

Through Video conferencing

OMP (I)(COMM.)147/21 BMW INDIA FINANCIAL SERVICES PRIVATE LIMITED Vs. SABOO CARS PRIVATE LIMITED AND ANR

17.09.2021

Present: Ms. Ashi Jain, Ld. Counsel for the petitioner.

None for the respondent despite service.

Ld. Counsel for the petitioner states that till date arbitral proceedings have not commenced.

An application is moved for substitution of AR.

It is stated that now Ms. Navin Ajwani has been appointed as the AR of the petitioner. Copy of power of attorney filed.

In view of the above, Sh. Navin Ajwani is allowed to represent the petitioner.

Ld. Counsel requests for appointment of the receiver stating that there is consecutive defaults of payment of installments by the respondent.

Heard.

Vide separate order dictated and announced in the open court, the petition under Section 9 of the Arbitration and Conciliation Act is allowed.

Be listed for further proceedings on 15.11.2021.

(Sanjiv Jain)
District Judge/Commercial
Court-03/ New Delhi

Note: In case any document or any judgment is to be sent, the same may be sent on the e-mail id: readerdjcc03phc@gmail.com

**IN THE COURT OF SH. SANJIV JAIN:
DISTRICT JUDGE: COMMERCIAL COURT-03
PATIALA HOUSE COURTS:NEW DELHI**

OMP (I) (Comm.) No. 147/21

BMW Finance Service India Pvt Ltd

1st Floor, Oberoi Centre, Building No. 11,
DLF Cyber City, Phase II, Gurugram,
Haryana.

..... Petitioner

VERSUS

1. Saboo Cars Pvt Ltd

R/o H. No. 3-5-141/2, Ramkote, Eden Bagh,
Hyderabad, Telangana.

..... Respondent no.1

2. Prashant Saboo

R/o H. No. 3-5-141/2, Ramkote, Eden Bagh,
Hyderabad, Telangana.

..... Respondent no.2

O R D E R

1. The petitioner, a non banking finance company has approached this court under Section 9 of the Arbitration and Conciliation Act for interim relief qua appointment of receiver for repossessing the vehicle make Sportz, bearing Engine No. 666931 and Chasis No. M924480.

2. Briefly, the facts as stated in the petition are that the petitioner, on the request of the respondent, granted a loan facility amounting to Rs. 7,21,000/- by virtue of the Loan Agreement dated 28.02.2019 for purchase of above vehicle. The respondents hypothecated the vehicle with the petitioner. Respondents failed to maintain the financial discipline and pay the dues under the agreement. A loan recall notice dated 20.07.2021 was issued calling upon respondents to pay the amount of Rs. 273244.99 but the respondents failed to make any payment. As on 14.04.2021, a sum of Rs. 273244.99 became due and payable. It is stated that the petitioner has to secure the loan.

3. Vide order dated 13.08.2021, an adinterim injunction was granted in favour of the petitioner and against the respondents restraining the respondent from parting with possession, disposing of or creating third party interest in respect of the vehicle i.e. Sportz, bearing registration No. TS 10 BR 5871, Engine No. 666931 and Chasis No. M924480.

4. As on 14.04.2021, an amount of Rs. 273244.99 is recoverable from respondent. Thus, prayer has been made to repossess the vehicle to protect its interest in the vehicle. It is stated that its representative may be appointed as a receiver.

5. I have heard ld. Counsel Ms. Ashi Jain for the petitioner.

6. Having heard Ld. Counsel for the petitioner and perused the record, I am of the view that it is a fit case where the petitioner's representative may be appointed as a receiver. **Sh. Rathinam Kumar** is therefore appointed as receiver. He is directed to seize the vehicle i.e. Sportz, bearing registration No. TS 10 BR 5871, Engine No. 666931 and Chasis No. M924480 by removing the same from the possession and custody of respondent or any third person found to be in possession of the said vehicle, in accordance with law. If required, police aid may be taken by the receiver. Since the receiver appointed to repossess the vehicle is a representative of the petitioner company, the petitioner company shall remunerate the receiver as it deems fit. Further, for the same reason, both the receiver and the petitioners company shall act as *Custodian Legis* and shall keep the vehicle post repossession in safe custody and shall be liable to the court for the same. The receiver and the petitioner company are directed to note the following in this respect:

1. The receiver shall remain personally present at the time of seizing the vehicle.
2. The person from whose custody the vehicle is repossessed shall be permitted to take his belongings from the vehicle.
3. The receiver shall give a receipt of seizing the vehicle with exact date and an inventory of the articles found from the vehicle to the respondent or such other person from whose custody the vehicle is taken. A copy thereof shall be filed in the court alongwith the receiver's report of taking possession.
4. The receiver shall also note the condition of the vehicle in the said receipt. Preferably, photographs pertaining to the

condition of the vehicle shall be taken and given to the respondent or such other person from whose custody the vehicle is taken.

5. The petitioner shall not dispose of the said vehicle without the permission of the court.
6. The petitioner shall not sell dismantle or create encumbrance on the vehicle and shall maintain the vehicle in the same condition as it is when seized, so far as practically possible. **The petitioner shall be held liable for any kind of loss occurring to the vehicle due to their willful default or gross negligence.**
7. In case the respondents pay up to date dues to the satisfaction of the petitioner within four weeks of the repossession of the vehicle by the receiver, the vehicle shall not be alienated and shall be handed back to the respondents upon such payment.
8. In case the vehicle is not repossessed within a period of **six weeks** from the date of this order, the present order shall cease to be in operation.

7. The receiver shall submit his report along with affidavit with regard to the repossession **within a week** of the said repossession. Documents of identity of the receiver be placed on record **within five days. The petitioner shall serve the copy of this order upon the respondent within 6 working days from today and file the compliance report in the court accordingly.**

PRONOUNCED IN THE OPEN COURT ON 17th DAY OF SEPTEMBER, 2021.

(Sanjiv Jain)

District Judge (Commercial) - 03
Patiala House Courts, New Delhi