

Misc. Case 5323 of 2022 (CNR WBCC01-011099-2022)
Present: Jayashree Banerjee, Judge, Bench-II (WB01049)

Order No. : 02
Dated : 29.09.2022

This application taken out u/s 9 of Arbitration and Conciliation Act, 1996 by the petitioner, namely, HDB FINANCIAL SERVICES LIMITED with a prayer for appointment of receiver and an order of injunction restraining the respondents, their servants and/or agents and/or representative and/or assigns from disposing of and / or transferring and/or in any way dealing with or changing the identification of the subject vehicle and also for police help to enable the receiver to take possession and also for taking steps for preservation of the vehicle in his custody, is taken up for hearing.

Heard the Ld. Advocate. Perused all the documents appended to the application. From the record it transpires that the respondent no.1 as borrower and respondent no.2 as co-borrower had entered into a hire purchase agreement with the petitioner to purchase one vehicle (TATA LPS 5523) bearing **Registration No. NL-01AD-8074, Engine No. 91D63784157 and Chassis No. MAT704149KAD09022** taking financial help and the Respondents were granted loan of Rs.27,40,000/-, payable by 46 monthly installments along with interest, commencing from 10.09.2019 till date, considerable amount of money (Rs.5,15,900/- as on September, 2022) is still lying due.

So, it is appearing that a huge amount of money is lying due which is payable by the respondents to the petitioner in terms of agreement executed by and between the parties hereto and so, it is appearing that there is strong prima facie case in favour of the petitioner herein and it goes without saying an interim order can be given in case of apprehended danger also if balance of convenience and inconvenience is tilted in favour of the parties seeking such interim order and if the said vehicle is removed to any unknown place or if third party interest is created in respect of such vehicle in any manner whatsoever, the petitioner shall suffer irreparable loss and injury and hence, it is appearing that balance of convenience and inconvenience also tilted in favour of the petitioner and accordingly it is considered that petitioner has made out a good prima facie case in his favour and hence, it is held that petitioner is entitled to get order for appointment of receiver for protection and preservation of the subject vehicle.

Hence, it is

Ordered

Moumita Bhattacharya, an Advocate be appointed as receiver temporarily for the parties of taking over possession of the vehicle bearing **Registration No. NL-01AD-8074, Engine No. 91D63784157 and Chassis No. MAT704149KAD09022**.

Receiver is authorized to take all possible steps in accordance with law including appointment of agent. The police authority of nearby Police Station or Superintendent of

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Police under the jurisdiction of whom, the vehicle in question is intercepted, would render assistance as would be required lawfully by the receiver and if situation demands for such assistance and the same is taken, receiver shall submit report before this Court disclosing such facts.

So long, the vehicle in question shall remain in the custody of the receiver. He/she shall remain responsible for any loss or damage, if any caused to the vehicle and the receiver shall not dispose, alienate or transfer the vehicle in question and shall not change the nature and character of the vehicle in question in course of his custody.

The fee of the receiver is provisionally assessed at **@ Rs.6,000/-**.

Let a copy of this order be handed over to the receiver for information and necessary compliance.

The petitioner is hereby directed to initiate arbitral proceeding within the time stipulated under sub-section 2 of S.9 of Act of 1996 failing which this order shall stand vacated and petitioner is directed to file report regarding commencement of such proceedings positively by the next date. **If the petitioner takes possession of the vehicle from the receiver, it shall not sale the same unless and until the petitioner is authorised to do so either by this Court or by the Ld. Arbitrator who will be appointed as per S.9(2) of the Act.**

Let a copy of this order along with the application with all annexure thereto be served upon the respondents forthwith and petitioner is to file affidavit of service positively on the next date.

To 30.01.2023 for S/R.

Dictated and corrected by me,

Judge, Bench-II

Judge, Bench-II
City Civil Court, Calcutta