



\$~10

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

+ **ARB.P. 1185/2024**

KOTAK MAHINDRA PRIME LIMITED

.....Petitioner

Through: Mr. Ajay Uppal, Advocate.

versus

HASAN ALI

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

08.11.2024

%

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Loan Agreement dated 22.07.2022. Clause 32 of the said Loan Agreement, which is an arbitration clause, reads as under:

“32. Arbitration:

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.”

2. Material on record indicates that the Respondent took a loan of Rs.17,99,539/- from the Respondent for a period of 48 months for purchasing a vehicle of make/model No. Toyota – Fortuner 4X2, Registration No. DL1CZ7907, Engine No.1GDA202428 and Chassis No.MBJAA3GS2005346050618. It is stated that as per the loan agreement, the Respondent had agreed to repay the said loan amount, in 48 equated monthly instalments (EMI) of Rs.47,840/- each. It is stated that the Respondent has defaulted in repayment of loan. It is stated that since money was not forthcoming, the loan agreement was foreclosed vide Loan Recall Notice dated 16.05.2024. Material on record indicates that a notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 was sent by the Petitioner to the Respondent on 27.05.2024. Since no reply was received, the Petitioner has approached this Court by filing the present petition seeking appointment of an Arbitrator.

3. Notice was issued in the petition on 08.08.2024.

4. There is no appearance on behalf of the Respondent today.

5. Report of the Process Server shows that notice has been served on the Respondent. An affidavit of service has also been filed.

6. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Loan Agreement, this Court is inclined to



appoint an Arbitrator to adjudicate upon the disputes between the parties.

7. Accordingly, Ms. Shobha Rammoorthy, (Mob. No.9910626622) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

8. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

9. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

10. 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.

11. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

12. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 8, 2024

S. Zakir