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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-12-2024

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THE HONOURABLE MR JUSTICE P.B. BALAJI

Arb Appln NO. 904 of 2024

Mercedes Benz Financial Service India Pvt Ltd
(Formerly Known as Daimler Fianancial Services
Pvt Ltd, Rep.by its authorized signatory
Mr.Ra.Shivdhara Adhiyaman, S/o.Mr.V.Ramani,
Plot nO.8, 5th Floor, Baashyam Willow Square, 9
and 10 First Street, Thiru Vi Ka Industrial Estate,
Guindy, Chennai 600 032.Thambu Chetty Street

Appellant(s)

Vs

Vspl Energy Pvt Ltd
Thambu Chetty Street202, 2nd Floor Opp Big
Bazar, Emarat Firdaus, Exhibition Road, Patna
800 001 Bihar. and another

Respondent(s)

For Appellant(s):

T.Vagini

For Respondent(s):

ORDER

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Advocate Commissioner to visit the respondents premises, other areas which is



occupied by the respondents and any other premises of the respondents along with local police protection to break open, if necessary, and to seize and take custody of the vehicle hypothecated with the applicant being Motor Car (LMV) bearing No.HR-98-F-2328, Model – E 350 D, specifically described in the schedule to the Judge's Summons and hand over them to the applicant pending final adjudication of the disputes between the parties through arbitration.

2.Heard Ms.T.Vagini, learned counsel for the applicant.

3.The respondent entered into a loan agreement with the applicant Company dated 28.07.2022 for purchase of the asset, more fully described in the schedule to the Judges Summons. Under the loan agreement, the total loan amount of Rs.84,00,000/- was repayable by the respondent to the applicant in 30 monthly installments at 9.0994% interest per annum, commencing from 29.07.2022 to 04.08.2026.

4.The applicant has expressed its difficulty to repossess the asset on its own. Only under the aforementioned circumstances, this application has



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been filed under Section 9 of the Arbitration and Conciliation Act, 1996

seeking for appointment of an Advocate Commissioner to repossess the asset, which is more fully described in the schedule to the Judges Summons.

I am satisfied with the reasons assigned in the affidavit in support of the application for appointment of an Advocate Commissioner.

5.The learned counsel for the applicant further submits that the respondent, having availed the loan, failed to repay the same. He would submit that the hypothecated vehicle is a movable asset and if it is kept in idle condition, it would get damaged and its value also gets deteriorated and hence, he would urge this Court to appoint an Advocate Commissioner to seize and handover the vehicle more fully described in the schedule to the Judge's Summons, available at the respondent's premises to the applicant Bank, in order to make the security effective and so that the money in dispute in arbitration is fully secured by way of sale of the vehicle in public auction after following due process of law.

6. Upon considering the facts and circumstances of the case and the submissions made by the learned counsel for the applicant, this Court is



inclined to appoint an Advocate Commissioner. Accordingly, this Application is ordered with the following directions:

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a) **Mr.Ponram Rajaa, Advocate, No.438, Additional New Law Chambers, High Court Campus, Chennai – 104, Ph.No.9677245241 / 9841787100 / 9282109101**, is appointed as an Advocate Commissioner to repossess the asset, which is more fully described in the schedule to the Judges Summons from the respondent or wherever it is available and handover the same to the applicant by way of interim custody;

b) The Advocate Commissioner is permitted to obtain police aid and break open of the premises in case the seized vehicle is kept in a locked premises in the presence of the Police, after taking proper inventory;

c) If break open of a lock is required, the Advocate Commissioner shall do so in the presence of the police personnel who will counter sign the record evidencing the break open of the lock and to re-lock the premises.

d) If the Advocate Commissioner finds any difficulty with the jurisdictional police, he is at liberty to approach Superintendent of Police, who shall provide all necessary assistance to him at the time of seizure of the vehicle.



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e) The Advocate Commissioner shall be paid his initial remuneration of Rs.30,000/- (Rupees Thirty Thousand only) within a period of six weeks from the date of receipt of a copy of this order or before the Advocate Commissioner executes the Warrant of Commission in accordance with the directions given by this Court. The Boarding, lodging and travel expenses shall be paid by the applicant to the Advocate Commissioner for executing the warrant of Commission;

7. Notice to the respondent returnable by 24.01.2025. Private Notice is also permitted.

8. Post the matter on 24.01.2025 under the caption 'for reporting compliance'.

20-12-2024

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P.B. BALAJI,J.

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