* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **O.M.P.(I) 306/2015**

% **<u>Date of Decision : 06th July, 2015</u>**

KOTAK MAHINDRA PRIME LTD. ..... Petitioner
Through: Mr. Vikas Chopra, Advocate

versus

TATTVA REALTORS PRIVATE LIMITED & ORS. ... Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

<u>JUDGMENT(ORAL)</u>

1. The petitioner is seeking *ex parte* appointment of receiver under Section 9 of the Arbitration and Conciliation Act, 1996 to take possession of vehicle make Bentley bearing registration No.TN20BH0357 having chasis No.5CBBY53W49CO62319 and engine No.BWR022921 from the respondent.

2. Vide loan agreement dated 20th February, 2014, the petitioner advanced a loan of Rs.89,70,000/- to the respondents which was repayable in 36 monthly instalments of Rs.3,01,327/- commencing from 10th March, 2014.

3. The respondents have paid 13 EMIs and there is a default in respect of three EMIs. Vide notice dated 07th May, 2015, the petitioner recalled the loan and called upon to the respondents to pay the total outstanding amount. The respondents have not complied with the aforesaid notice. The amount payable by the respondents as on 30th June, 2015 is Rs.65,08,711/-.

4. This Court is satisfied that the petitioner has made out a case for *ex*

parte appointment of the receiver. The petition is, accordingly, allowed and Mr. Nitin Arora, the representative of the petitioner is appointed as receiver to take the possession of Bentley car bearing registration No.TN20BH0357 having chasis No.5CBBY53W49CO62319 and engine No.BWR022921.

5. The receiver shall take over the possession of the vehicle from the respondents at the address(es) 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.

6. 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.

7. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of the vehicle. The concerned SHO shall provide assistance to the receiver as and when requested.

8. 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.

9. At the time of taking the custody of the vehicle, the receiver shall deliver copy of this order to the person from whom the possession is taken.

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

11. 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.

12. After taking the vehicle in possession, the receiver shall keep the vehicle in safe custody.

13. If the respondents make payment of the outstanding instalments as on date of possession, the receiver shall release the vehicle in question to the respondent on s*uperdari* subject to an undertaking by the respondents to the receiver for regular repayment of future monthly instalments till the expiry of the tenure and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.

14. If the respondents are not in a position to clear the entire outstanding instalments, the receiver shall give them another opportunity to pay the outstanding instalments within 30 days of taking over the possession of the vehicle and in case the respondents make the payment the outstanding instalments within the said period, the receiver shall release the vehicle to the respondents subject to an undertaking as aforementioned.

15. If the respondents do not make the payment of the outstanding amount to the petitioner within 60 days, the receiver, with the prior permission of the arbitrator, would be authorised to sell the vehicle in question in a public auction with prior written notice (to be sent by Speed Post AD) of the date of auction to the respondent at the address(es) mentioned in the loan agreement and the address from where the vehicle is taken into possession so that the respondents may also be able to participate in the auction to enable the appellant to fetch maximum amount from the sale of the vehicle. The receiver shall carry out video recording of the auction proceedings and shall submit the same before the arbitrator along with his final report.

16. The receiver shall submit his report before this Court within 10 days of taking the custody of the vehicle along with the photographs and inventory mentioned above.

17. The petitioner shall appoint the arbitrator in terms of the loan agreement within 30 days. The receiver shall submit copy of his report before the arbitrator.

18. The learned arbitrator will decide the disputes between the parties uninfluenced by the present order.

19. The parties are at liberty to apply to the learned arbitrator for modification of this order.

20. This order shall remain in force till either the respondents makes the payment of the loan amount or till it is modified by the learned arbitrator during arbitration proceedings or till the termination of the arbitration proceedings.

21. The petition is disposed of in the above terms. Order be given dasti.

J.R. MIDHA, J.

JULY 06, 2015
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