



2025:DHC:1298



\$-2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 2110/2024**Date of Decision: **13.02.2025****IN THE MATTER OF:****CARS 24 FINANCIAL SERVICES PRIVATE LIMITED****..... PETITIONER**Through: Mr. Rit Arora and Mr. Anurag Arora,
Advocates..

Versus

ANIL KUMAR & ANR.**.... RESPONDENTS**

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The petitioner in the instant petition prays for the following relief:-

“Pass an order or direction appointing a sole Arbitrator and/or constituting Arbitral Tribunal in accordance with the terms of the Arbitral Clause contained in the Arbitration Agreement and under the provisions of the Section 11(5) of the Arbitration and Conciliation Act, 1996, to adjudicate upon the dispute(s) and claim(s) arising between the parties”

2. Learned counsel for the petitioner submits that the petitioner is a Private, Non-Banking Financial Company registered with the Reserve Bank of India, and a wholly-owned subsidiary of Cars24 Services Private Limited. The petitioner-company is engaged in offering various lending products to customers. He submits that respondent no. 1 and respondent no. 2 are co-borrowers and signatories to the Credit Facility Agreement dated



2025:DHC:1298



15.02.2020, and both are engaged in the business of dealing in used/pre-owned cars, based in Meerut. It is further submitted that the respondents had approached the petitioner-company seeking sanction of a revolving credit facility under the UNNATI scheme for the purchase of used cars from M/s Cars24 Services Private Limited, and in doing so, had undertaken and assured compliance with the terms and conditions of the agreement while maintaining financial discipline. He further submits that the liability of both respondents is joint and several, extending co-extensively for the repayment of the loan amount and outstanding dues to the petitioner company.

3. Learned counsel for the further petitioner submits pursuant to the execution of the agreement, the respondents were assigned Dealer ID No. 72563, and under its terms, they had agreed to repay each tranche within 60 days from the date of disbursement along with interest charges. He further submits that the respondents availed various cars from the petitioner company from time to time, with the finance/credit facility being extended on each occasion for a period of 60 days from the date of disbursement.

4. However, due to their failure to adhere to the agreed terms, disputes arose between the parties, leading the petitioner to issue a Credit Facility Recall Notice on 24.06.2021, terminating the facility and requesting the respondents to clear the outstanding amount within seven days. Learned counsel further submitted that the respondents neither responded to the notice nor made any payment, and despite repeated attempts by the petitioner to amicably resolve the dispute, no settlement could be reached. Consequently, the petitioner invoked arbitration as per Clause 15.2 of the Credit Facility Agreement dated 15.02.2020.

5. Learned counsel contends that the respondents have acted



fraudulently, and have no intention of abiding by their contractual promises and assurances. The petitioner asserts that despite the clear terms of the Credit Facility Agreement, the respondents failed to repay the outstanding loan amount and adhere to the agreed terms and conditions. Aggrieved by the default, the petitioner issued a notice dated 14.08.2024, invoking arbitration under the Credit Facility Agreement bearing No. 72563, seeking the appointment of a Sole Arbitrator.

6. He submits that the dues payable as on 14.09.2024 amounts to a sum of Rs. 9,68,492/- (Rupees Nine Lakhs Sixty-Eight Thousand Four Hundred and Ninety-Two Only) remains due and payable by the respondents to the petitioner.

7. Heard learned counsel appearing on behalf of the petitioner. It is seen that so far as the service on respondent no.1 is concerned, the office report confirms that the same has been served.

8. The affidavit of service has been placed on record by the petitioner, which reads as under:-

"1. That I am the Advocate for the petitioner company in the present matter and am well conversant with the facts of the present case and competent to file this affidavit.

2. That I state that the deponent has served the copy of the notice along with the copy of the petition upon the respondents through speed post. That the summons along with the petition were duly served upon the respondents on 03.02.2025. The proof of service by post has been annexed herewith.

3. That state that the deponent has served the copy of the notice along with the copy of the petition upon the Respondent No.1 at his Whatsapp +91 8958285491 and on the Email address of Respondent No.1 i.e. anil08@live.com. The proof of service already has been annexed herewith. The email has not bounced back.

4. That I state that the Respondents have been duly served."

9. The first aspect that requires consideration is whether respondent no.



2 is also duly served in accordance with the prescribed legal procedure.

10. Upon a perusal of the affidavit, it is seen that the petitioner has sought to effect service on the respondents through e-mail and whatsapp as well.

