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Arb.Appln.No.167 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.01.2025**

CORAM

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

Arb. Appln. No.167 of 2025

M/s. HDB Financial Services Limited
Having one of its branch office at: 4th Floor,
Loyal Towers, No.68/2, Greams Road,
Chennai-600 006.
Rep. by its Authorised Signatory,
Mr.P.Saravanan

... Applicant

vs.

1.M/s.Cauvery Crusher,
Represented by its Proprietor,
Mr.Lakshman Gowda H.K,
Chilkunda Kaval Post,
Hunsur Taluk, Chilkunda,
Mysore-571105,Karnataka

2.Lakshman Gowda H.K

3.Divya Jothi C.M.

... Respondents

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 Asset "KOMATSU HYDRAULIC EXCAVATOR PC130-7" Construction Equipment bearing Machine Serial NO.N520687 available at the Respondent's premises or wherever found and permit the Advocate Commissioner to obtain police



WEB COPY

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aid and to break open the premises.

For Applicant : Mr.M.Arunachalam

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 Asset "KOMATSU HYDRAULIC EXCAVATOR PC130-7" Construction Equipment bearing Machine Serial NO.N520687 available at the respondents' premises or wherever found and permits the Advocate Commissioner to obtain police aid and to break open the premises.

2. The respondents entered into a loan agreement dated 07.01.2022 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 respondents to the applicant in 36 monthly installments commencing from 10.02.2022.

3. The learned counsel for the applicant submits that the respondents have availed the loan and failed to repay the same. Hence,



the applicant has initiated the arbitration proceedings in accordance with the Arbitration Clause and pursuant to which, Award was passed by the learned Arbitrator in Arbitration Case No.ARC/HDB/47672 dated 28.10.2024. As per the award, the applicant is entitled to repossess the asset, morefully described in the schedule to the Judges Summons. The applicant has expressed its difficulty to repossess the asset on its own.

4. He would further submit that if the hypothecated asset 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 asset more fully described in the schedule to the Judge's Summons, available at the respondents' premises to the applicant, 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 asset in public auction after following due process of law.

5. 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.DEEPHEK PRIYADHARSHAN, (Enroll No.355/2022),**
Advocate having address at 159, Eastveli Street, Opp. CSI Mission
Hospital Bus Stop, Madurai -1, Cell: 72002 50113, E.Mail:
deephakdharshan295@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., "KOMATSU HYDRAULIC
EXCAVATOR PC130-7" Construction Equipment bearing Machine
Serial NO.N520687 from the respondents 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, he is at liberty to approach Superintendent of Police,
who shall provide all necessary assistance to him at the time of seizure of
the asset.



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;

6. Notice to the respondents 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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Arb.Appln.No.167 of 2025

P.B.BALAJI, J.,

rkp

Arb. Appln. No.167 of 2025

28.01.2025