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Arbitration Application No.876 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2025

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THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

Arbitration Application No.876 of 2025

M/s.Cholamandalam Investment and Finance
Company Limited

'Chola Crest', C 54 & 55, Super B-4

Thiru.Vi.Ka Industrial Estate

Guindy, Chennai.

Represented by its Authorised Signatory

..... Applicant

Vs

M/s.Theja Engineering

Prop.Mr.B.Meganathan

D.No.200/2A, Kamarajar Nagar

Thulasiamman Street

Zuzuvadi Village, Hosur

Krishnagiri, Tamil Nadu – 635 126.

.... Respondent

Prayer : Application filed under Order XIV Rule 8 of O.S.Rules read with Section 9(1)(ii)(a)(b)(d)&(e) of Arbitration and Conciliation Act, 1996, praying to appoint an Advocate Commissioner to seize and deliver the equipment to applicant which is morefully described in the schedule to the Judges Summons which is lying in the custody of respondent or respondent's men, agents, servants from respondent premises or wherever found with police aid and break open of premises if necessary and pass orders.



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For Applicant : Mr.D.Pradeep Kumar

ORDER

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 for appointment of an Advocate Commissioner for seizing the equipment in the custody of the respondent, if necessary, with police protection and by breaking open the premises.

2. When this application came up for hearing on 04.07.2025, this Court passed the following order:-

“This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for 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 Agreement, dated 25.02.2023. The respondent is a defaulter in the repayment of the loan to the applicant. The Loan Agreement, dated 25.02.2023 contains an arbitration clause. In case of default, the applicant is empowered to repossess the equipment/asset from the respondent or wherever available. As on date, the respondent is in arrears of four (4) instalments, which



works out to Rs.1,27,728/-. The applicant has also recalled the loan granted to the respondent through their loan recall notice, dated 12.05.2025. The statement of account has also been filed along with this application, which discloses that a sum of Rs.10,63,551/- is due and payable by the respondent, which includes the arrears of instalments, future instalments payable by the respondent, penal interest and other charges as per the terms and conditions of the Loan Agreement dated 25.02.2023. 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 applicant has also expressed its willingness to go for arbitration in accordance with the arbitration clause contained in the contract, which is the subject matter of the dispute between the parties.

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, they 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.S.Victor Prasath, Advocate, who is having office at No.7, Jagadambal Colony, II Street, Royapettah, Chennai – 600 014, (Mobile No.96770 56407) is appointed as the Advocate Commissioner to re-posses the equipment/asset morefully



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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 vehicle, the Advocate Commissioner shall send a Communication to the respondent intimating that a sum of Rs.1,27,728/- 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 a communication from the Advocate Commissioner and on payment of such sum, the applicant shall handover 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



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remuneration of Rs.20,000/- 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 11.08.2025. Private notice is also permitted.

Post the matter on 11.08.2025."

3. The private notice sent to the respondent has been served and affidavit of service has also been filed. However, today there is no appearance for the respondent either in person or through counsel. Hence the apprehension raised on the side of the applicant that the respondent is trying to secret the equipments is *prima facie* established.

4. In view of the above, in the place of the Advocate Commissioner, Mr.T.Harish, Branch Receivables Manager is appointed as Receiver for seizing the subject equipment from the respondent or wherever it is found and by breaking open the premises, if required, with police aid.



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5. This application stands disposed of in the above terms.

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N. ANAND VENKATESH., J

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