11. At this juncture, reference can be drawn to the order of the Supreme Court in ***Central Electricity Regulatory Commission v. National Hydroelectric Power Corpn. Ltd***¹, wherein directions were issued regarding the service of notices, particularly for government agencies. Recognizing the need for a more efficient and technologically advanced mode of service, the Court directed that, in addition to the traditional modes, service of notices may be effected *via* e-mail. The Advocate(s)-on-Record were mandated to furnish a soft copy of the petition or appeal in PDF format at the time of filing, along with the e-mail addresses of the respondent companies, corporations, or government agencies. The Registry, upon issuance of notice by the Court, was required to send an additional notice *via* e-mail to the respondents and their respective advocates who had filed caveats. Furthermore, the Cabinet Secretariat was instructed to compile and provide centralized e-mail addresses for various Ministries, Departments, and Regulatory Authorities, along with the names of designated Nodal Officers for the purpose of electronic service.

12. While the directions issued in the aforementioned decision are specifically directed towards the Advocate-on-Record(s) representing various organs of the State before the Supreme Court, it is evident that as early as 2010, the Supreme Court had already taken measures to ensure that modes of service were supplemented through evolving technological

¹ (2010) 10 SCC 280



advancements.

13. Furthermore, reference can be made to the decision of this Court in the case of ***Lease Plan India (P) Ltd. v. Rudraksh Pharma Distributor***², wherein, the service of the petition by e-mail and WhatsApp was permitted. The relevant portion of the said decision reads as under:-

“7. It is nonetheless clear that the respondents have been duly served by email and WhatsApp. It may be noted that the email address and the mobile number of the respondents is mentioned in the Agreement itself [at page Nos. 35, 37, 40 and 43 of the petition]. The affidavit of service dated 28.03.2024, affirmed by the authorised representative/legal counsel of the petitioner - company, demonstrates service by both these modes.

8. Although service by email and WhatsApp is sufficient, it may also be noted that in the Agreement itself, the address of the respondent for the purposes of correspondence, provided in Clause 10.3, is the address at which service has been attempted. The notice invoking arbitration sent to the same address was reported to have been delivered, but in the Speed Post report, by which the petition was sent to the address, it is stated that no such person is available at the address.”

14. Moreover, the co-ordinate Bench of this Court in CS(COMM) 1601/2016 vide order dated 27.04.2017 has permitted the plaintiff therein to serve the defendants through text message as well as through Whatsapp as well as by e-mail.

15. Furthermore, in ***Kross Television India (P) Ltd. v. Vikhyat Chitra Production***³, the High Court of Bombay observed that the mode of service should not be confined to antiquated or overly formalistic methods. The Court held that as long as service is shown to have been effected and acknowledged, the absence of traditional modes such as registered post or bailiff service does not render the notice invalid. The Court further noted that while e-mail and other electronic means have not been formally

² 2024 SCC OnLine Del 2687



recognized as the primary mode of service due to their inherent limitations, the alternative modes of service that ensure effective communication and acknowledgment thereof, cannot be absolutely disregarded. The Court, in its analysis, emphasized that procedural rules cannot be so rigid as to insist on outdated modes of service, especially when modern technology allows for effective and verifiable communication. If service is adequately demonstrated through alternative means, including electronic communication, it cannot be contended that the defendants were unaware of the proceedings. The relevant portion of the decision reads as under:-

“6. I do not see what more can be done for the purposes of this Motion. It cannot be that our rules and procedure are either so ancient or so rigid (or both) that without some antiquated formal service mode through a bailiff or even by beat of drum or pattaki, a party cannot be said to have been ‘properly’ served. The purpose of service is put the other party to notice and to give him a copy of the papers. The mode is surely irrelevant. We have not formally approved of email and other modes as acceptable simply because there are inherent limitation to proving service. Where an alternative mode is used, however, and service is shown to be effected, and is acknowledged, then surely it cannot be suggested that the Defendants had ‘no notice’. To say that is untrue; they may not have had service by registered post or through the bailiff, but they most certainly had notice. They had copies of the papers. They were told of the next date. A copy of the previous order was sent to them. Defendants who avoid and evade service by regular modes cannot be permitted to take advantage of that evasion.

