



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb Appln No. 1247 of 2025

1. Cholamandalam Investment
And Finance Co Ltd
Chola Crest, C 54 and 55, Super
B-4, Thiru Vi Ka Industrial
Estate, Guindy, Chennai

Applicant(s)

Vs

1. M/s V Tech
Rep by its Prop
Mr Dineshbhai Jerambhai Khunt
S.R.No.263, Plot No.25, Street,
No.2, Shed No.2/D, Natraz
Industrial Area, Opp Narayan
Way Bridge, Gondal Road,
Kothariya Rajkot, Gujarat 360
002.

Respondent(s)

PRAYER

To appoint an Advocate Commissioner to seize and deliver the equipment to applicant which is more fully described in the schedule to the Judges Summons which is lying in the custody of respondent or respondents men, agents, servants from respondent premises or wherever found with police aid and break open of premises if necessary.



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For Applicant(s): Mr.D.Pradeep Kumar

ORDER

This application has been filed for appointment of Advocate Commissioner to seize and deliver the equipment to the applicant lying in the custody of the respondent, their men, agents, servants etc., with police aid and break open premises if necessary.

2. Heard the learned counsel for the Applicant and carefully perused the materials available on record.

3. The specific case of the applicant is that the respondent has not paid seven instalments and notice was issued to the respondent in this regard on 13.02.2025. Even thereafter, one instalment was paid. The applicant has also given an undertaking that they will initiate arbitration proceedings.

4. In the considered view of this Court, to invoke Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Act”), there must be a manifest intention to arbitrate. The law on this issue was spelt out by the Apex Court in ***[Firm Ashok***



Traders and another Vs. Gurumukh Das Saluja and others]

reported in ***2004 3 SCC 155***. The law was again reiterated by this

Court in ***[M/s. Cholamandalam Investment and Finance company Ltd. Vs. Harkhabhai Amarshibhai Vaghadiya]*** in ***Arb. Appln. No. 40 etc., of 2022***.

5. It is true that trigger notice under Section 21 of the Act is not imperative. However, there must be a manifest intention to arbitrate the moment dues become payable. In this case, totally seven instalments have not been paid and the notice has been issued to the respondent as early as in February 2025. In view of the same, this Court finds that there is lack of intention to arbitrate.

6. In the light of the above discussion, it is made clear that the right of the applicant is left open to agitate the same before the Arbitral Tribunal and similar prayer can be made under Section 17(1) (ii) (d) of the Act. If such a course is adopted by the applicant, it is left open to the Arbitral Tribunal to decide the same on its own merits and in accordance with law.



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7. This Application is disposed of in the above terms.

01-09-2025

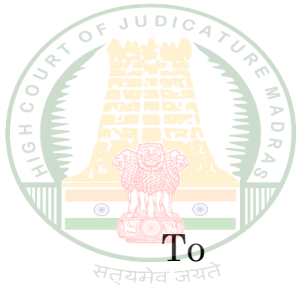
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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No



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To

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N.ANAND VENKATESH J.
rka

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