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Arb.Appln.No.184 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.01.2025**

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THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

Arb. Appln. No.184 of 2025

M/s. Kotak Mahindra Bank Ltd.
Rep. by its Authorized Signatory
Having Regional office at - No. 141,
TVH Agnitio Park, Sth Floor,
Old Mahabalipuram Road,
Kandanchavadi, Chennai - 600096.

... Applicant

vs.

Sri Sai Earth Movers,
No. 52 Sembagam Street,
KK Nagar, Peerankaranai,
New Perungalathur, Chennai,
Kanchipuram - 600063, Tamil Nadu.

... Respondent

PRAYER: This Arbitration Application filed under ORDER XIV RULE 8 OF O.S. RULES READ WITH SEC 9 (II) (d) & (e) OF ARBITRATION AND CONCILIATION ACT 1996, to appoint an Advocate Commissioner to seize and deliver the vehicle/Machinery DAIMLER INDIA COMMERCIAL VEHICLES PVT LTD, BHARATHBENZ 2823C 0X4BSVI N3G 4 bearing TN11BA9077, Vehicle Engine No.926956D0131846 and Vehicle Chassis No. MEC841EBJNP127212 to the custody of the Applicant, available at the Respondent premises or wherever found and with whomsoever it is



found and permit the Advocate Commissioner to obtain Police aid and to break open the premises.

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For Applicant : Ms.Meera Gnansekar

ORDER

This Application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking to appoint an Advocate Commissioner to seize and deliver the vehicle/Machinery DAIMLER INDIA COMMERCIAL VEHICLES PVT LTD, BHARATHBENZ 2823C 0X4BSVI N3G 4 bearing TN11BA9077, Vehicle Engine No.926956D0131846 and Vehicle Chassis No. MEC841EBJNP127212 to the custody of the Applicant, available at the Respondent premises or wherever found and with whomsoever it is found and permit the Advocate Commissioner to obtain Police aid and to break open the premises.

2. The respondent entered into a loan agreement dated 18.10.2022 for purchase of the asset, morefully described in the schedule to the Judges Summons. Under the loan agreement, the total loan amount was repayable by the respondent to the applicant in 47 monthly installments



commencing from 15.11.2022.

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3. As seen from the statement of accounts, which are supported by the averments contained in the affidavit filed in support of the application, the respondent is irregular in making payments of EMI and as such, the over due amount was Rs.23,44,735/- as on 19.12.2024. There is an Arbitration Clause available in the loan agreement, which is the subject matter of dispute. The applicant has initiated the arbitration proceedings in accordance with the Arbitration Clause. Under the loan agreement, the applicant is entitled to repossess the asset, morefully described in the schedule to the Judges Summons in case the respondent commits default in repayment of the loan. The applicant has expressed its difficulty to repossess the asset on its own.

4. Only under the aforementioned circumstances, this application has been filed under Section 9 of the Arbitration and Conciliation Act seeking for appointment of an Advocate Commissioner to repossess the asset, which is morefully described in the schedule to the Judges Summons and therefore, the Applicant has made out a prima facie case, for invoking Section 9 of the Act. In the interest of justice, I proceed to



appoint an Advocate Commissioner.

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5. Accordingly, this Application is ordered with the following directions:

a) **Mrs.R.RAVITHA, Advocate, having address at Women Lawyer's Association, 1st Floor, Additional Law Chambers, High Court Buildings, Chennai – 600 104, Cell:96550 07811, E.mail:lawyeravitha87@gmail.com** is appointed as an Advocate Commissioner to repossess the asset, which is more fully described in the schedule to the Judges Summons viz., BHARATHBENZ 2823C 0X4BSVI N3G 4 bearing TN11BA9077, Vehicle Engine No.926956D0131846 and Vehicle Chassis No. MEC841EBJNP127212 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 asset 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, she is at liberty to approach Superintendent of Police, who shall provide all necessary assistance to her at the time of seizure of the asset.

e) The Advocate Commissioner shall be paid her 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;

6. Notice to the respondent returnable by 17.03.2025. Private Notice is also permitted.

7. Post the matter **on 17.03.2025 'for reporting compliance'**.

28.01.2025

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Index : Yes / No

Internet : Yes / No



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