

24.03.2025

Present: Sh. Shamim Saifi Ld. Counsel for petitioner.

Track report has been filed by Ld. Counsel for petitioner. As per report, respondent is unserved.

Ld. Counsel for petitioner says that this is the last known address of respondent available with the petitioner company and other address is available. He has filed affidavit in this regard.

This is an application u/s 9 of Arbitration and Conciliation Act for appointment of receiver to repossess the hypothecated vehicle.

Case of the petitioner is that respondent has availed loan amount of Rs.20,65,900/- repayable in 36 monthly installments of Rs.65,980/-. Vehicle/machine INNOVA CRYSTA 2.4 Z 7 SEATER bearing registration no. GJ01WG5961 chassis no. MBJAB3EM702574748 and engine no. 2GDA657625 is stated to be hypothecated in favour of the applicant constituting primary security. After availing the said loan facility respondent has failed to adhere to financial discipline and committed willful default as borne out from the statement of account showing default of 07 installment. There is an arbitration clause in the agreement.

Ld. counsel for petitioner submitted that subject loan account already stands terminated vide notice dated 14.10.2024 served through speed post. Despite service of the said notice respondent has failed to discharge the liability in terms thereof and as such present application has been moved seeking interim relief in the nature of appointment of court receiver with the directions to take possession of the hypothecated property.

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Ld. Counsel for petitioner further submits that there is genuine apprehension of the petitioner that respondent may dispose of the vehicle against the terms of contract between the parties which may frustrate the very purpose of execution of hypothecation agreement.

This Court has heard the submissions advanced and has perused the documents filed alongwith the petition which is supported by the statement of truth of the AR of the petitioner.

Legal standard is well settled that while passing orders under Section 9 of the A & C Act, the Court is required to satisfy itself that (i) the applicant, before it, manifestly intends to initiate arbitral proceedings, (ii) the criteria for grant of interim injunction, which apply to Order 39 of the CPC, stands satisfied and (iii) circumstances also exist, which render the requirement of ordering interim measures an emergent necessity, which cannot await a Section 17 proceeding, before the arbitrator, or arbitral tribunal. In assessing whether such an emergent necessity exists, or not, the court essentially satisfies itself that failure to order interim measures, under Section 9, would frustrate, or would render the recourse, to arbitration – which is yet to take place – a futility.

Considering the totality of aforementioned facts and circumstances, this Court is of the opinion that a prima facie case exist in favour of the petitioner and rights of the petitioner may be prejudiced if an order for repossessing the vehicle is not passed.

Accordingly, **Sh. Chirag Jadia** employee of the representative of petitioner is appointed as Receiver to take the possession of the hypothecated Vehicle/machine INNOVA

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CRYSTA 2.4 Z 7 SEATER bearing registration no. GJ01WG5961 chassis no. MBJAB3EM702574748 and engine no. 2GDA657625 from the address mentioned in the reply of respondent. In case, any resistance is offered by respondent, Receiver is entitled to take police aid. In such an eventuality, Station House Officer of the concerned Police Station is directed to render all possible assistance to the Receiver in execution of this order. This order for appointment of receiver is subject to following further conditions:

(i) The receiver shall take over the possession of the vehicle from the respondent at the address given in the loan application. If the vehicle is not available at the said address(es), the receiver shall be at liberty to recover the vehicle wherever found. However, the receiver shall not stop a running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The receiver shall also not make any attempt to block the passage of a car to bring it to a halt to take its possession.

(ii) The receiver shall avoid taking the possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or physically/mentally challenged person. In such cases, the receiver shall take the possession of the vehicle from the borrower's residence.

(iii) The receiver shall also ensure that the repossession of the vehicle does not result any breach of the peace. In the event of any breach of peace by the person occupying the vehicle, the receiver shall not proceed without assistance of police.

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(iv) At the time of taking the custody of the vehicle, the receiver shall deliver copy of this order as well as petition and attached documents to the person from whom possession is taken.

(v) At the time of taking custody of the vehicle, the receiver shall take the photographs of the vehicle from different angles alongwith the person occupying the vehicle as well as the place of taking over the possession.

(vi) The receiver shall prepare an inventory of the articles/accessories found in the vehicle and shall furnish the copy of the inventory to the person from whom the possession is taken.

(vii) After taking the vehicle in possession, the receiver shall keep the vehicle in safe custody and if directed bring the vehicle within the jurisdiction of this court thereafter and the vehicle shall not be disposed of without the permission of this court and/or later on Ld. Arbitrator.

(viii) In case the vehicle is not repossessed within a period of 90 days from the date of this order, this order shall cease to be in operation, as the present proceedings are only interim measure with the dispute being required to be adjudicated by the Arbitrator.

(ix) If the respondent makes payment of the outstanding installments as on date of possession, the receiver shall release the vehicle in question to the respondent on superdari subject to an undertaking by the respondent to the receiver for regular payment of future monthly installation till the expiry of the tenure and on furnishing a

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declaration not to part with the vehicle or create third party interest in the vehicle without permission of the Arbitrator or until the entire due amount as per agreement or decided by the Arbitrator is paid.

(x) Petitioner shall initiate arbitration proceedings as per time limit mentioned in Section 9 of the Arbitration & Conciliation Act, 1996 within 90 days from today, failing which the Interim Order shall be deemed to be automatically vacated. Report of Receiver be filed within such time limit.

With the aforesaid directions petition U/s 9 of A&C Act stands disposed of accordingly. Report be filed within a week of repossession. File be consigned to record room.

(Anuradha Shukla Bhardwaj)

District Judge

(Commercial Court-02)

South Distt., Saket, New Delhi/24.03.2025