

**IN THE COURT OF VIKAS DHULL: ADDITIONAL  
DISTRICT JUDGE-01, TIS HAZARI COURTS (WEST),  
DELHI**

Arbitration No. **16/2020**

In the matter of :

M/s.Capital Hind Finance Pvt.Ltd.  
B-22, Manak Vihar Extn.Beri Wala Bagh  
Near Subhash Nagar  
New Delhi  
Regd.Office at: 82, Ground Floor, Khanna Market  
Tis Hazari  
Delhi-54  
Through its AR  
Ms.Jyoti Khari

**...Applicant/Petitioner**

Versus

Sh.Ajay Kumar  
S/o Sh.Panchi Lal  
H.No.E-77, Harsh Vihar  
Hari Nagar, Part -3  
Badarpur  
New Delhi-110044

**...Respondent**



Date of filing of application through email: 13.08.2020  
Date on which order reserved :14.08.2020  
Date on which order passed :14.08.2020

### ORDER

1. The applicant/petitioner has filed the present application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking appointment of receiver to take possession of security i.e. vehicle bearing Registration No. **DL-1R-Q-7284 make Bajaj TSR Model, 2015.**
2. It is averred in the application that applicant/petitioner is in the business of finance for various purposes.
3. Vide Resolution dated 15.06.2019 passed in the meeting of Board of Directors of applicant/petitioner, Ms.Jyoti Khari, Manager of the applicant was authorized to file, sign, verify the present petition and attend all the proceedings of the aforesaid case.
4. It is averred in the application that respondent made a representation at the branch office of the applicant/petitioner company for availing a facility in



the name of hire & purchase of aforementioned vehicle and consequent upon execution of agreement dated 10.04.2018 for total hire charges of Rs.3,00,000/-, the aforesaid vehicle was given to respondent on loan cum hypothecation agreement.

5. It is averred that respondents undertook to comply with the payment schedule of **Rs.3,00,000/- for 36 months payable in the installments of Rs.12,334/-each.**
6. It is further averred after availing the finance facility and possession of the vehicle bearing No. **DL-1R-Q-7284**, respondent failed to make the payment as per the agreement and committed willful defaults and **as on July, 2020, total outstanding amount against respondent was Rs. 2,86,508/- as the respondent had paid only 09 installments till date and defaulted in payment of 18 installments which were to be paid up to.**
7. It is further averred that applicant company apprehends that respondent might try to part with



the possession of said vehicle in violation of terms and conditions of agreement. Accordingly, a prayer has been made for appointing receiver to take possession of the vehicle in question i.e.

**DL-1R-Q-7284.**

8. I have heard Sh. Vijay Kumar Sehgal, Ld. counsel for applicant/petitioner. I have also carefully perused the documents filed on record.
9. As per statement of account, filed by petitioner/ applicant, the loan amount was Rs.3,00,000/- and the same was required to be repaid in equal monthly installment of Rs.12,334/- each. However, respondent has only paid Rs. 1,13,850/- to the applicant/ petitioner and as on July, 2020, **balance outstanding amount is Rs. 2,19,168/-- which is** required to be paid by the respondent. The loan agreement dated 10.04.2018 has also been filed on record.
10. Further, in the light of **Order dated 26.02.2018 of Hon'ble High Court of Delhi in FAO 7/2016, titled as ICICI Bank Limited v.**



**Updesh Nagar, the impugned order declining the prayer made for appointment of a Receiver has been set aside and a Receiver was appointed.** In the said case, the Hon'ble Court has observed that:--

"each day's delay in repayment of the loan causes prejudice to the appellant. The appellant/ plaintiff is a Finance Company which, essentially, deals with public funds and therefore, cannot be left at a loose-end to protect its security. The only security as contended by the counsel for the appellant/ plaintiff, qua the loan disbursed to the respondent/defendant, is the aforementioned vehicle."

11. Considering the aforesaid preposition of law and the fact that the respondent is defaulter and is now liable to pay a sum of Rs. 2,19,168/- till July, 2020, the apprehension of the petitioner that the subject vehicle may be disposed off by the respondent during pendency of dispute is not totally mis-conceived. Further, the respondent is a defaulter and as such delaying grant of interim



relief, may defeat the very object of filing the instant application under disposal. Accordingly, this court is satisfied that the petitioner has been successful in making out a prima facie case for appointment of receiver. In this regard, guidelines laid down by the **Hon'ble Delhi High Court in O.M.P. (I) No. 540/2015 & I.A. No. 25026/2015 titled as Kotak Mahindra Prime Ltd. Vs. Kamal Chauhan & Anr., decided on 23<sup>rd</sup> December, 2015** have been taken into consideration and accordingly, the following directions are being passed:--

**(i) Shri Raju, Recovery Manager** of Petitioner is hereby appointed as Receiver in this case to take into his custody the vehicle **i.e. DL-1R-Q-7284, Engine No.39773, Chasis No.38227 MAKE BAJAJ TSR Model 2015** from respondent, his agents or any other person found possessing the vehicle.

