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Arb.Appln.No.816 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Application No.816 of 2025

Tata Capital Limited,
by its Associate Legal Remedial,
R.Kamalakkannan,
Having its office at
1st Floor, Centennial Square,
6A-Dr.Ambedkar Salai, Kodambakkam,
Chennai – 600 024.

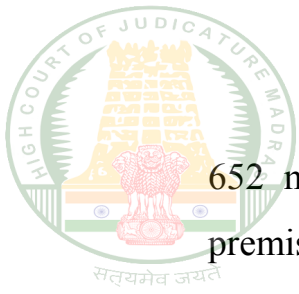
... Applicant

Vs.

Thambi and Associates
Rep.by its Proprietor Mr.Thambi,
19 24 Peechi Kannara,
Thrissur, Landmark – Kannara,
Kerala – 680 652.

...Respondent

Prayer: Arbitration Application filed under Order XIV Rule 8 of O.S.Rules read with Section 9(II) (b), (d) & (e) of Arbitration Act, 1996, to pass an order appointing an Advocate Commissioner to seize and deliver the Excavator JCB India Ltd., CEQ, - Catalog No.JS14OUFFAAAFBB+1, JS 140 TRACKED EXC0.72CUM BKT RBC AC LL Model Chasis No.2439415, and Engine No.84259443 together with all accessories fitted to the vehicle lying at 19 24 Peechi Kannara, Thrissur, Landmark – Kannara, Kerala – 680



652 more fully described hereunder, with police aid or break open the premises or from wherever found and handover the same to the applicant.

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SCHEDULE

Excavator JCB India Ltd., CEQ, - Catalog No.JS14OUFFAAAFBB+1, JS 140 TRACKED EXC 0.72CUM BKT RBC AC LL Model Chasis No.2439415, and Engine No.84259443 together with all accessories fitted to the vehicle lying at 19 24 Peechi Kannara, Thrissur, Landmark – Kannara, Kerala – 680 652.

For Applicant	:	Mr.N.K.Vanan
For Respondent	:	set <i>ex parte</i> on 31.07.2025
Advocate Commissioner	:	Mr.A.Rajadurai

ORDER

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (Act No.26 of 1996) seeking for appointment of an Advocate Commissioner to seize and deliver the equipment in possession of the respondent.

2. When the application came up for hearing on 26.06.2025, this Court passed the following order:

"This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for



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appointment of an Advocate Commissioner to seize and take possession of the equipment/asset morefully described in the schedule to the Judges Summons from the respondent or wherever it is available.

2. The applicant is a Non Banking Financial Institution. The applicant has lent money to the respondent under the Loan cum Hypothecation Agreement, dated 12.05.2023. The respondent had availed loan from the applicant for the purchase of equipment/asset morefully described in the schedule to the Judges Summons.

3. The respondent is a defaulter in the repayment of the loan to the applicant. As on date, the respondent is in arrears of six (6) installments, which works out to Rs.3,54,890/-. The applicant has also recalled the loan granted to the respondent through their loan recall notice dated 16.10.2024. As seen from the Statement of Account, a sum of Rs.6,83,174/- is due and payable by the respondent to the applicant which includes future installments, arrears of installments, penal interest and other charges payable as per the terms and conditions of the contract. The applicant is empowered to repossess the equipment/asset from the respondent, as per the terms of the said loan agreement, in case, they commit default in the repayment of the loan. The applicant claims that they are having difficulty in repossessing the equipment/asset on their own. Only under those circumstances, they have filed this application seeking for appointment of an Advocate Commissioner to repossess the equipment/asset from the respondent or wherever available. The Loan-cum-Hypothecation Agreement, dated 12.05.2023 contains an arbitration clause. The applicant has expressed its willingness to go for arbitration in accordance with the arbitration clause.

4.This Court is of the considered view that a prima facie case has been made out by the applicant for appointment of an Advocate Commissioner. Once the equipment/asset is repossessed by the Advocate Commissioner, to enable the respondent to use the equipment/asset once again, he must be put on terms for getting back the equipment/asset from the applicant after re-possession. In order to strike a balance, the following order is passed by this Court:

a) Mr.A. Rajadurai, Advocate, having office at



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No.17/F, Kaladipet, Thiruvottiyur, Chennai – 600 019, (Mobile No.9962806443) is appointed as the Advocate Commissioner to re-posses the equipment/asset morefully described in the schedule to the Judges Summons from the respondent or wherever it is available;

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

c) On repossession of the subject equipment/asset, the Advocate Commissioner shall send a Communication to the respondent intimating that a sum of Rs.3,54,890/- is due and payable by the respondent to the applicant in respect of the aforesaid loan agreement.

d) On receipt of such intimation, the respondent shall pay the aforesaid amount within a period of three days from the date of receipt of the communication from the Advocate Commissioner and on payment of such sum, the applicant shall hand over the equipment/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 equipment/asset shall also be redelivered back to the respondent 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.

5. Notice to the respondent, returnable by 31.07.2025. Private Notice is also permitted.

Post the matter on 31.07.2025."



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3. Pursuant to the above order, learned Advocate Commissioner has attempted to execute the warrant but however, learned Advocate Commissioner was not able to trace the equipment.

4. Notice sent to the respondent was duly served and since the respondent did not choose to contest the case, the respondent was set *ex parte* by this Court by an order dated 31.07.2025.

5. In view of the above, this Court appoints Mr.Athin Roy, Legal Officer, Tata Capital Limited, 1st Floor, Puturan Plaza, KPCC Junction, M.G.Road, Cochin, Kerala - 682011, Phone No.9207586591, as Court Receiver to seize the equipment from the respondent wherever it is found, if required with police aid. The applicant shall also initiate the process of arbitration since the trigger notice has already been issued.

This application is disposed of in the above terms.

07.10.2025

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No



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N.ANAND VENKATESH, J.

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