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

\+ **ARB.P. 1841/2024**

TATA CAPITAL LIMITED TRANSFEREE OF TATA CAPITAL FINANCIAL SERVICES LTD

.....Petitioner

Through: Mr.Sanidhya Sonthalia, Advocate.

versus

MADHUSUDAN VEHICLES PVT LTD & ORS. ...Respondents

Through: Mr.Ravi Kapoor and Ms.Sakshi Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **10.02.2025**

1. The instant petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the following reliefs:-

> *"a. Allow the present petition;*
>
> *b. Pass an order for appointment of Arbitrator as per Arbitration and Conciliation Act, 1996, as amended from time to time;*
>
> *c. Award costs of the Petition in favour of the Petitioner and against the Respondent; and*
>
> *d. Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of justice."*

2. Heard learned counsel appearing on behalf of the parties.

3. It appears that on 04.03.2023, certain documents were executed between the parties including the Loan *cum* Guarantee (Channel Finance) Agreement for a loan of Rs.4 Crores. It is stated by the petitioner that

respondent nos.2 and 3 jointly and/or severally guaranteed to repay the loan amount sanctioned under the aforesaid loan agreement along with interest, penal/additional interest, other lawful charges, costs, expenses, and other monies payable thereunder, on demand, upon respondent No. 1, committing any default or delay in repaying the loan amount.

4. It is the case of the petitioner that there was certain default by respondent no.1, and accordingly, on 05.11.2024, a Loan Recall Notice (LRN) was issued, stating therein *inter alia* to make payment and also invoking arbitration under Clause 12 of the Loan *cum* Guarantee (Channel Finance) Agreement dated 04.03.2024. It is the case of the petitioner that a sum of Rs.4,23,45,763/- is outstanding as of 18.10.2024.

5. The Court, *vide* its order dated 23.01.2025 granted liberty to the respondents to file the reply.

6. Learned counsel appearing on behalf of the respondents that without prejudice to his rights and contentions, the Court may consider to appoint an Arbitrator.

7. The Court takes note of Clause 12 of the Loan *cum* Guarantee (Channel Finance) Agreement dated 04.03.2024, which reads as under:-

> *"**12. Arbitration***
> *If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitration to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 17 of Annexure 1 hereto of the Agreement. The Party invoking the arbitration ("Claimant") shall address a notice to the other Party ("Respondent") suggesting the names of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High*

Court or the Supreme Court or a lawyer having minimum 10 years' relevant experience. The Respondent shall either:

(i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (1 0) days from the date of notice ***("Notice Period");*** *or*

(ii) Convey objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties. In the event, the Respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Obligor/s."

8. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Loan *cum* Guarantee (Channel Finance) Agreement dated 04.03.2024, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

9. Accordingly, *Mr. Ishaan S. Sharma (Contact details - Phone no. +919555777622, Email id – advocateishaansharma@gmail.com)* is appointed as the sole Arbitrator.

10. 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.

11. The learned arbitrator is also requested to file the requisite disclosure under Section 12(1) and 12(2) of the Act, within a week of entering on

reference.

12. The registry is directed to send a receipt of this order to the learned Arbitrator through all permissible modes, including through e-mail.

13. 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 merits, in accordance with law.

14. The petition stands disposed of in the aforesaid terms.

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 10, 2025
Nc/sp

Click here to check corrigendum, if any