(ii) The Receiver shall file his photo identity card alongwith his affidavit that he is working with the petitioner company **through email on court**



**email ID**  
**i.e.readeradj01west@gmail.com**  
**within three days of passing of the**  
**order.**

(iii) An inventory in respect of the attachments in the vehicle shall be made by the receiver and copy of the same be given to the person from whose possession the vehicle is repossessed and the petitioner shall **sent the same on court email ID i.e. readeradj01west@gmail.com** **alongwith his report.**

(iv) The Receiver shall take over the possession of the vehicle from the respondent at the address(es) given in the loan application. If the vehicle is not available at the said address(es), the Receiver shall be at liberty to recover the vehicle wherever found. However, the Receiver shall not stop a running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The Receiver shall also not make any attempt to block the passage of the vehicle to bring it to a halt to take its possession.

(v) The Receiver shall avoid taking the

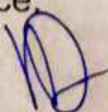


possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or physically/mentally challenged person. In such cases, the receiver shall take the possession of the vehicle from the borrower's residence.

(vi) At the time of taking the custody of the vehicle, the Receiver shall take the photographs of the vehicle from different angles alongwith the person(s) occupying the vehicle as well as the place of taking over the possession.

(vii) At the time of taking the custody of the vehicle, the Receiver shall deliver a copy of this order to the person from whom the possession is taken. The vehicle in question shall not be sold or disposed of or the possession thereof parted with without due permission of the Court.

(viii) The Receiver shall also ensure that the repossession of the vehicle does not result in any breach of peace. In the event of any breach of peace, the Receiver shall not proceed without assistance of police.





(ix) In case the respondent clears all the installments due before such repossession, the vehicle shall not be repossessed.

(x) After taking the vehicle in possession, the Receiver shall keep the vehicle in safe custody.

(xi) If the respondent make payment of the outstanding installments as on date of repossession, the receiver shall release the vehicle in question to the respondent on superdari subject to an undertaking by the respondent to the Receiver for regular repayment of future monthly installments till the expiry of the tenure and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.

(xii) If the respondent is not in a position to clear the entire outstanding installments, the Receiver shall give him another opportunity to pay the outstanding installments within 30 days of taking over the possession of the vehicle and in case the respondent makes the payment of the outstanding



installments within the said period, the Receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.

(xiii) If the respondent does not make the payment of the outstanding amount to the Petitioner within 60 days, the Receiver, with the prior permission of the Arbitrator, would be authorized to sell the vehicle in question in a public auction with prior written notice (to be sent by Speed Post (AD) on the date of auction to the respondent at the address(es) mentioned in the loan agreement or the address from where the vehicle is taken into possession so that the respondent may also be able to participate in the auction to enable the appellant to fetch maximum amount from the sale of the vehicle. The Receiver shall carry out video recording of the auction proceedings and shall submit the same before the Arbitrator along with his final report.

(xiv) The Receiver shall inform the respondent the option of resolving the dispute amicably by settlement before the Ld. Mediation Cell, Tis Hazari Courts, Delhi and will also give a copy



of this order to the respondent at the time of repossessing the vehicle.

(xv) The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of the vehicle. The concerned SHO shall provide assistance to the receiver as and when requested.

(xvi) The petitioner shall refer the dispute to arbitration in terms of clause 10.14 of loan agreement if not already referred for appointment an arbitrator within four weeks from today and inform the Court in writing about the same.

(xvii) The receiver shall submit his report on court email ID i.e. readeradj01west@gmail.com within 10 days of taking the custody of the vehicle along with the photographs and inventory mentioned above, if matter is not referred to Arbitration, till such repossession.

(xviii) In case, the matter is referred to arbitration after this order, then the receiver shall submit a copy of his report before the arbitrator. In case



same has been already referred then also such report shall be filed before the arbitrator.

(xix) The learned arbitrator shall decide the disputes referred for arbitration uninfluenced by the present order.


(xx) The parties are at liberty to apply to the learned arbitrator for modification of this order.

(xxi) This order shall remain in force till either the respondent makes the payment of the loan amount or till it is modified by the learned arbitrator during arbitration proceedings or till the termination of the arbitration proceedings.

12. With the aforesaid directions, **application stands disposed of accordingly. Let copy of this order be served upon the respondent by petitioner through whatsapp/email and file affidavit to the said effect on court email ID i.e. readeradj01west@gmail.com within five days from service.**
13. **A copy of order be sent to the Ld.counsel**



for petitioner through whatsapp/email.

  
(Vikas Dhull)  
ADJ-01, West  
THC, Delhi