THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. Appln. No.747 of 2025

M/s. Mercedes Benz Financial Services India Pvt. Ltd
(formerly known as M/s. Daimler Financial
Services India Private Limited)
5th Floor, Plot 8, Baashyam Willow Square,
9 &10, First Street, Thiruvika Industrial Estate,
Guindy, Chennai-600032, Tamil Nadu, India.
Represented by its Authorised Signatory ... Applicant

vs.

1. Maher Builders and Developers Private Limited
Rep. by Mr. Amaan Nooruddin Dharani
4 Floor 41 898 403
Tilak Road Abids
Hyderabad-500 001.

2. Mr. Amaan Nooruddin Dharani
5 9 200 Flat No. 301
Aashnas Plateau Chirag Ali Lane
Nampally Hyderabad-500001. .... Respondents

For Applicant : Mr.M. Arunachalam

ORDER

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Advocate Commissioner by this Court to repossess the asset from the respondents or wherever available.

2. The respondents are defaulters in the repayment of the loan to the applicant under the Loan cum Hypothecation Agreement, dated 12.02.2022. As on date, the respondents are in arrears of four instalments due and payable to the applicant as per the terms and conditions of the Loan cum Hypothecation Agreement, dated 12.02.2022. The amount of four instalments works out to Rs.3,66,384/- (4 x Rs.91,596/-). Under the Loan cum Hypothecation Agreement, the applicant is empowered to repossess the asset from the respondents in case, the respondents commit default in the repayment of the loan. The Loan cum Hypothecation Agreement contains an arbitration clause. The applicant has expressed its willingness to go for arbitration in accordance with the arbitration clause. The applicant has already recalled the notice through their Loan Recall Notice, dated 08.05.2025. As per the terms and conditions of the Loan cum Hypothecation Agreement, dated 12.02.2022, a sum of Rs.65,93.230.63 is due and payable by the

respondents to the applicant as on 21.05.2025. This sum includes the future instalments, interest and penalty amount as stipulated under the Loan cum Hypothecation Agreement, dated 12.02.2022. The statement of account, dated 21.05.2025 has also been filed as a document along with this application to substantiate that a sum of Rs.65,93,230.63 is due and payable by the respondents as on 21.05.2025.

3. Since the respondents are defaulters in the repayment of the loan and the applicant is empowered to repossess the asset from the respondents as per the terms and conditions of the Loan cum Hypothecation Agreement, dated 12.02.2022, this Court is of the considered view that a prima facie case has been made out by the applicant for the appointment of an Advocate Commissioner by this Court to repossess the asset from the respondents or wherever available. Once the asset is repossessed by the Advocate Commissioner, to enable the respondents to use the asset once again, they must be put on terms for getting back the asset from the applicant after re-possession. In order to strike a balance, the following order is passed by this Court:

a)Ms. V. Dhatchayani, Advocate having office at Women's Lawyer Association, High Court Building, Chennai – 600 104 (Mobile No.9884223184) is appointed as the Advocate Commissioner to reposses the asset morefully described in the schedule to the Judges Summons from the respondents or wherever available;

b)The Advocate Commissioner is permitted to obtain the police aid whenever required and she is also permitted to break open the premises in case the asset is kept in a locked premises in the presence of the police after taking proper inventory.

c) On repossession of the subject asset, the Advocate Commissioner shall send a Communication to the respondents intimating that a sum of Rs.3,66,384/- is due and payable by the respondents to the applicant in respect of the aforesaid loan agreement.

d) On receipt of such intimation, the respondents shall pay the aforesaid amount within a period of three days from the date of receipt of a communication from the Advocate Commissioner and on payment of such sum, the applicant shall handover the asset back to the respondent and the Advocate Commissioner shall co-operate with the applicant for the same.

e)The applicant shall initiate arbitration in accordance with the arbitration agreement contained in the contract within a period of 90 days from the date of receipt of a copy of this order. In case, the applicant fails to initiate arbitration within the stipulated time, the order passed by this Court today shall stand automatically vacated and the re-possessed assets shall also be redelivered back to the respondents by the applicant unconditionally;

f) The Advocate Commissioner shall be paid an initial remuneration of Rs.25,000/- by the applicant, within a period of one week from the date of receipt of a copy of this order. All the boarding, lodging and travelling expenses for the Advocate Commissioner shall be borne by the applicant.

4. Notice to the respondents, returnable by 21.07.2025. Private notice is also permitted.

5. Post the matter on **21.07.2025.**

16.06.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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