**A.No.1437 of 2021**

**P.T.ASHA, J.**

The above application is filed to appoint an Advocate Commissioner to seize and deliver the Commercial Vehicle, Goods Carry, Tata LPT 4823 CRE BSIV 10x2 bearing Registration No.KA 16 D 4653 to the custody of the applicant, and permit the Advocate Commissioner to obtain police assistance.

2. It is the case of the applicant that they had extended financial assistance to the respondent for the purchase of a commercial vehicle, Tata LPT. The applicant and the respondent had entered into a Loan Agreement dated 31.07.2019. One Mrs. B.Jyothi had stood guarantee for the said loan. However the applicant has not impleaded her as a party.

3. As per the terms of the agreement, the respondent was required to repay the loan amount of Rs.35,98,700/- together with interest charges of Rs.13,90,096/- in 70 equated monthly instalment of a sum of Rs.81,690/-. The first instalment fell due on 31.07.2019 and the last instalment was due on 04.05.2025. The EMI was required to be paid by the respondent promptly without any demand being made for the same.

4. However contrary to the terms of the agreement the respondent after paying 6 EMÏ's committed a default of the remaining. As per the terms of the agreement in the event of a default the applicant could recall the entire loan amount and other charges.

5. The applicant would submit though under the Agreement they have the right to repossess however they are unable to do so. The applicant also apprehends that the respondent would remove the vehicle, the subject matter of the agreement away from the reach of the applicant. Hence the applicant considering that the parties had agreed to settle their disputes through arbitration has filed this application under Section 9 of the Arbitration and Conciliation Act.

6. Heard the counsel and perused the papers.

7. The respondent who under the agreement had agreed to repay the EMI's promptly without a demand being made for the same had committed default after the 6th instalment. The applicant has also taken into consideration the moratorium period and on 22.02.2021, the respondent is due and owing the applicant a sum of Rs.44,56,564/-. The demand notice dated

03.02.2021 has also not yielded the desired result. The agreement gives a right to the applicant to repossess the vehicle in case of a default. The applicant has approached this court since they are unable to exercise this right.

8. Taking into consideration the above, I am inclined to appoint Mr. Kamaleshkannan S, Advocate, 1754/2010, No. 28, Menod Street, Purasawakkam, Chennai -7, Phone No-9884422695, is appointed as Advocate Commissioner and an initial remuneration of Rs.30,000/- (Rupees thirty thousand only) shall be paid to the Advocate Commissioner. The Advocate Commissioner shall submit his report by 20.04.2021.

9. The Advocate Commissioner shall hand over custody of the vehicle to the applicant. The applicant shall not sell the vehicle without orders of this Court till the disposal of the Arbitral proceedings. In case the Advocate Commissioner is restrained in any manner from executing this order he shall, on request be provided police aid by the Station House Office of the jurisdictional police station. The applicant shall initiate Arbitral proceedings within a period of 60 days from this date.

10. Post the matter on 20.04.2021.

30.03.2021

mrn

Issue order copy on 07.04.2021.

**P.T.ASHA, J.**

**mrn**

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