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

+ **ARB.P. 2058/2024**

KOTAK MAHINDRA PRIME LTD

.....Petitioner

Through: **Mr. Kush Gupta, Advocate**

versus

ASHISH NAIN & ANR.

.....Respondents

Through: **None**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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03.04.2025

1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 ('Act of 1996') seeking appointment of the Arbitrator for adjudication of disputes between the parties in terms of the Car Finance Agreement No. CF21806633 dated 29.05.2023 ('Car Finance Agreement') executed between the parties. It is stated that the Car Finance Agreement contains an Arbitration Clause '32' of the said agreement as applicable to the parties herein.
2. Schedule I of the Car Finance Agreement bears a stamp recording that the place of Arbitration will be Delhi.
3. It is stated that the Respondents approached the Petitioner Company to avail financial facility for purchase of the vehicle and the hypothecation financing facility. It is stated that the Petitioner Company granted to the Respondents a loan of Rs. 7,74,757/- vide the Car Finance Agreement. It is stated that as per the agreement the Respondents agreed to repay the loan



amount with interest in 48 Equated Monthly Installments (EMIs) of Rs. 21950.

4. It is stated that in terms of the Clause 5 of the Car Finance Agreement the subject matter vehicle has been duly hypothecated by way of exclusive charge in favour of the Petitioner as a security for the due repayment of the said loan facility. It is stated that however, the Respondents failed to adhere to the financial discipline of repayment of the loan amount. And, pursuant to the continuous default the Petitioner Company issued Loan Recall Notice dated 11.03.2024, which was not adhered to by the Respondents.

5. It is stated that in these facts the Petitioner Company filed a petition under Section 9 of the Act of 1996 seeking interim relief of appointment of Receiver to take the physical possession of the hypothecated vehicle. And, the said petition was allowed vide order dated 29.04.2024 by the Saket District Court. There is no averment in the petition with respect to the further proceedings qua the vehicle.

6. It is stated that in light of these facts the Petitioner Company is approaching this Court for appointment of Sole Arbitrator.

7. It is stated that Petitioner Company has evaluated the claim to the tune of Rs. 8,34,330.87/- on account of total foreclosure as on 05.07.2024.

Arguments of the Petitioner Company

8. Learned counsel for the Petitioner Company contends that service in this Petition on the Respondents has been duly affected and the affidavit of service has also been filed. He states that the Respondents has been duly served through Speed post which is duly evidenced from the Speed Post receipts along with tracking reports the dated 19.03.2025. He states that the Respondents has also been duly served through registered post which is duly



evidenced from the Registered post receipts dated 13.03.2025 and relies upon the tracking reports.

9. He states that the quantum of amount, which is the subject matter of the dispute is approximately Rs. 8.5 Lakhs i.e., the amount, which was outstanding as on the date of filing of the petition.

10. He states that the arbitration may be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and an Advocate be appointed as an Arbitrator considering the value of the claim amount involved.

Decision

11. Notice in the present petition was issued on 17.12.2024 and 17.02.2025 and the Respondents was directed to file the reply to the petition. Due service on the Respondents by the Petitioner Company through speed post and registered post is reflected from the affidavit of service filed by the Petitioner. However, none has appeared on behalf of the Respondents in these proceedings.

12. Learned counsel for the Petitioner states that Respondents did not appear in Section 9 petition proceedings as well before the District Court.

13. Upon perusal of the Car Finance Agreement and Schedule I thereto, this Court is satisfied that the parties have agreed that the place of Arbitration will be Delhi.

14. A perusal of Clause '32' of the Car Finance Agreement shows that there exists an arbitration agreement between the parties and the said clause has been duly invoked by the Petitioner Company by issuing the notice invoking arbitration dated 11.03.2024.

15. In view of the aforesaid submission, considering the fact that the



arbitration agreement forms part of the Car Finance Agreement and it is mentioned in the said Car Finance Agreement that a Sole Arbitrator is to be appointed for adjudication of the disputes, therefore, the present petition is allowed with the following directions:

16. Mr. Rizwan, Advocate [Mobile No.: 9643349576, Email ID: rizwanoffice0506@gmail.com, Enrolment No.: D/1160/2012] is appointed as a Sole Arbitrator.

17. The arbitration will be held under the aegis of the DIAC. The remuneration of the Sole Arbitrator shall be in terms of the Schedule IV of the Act of 1996.

18. The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act of 1996 before entering into the reference.

19. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication of the Sole Arbitrator.

20. Learned Counsel for the Petitioner Company states that the Statement of Claim will be duly filed within four (4) weeks.

21. List for preliminary hearing to be presided over by the Sole Arbitrator on 05.05.2025 at 11:00 A.M.

22. The DIAC is directed to issue fresh notice to the Respondents for hearing dated 05.05.2025.

23. With the aforesaid direction, the petition stands disposed of.

24. The registry is directed to send a copy of this order to Secretary, DIAC for information and compliance and to the Sole Arbitrator.

25. The digitally signed copy of this order, duly uploaded on the official



website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

APRIL 3, 2025/sk/rhc