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Arb.Appln.No.173 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.173 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.Divya Enterprises,
Rep. by its Proprietor C.M.Divyajothi,
Sy No. 27, Chilkunda Kaval,
Hunsur-571 105 Mysore, Karnataka .

2.Lakshmangowda.H.K

3.Divyajothi.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 "ATLAS COPCO AIR ROCT D 35 WITH COMPRESSOR" bearing Machine Serial No:PE2260966 and D35 SL No. MHN22SEDARD35129 available at the respondents' premises or wherever found and permits the Advocate Commissioner to obtain police aid and to break open the premises.



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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 "ATLAS COPCO AIR ROCT D 35 WITH COMPRESSOR" bearing Machine Serial No:PE2260966 and D35 SL No. MHN22SEDARD35129 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 03.01.2023 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 24 monthly installments commencing from 15.02.2023.

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 respondents are irregular in making payments of EMI



and as such, the over due amount was Rs.8,30,674/- as on 10.12.2024.

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 respondents commit 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.

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



a) **Mr.N.SUNDAR RAJ (Enroll. No.711/2006), Advocate, having address at Chamber No.176, Additional New Law Chamber, High Court Buildings, Chennai – 600 104, Cell : 97885 61515, E.mail:sundar29515@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., "ATLAS COPCO AIR ROCT D 35 WITH COMPRESSOR" bearing Machine Serial No:PE2260966 and D35 SL No. MHN22SEDARD35129 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,



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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.25,000/- (Rupees Twenty Five 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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P.B.BALAJI, J.,

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