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

+ **ARB.P. 1331/2023**

**TATA CAPITAL FINANCIAL
SERVICES LIMITED**

..... Petitioner

Through: Ms. Ekta Bhasin & Mr. Sanidhya
Sonthalia, Advocates.

versus

**FALCON AUTO ENGINEERING
PRIVATE LIMITED**

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

19.02.2024

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1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a Loan cum Guarantee Agreement dated 30.08.2022.

2. Clause 11 of the aforesaid Agreement contemplates that all disputes between the parties under the Agreement shall be settled by a sole arbitrator, and the place of arbitration as Delhi. The Agreement further provides that exclusive jurisdiction, for the purposes of the Agreement, shall vest in the courts of Delhi.

3. The petitioner invoked arbitration *vide* legal notice dated 23.11.2023, to which no response was received.

4. Notice was issued in the petition on 18.12.2023. Service was



thereafter effected upon the respondent through registered post, courier and email and an affidavit of service dated 19.01.2024 was filed by the petitioner.

5. By order dated 31.01.2024, it was directed as follows:

1. *“Notice was issued in this petition on 18.12.2023. Learned counsel for the petitioner has filed an affidavit of service which shows that service has been effected upon the respondent by registered post, courier and email on 12.01.2024, 11.01.2024 and 23.01.2024 respectively.*
2. *Learned counsel for the petitioner states that service has been effected at the contact details mentioned in the loan-cum-guarantee agreement dated 30.08.2022, which is also the registered office address of the respondent company.*
3. *As service has been effected relatively recently, list on 19.02.2024 to enable the respondent to enter appearance.*
4. *Learned counsel for the petitioner is directed to forward a copy of this order to the respondent by e-mail within the next three days and to place an affidavit of compliance on record alongwith the current master data record relating to the respondent company, from the master data base maintained with the Ministry of Corporate Affairs, Government of India.”*

6. Learned counsel for the petitioner has thereafter filed another affidavit of service dated 12.02.2024, which states that service has again been effected upon the respondent by speed post, courier and email dated 08.02.2024, 06.02.2024, and 02.02.2024 respectively. The respondent has not entered appearance, despite being served twice through various modes. I do not find it necessary to await the appearance of the respondent further.

7. The Court, at this stage, is only required to examine the *prima facie* existence of an arbitration agreement for referring the parties to arbitration. The petitioner has made out a *prima facie* case to this effect, and with regard to invocation of the arbitration. The respondent has also



not appeared to controvert these submissions.

8. In view of the above, the petition is disposed of by referring the parties to the arbitration of Mr. Akshay Makhija, Senior Advocate [Tel:9810079901]. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. As the respondent has not appeared in these proceedings, it is made clear that the respondent should be served in accordance with DIAC Rules in the arbitration proceedings. All rights and contentions of the parties, including on limitation and maintainability of claims, are left open for adjudication by the learned Arbitrator. This Court has not examined the case on merits, and the averments in the petition are also not to be taken as admitted by the respondent.

10. The petition is disposed of in terms of the above.

PRATEEK JALAN, J

FEBRUARY 19, 2024

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