7. The Plaintiffs have given the Defendants every opportunity to appear. The past record shows that the Defendants are only avoiding service. It was extremely difficult to even obtain their addresses. Their addresses were in fact obtained when the Plaintiffs contacted the CBFC in Bengaluru and obtained the addresses from that secretariat. The Defendants' addresses were necessarily with that body since the Defendants obtained certification for their film from that office. The CBFC in fact informed the Plaintiffs that there is only one producer, and it furnished that address. The copy of the communication dated 21st March, 2017 from the CBFC is at Exhibit “A” to this Affidavit and it lists Vikhyat's address. If Vikhyat and Krishna believe they can resort

³ 2017 SCC OnLine Bom 1433



to these tactics to avoid service, they are wrong. They may succeed in avoiding a bailiff. They may be able to avoid a courier or a postman. They have reckoned without the invasiveness of information technology. Vikhyat in particular does not seem to have cottoned on to the fact that when somebody calls him and he responds, details can be obtained from in-phone apps and services, and these are very hard to either obscure or disguise. There are email exchanges. There are message exchanges. None of these to my mind establishes that the Defendants are not adequately served."

16. Moreover, in ***SBI Cards & Payments Services (P) Ltd. v. Rohidas Jadhav***⁴, the Court observed that alternative modes such as WhatsApp messaging could be considered sufficient, especially when a party is seeking to evade summons. The Court noted that the message and its attachment, sent *via* WhatsApp, had been both delivered and opened, as indicated by the read receipts of the applicant therein. This technological verification, coupled with supporting evidence of the contact number of the recipient, was deemed adequate to satisfy the requirement of valid service.

17. The Bombay High Court in ***Madhav Vishwanath Dawalbhakta v. Bendale Brothers***⁵ while dealing with the aspect of substituted service, has observed that Order V Rule 20 of the Code of Civil Procedure, 1908, substituted service may be carried out through affixing copies of summons at designated locations. However, sub-rule (iii) provides the Court with the discretion to order service in *such other manner as the Court thinks fit*, which allows for consideration of contemporary modes of communication such as courier, e-mail, or WhatsApp. The Court further noted that while exercising this discretion, the chosen method should be analogous to the traditional means prescribed in the rule.

⁴ 2018 SCC OnLine Bom 1262

⁵ 2018 SCC OnLine Bom 2652



18. In view of the aforesaid, and based on the affidavit of service and the steps undertaken by the petitioner on respondent No. 2, the Court is satisfied that the service compliance has duly been made. The notice was effectively served on the respondents through e-mail and WhatsApp, both of which were explicitly mentioned in the Agreement as communication modes.

19. The facts of the instant case would indicate that on 15.02.2020, the petitioner extended the credit facility to the respondent, and the credit facility agreement dated 15.02.2024 was executed. The amount was to be repaid in terms of the said agreement. However, on commission of default, the petitioner appears to have issued a notice demanding the balance amount, but the said amount has not been paid.

20. Accordingly, the petitioner has invoked Clause 15.2 of the Credit Facility Agreement for the appointment of the Arbitrator. The said clause reads as under:-

"15.2 Arbitration: Any dispute under this Agreement shall be settled by binding arbitration conducted in English with the seat of arbitration in New Delhi before a single arbitrator appointed by Lender at its sole discretion, as per the Arbitration and conciliation Act, 1996."

21. It is thus seen that there exists an arbitration clause in the event any dispute has arisen between the parties and the same remains undisputed, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***,⁶ ***TRF Limited v. Energo Engineering Projects Ltd.***,⁷ ***Bharat Broadband Network Limited v. United***

⁶ (2020) 20 SCC 760

⁷ (2017) 8 SCC 377



2025:DHC:1298



Telecoms Limited.,⁸ and Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899⁹.

22. In view of the aforesaid, the Court deems it appropriate to appoint Mr. Shivam Sachdeva Advocate, (Mobile Number:+91-9971358035, Email:- shivam.sachdeva1298@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

23. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996.

24. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act, or as otherwise agreed to between the parties and the learned Sole Arbitrator. The parties shall share the fee of the Arbitrator and arbitral cost, equally.

25. It is also pertinent to note that the Court has not expressed anything on the merits of the case in relation to the claims/counter-claims of the respective parties. All these aspects are left open by the Court, to be adjudicated by the Sole Arbitrator in accordance with law.

26. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well. Accordingly, the instant petitions stand disposed of.

PURUSHAINdra KUMAR KAURAV, J

FEBRUARY 13, 2025

Nc/sp

Click here to check corrigendum, if any

⁸ 2019 SCC OnLine SC 547

⁹ In re, 2023 SCC OnLine SC 1666.