respondent.
10. For the said reasons, the petition is allowed and the following



directions are issued:-

- i) Ms. Chand Chopra, Advocate (Mob. No. 9915907494) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned Arbitrator within two weeks from today.

11. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

NOVEMBER 8, 2024 / (MS)

Click here to check corrigendum, if any