



2025:DHC:2348



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.P. 2083/2024

Date of Decision: 01.04.2025

IN THE MATTER OF:

KOTAK MAHINDRA PRIME LTD

.....Petitioner

Through: Mr. Shankar Sen and Mr. Kush
Gupta, Advs.

versus

RINKI DUTT & ANR.

.....Respondents

Through: None.

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

1. The service affidavit has been placed on record which reads as under:-

*“AFFIDAVIT OF SERVICE**I, RAJESH JANGRA ADVOCATE, ERONL: (D-1457A/2003), OFFICE AT: ED-15C & D, PITAMPURA, DELHI – DO HEREBY SOLEMNLY AFFIRM AND DECLARE AS UNDER:- LIST MATTER ON 18.12.2024**1. That I am the counsel for the plaintiff in the present Petition and that my registered Email ID is; jangraadvocate@gmail.com**2. That the above captioned Petition has been sent to the defendant no.1 and defendant no.2 at their registered Email ID: rinki92octane@gmail.com and pranjaloctane@gmail.com vide email dated 17.12.2024. I had emailed a copy of the complete Petition as “Kotak Mahindra Prime Ltd. –Vs.- Rinki Dutt & Anr.”**3. That the counsel for the plaintiff has served the defendants with the present petition upon his email id's: rinki92octane@gmail.com and pranjaloctane@gmail.com.**4. The captioned case email along with petition has been delivered and not bounced back.*

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DEPONENT.”

2. The e-mail has been sent on the address which is forming part of the agreement. Even service through courier has already been affected.
3. In view of the aforesaid, the Court finds that the service upon the respondents stands complete.
4. The facts of the case would indicate that the instant petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (A&C Act) is filed by the petitioner for the appointment of an arbitrator.
5. The petitioner is a company incorporated under the Companies Act 1956 and is carrying out the business of extending loan facilities to borrowers. As per the case set up by the petitioner, the loan for a sum of Rs. 12,12,076/- was sanctioned *vide* a car finance agreement dated 19.05.2022.
6. Learned counsel for the petitioner submits the respondents have defaulted in repayment of the loan and, therefore, a dispute has arisen between the parties.
7. Learned counsel for the petitioner further submits that clause 31 of the car finance agreement dated 19.05.2022 clearly stipulates the arbitration clause. The said clause reads as under:-

“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.”



8. Learned counsel for the petitioner submits that a loan recall notice was sent on 12.06.2023. Thereafter, an arbitration proceeding was also invoked against the respondents. However, despite the same, the petitioner has not received any response.

9. It is thus seen that the dispute is amenable to be adjudicated by the arbitrator. It is explicitly evident that where there exists an arbitration clause in the event any dispute arises between the parties, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes. Reference can be made to the decisions of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*,¹ *TRF Limited v. Energo Engineering Projects Ltd.*,² *Bharat Broadband Network Limited v. United Telecoms Limited.*,³ and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*⁴.

10. In view of the aforesaid, the Court appoints Mr. Neeraj Yadav, Advocate (Mob No. +919899426760, Email Id: neerajyadavlaw@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

11. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the A&C Act.

12. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547

⁴ 2023 SCC OnLine SC 1666.



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the parties and the learned Sole Arbitrator.

13. The parties shall share the arbitrator's fee and arbitral cost, equally.

14. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

15. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. All rights and contentions of the parties in this regard are reserved.

16. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

17. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

APRIL 1, 2025

aks/mjo

Click here to check corrigendum, if any