

Kotak Mahindra Prime Ltd vs Rinki Dutt & Anr. on 1 April, 2025

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ARB.P. 2083/2024

Date of Decision

IN THE MATTER OF:
KOTAK MAHINDRA PRIME LTD

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

versus

RINKI DUTT & ANR.

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
JUDGEMENT

PURUSHAINDRA 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 pranjalocatane@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 pranjalocatane@gmail.com.

4. The captioned case email along with petition has been delivered and not bounced back.

-sd-

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Signing Date:04.04.2025
17:04:26

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."

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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 (2020) 20 SCC 760 (2017) 8 SCC 377 2019 SCC OnLine SC 547 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 Digitally Signed By:AMIT Digitally Signed Signing Date:04.04.2025 By:PURUSHAINDRA 17:04:26 KUMAR KAURAV