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Arbitration Application No.586 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Application No.586 of 2025

M/s.IndusInd Bank Ltd.,
represented by its Deputy Manager Legal,
I.J.Vasantha Rooban Abishek,
Having office at -
Consumer Finance Division,
No.34, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

.... Applicant

Vs.

S.Thomsson
S/o.Sehayan

.... Respondent

PRAYER

Arbitration Application filed under Order XIV Rule 8 of O.S.Rules read with Section 9(1)(2)(ii)(a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996, seeking to appoint an Advocate Commissioner to seize and deliver the vehicle/Machinery Ashok Leyland Ltd., 1618 Goods Carrier (HGV) bearing Vehicle Registration No.TN02BS6890, Vehicle Engine No.KEEZ415459 and Vehicle Chassis No.MB1A3CHD6KEED9270 to the custody of the Applicant, available at the respondent premises or wherever found and with whomsoever it is found and permit the Advocate Commissioner to obtain police aid and to break open the premises.

For Applicant : Ms.Meera Gnanasekar

For Respondent : Mr.M.Maharaja



ORDER

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This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] to appoint an Advocate Commissioner to seize the vehicle from the respondent.

2. When the application came up for hearing on 16.04.2025, this Court passed the following order:

“These applications have been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Advocate Commissioner to seize the vehicle / machinery morefully described in the schedule to the respective Judges Summons from the respondent or wherever it is available.

2. The applicant is a Non Banking Financial Institution. The applicant and the respondent are one and the same in both these applications. The respondent has availed loan from the applicant under separate Loan Agreements, they are dated 24.09.2019 and 30.09.2019 for the purchase of respective vehicles / machineries. According to the applicant, the respondent has committed default in re-payment of the loan.

3. According to the applicant, insofar as **Arb. A. No.586 of 2025** is concerned, the respondent has paid only 52 installments. According to the applicant, the respondent has made payments belatedly. The applicant has also recalled the loan granted to the respondent through their demand notice, dated 04.11.2024. Despite the same, the respondent failed to settle the loan account. The applicant has filed statement of accounts, dated 03.04.2025 along with Arb. Appln. No.586 of 2025. As on date, the respondent is in arrears of 8 installments, which works out to Rs.3,48,918/-.

4. According to the applicant, insofar as **Arb. A. No.587 of 2025** is concerned, the respondent has paid only 53 installments. According to the applicant, the respondent has made payments belatedly. The applicant has also recalled the loan granted to the



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respondent through their demand notice, dated 04.11.2024. Despite the same, the respondent failed to settle the loan account. The applicant has filed statement of accounts, dated 03.04.2025 along with Arb. Appln. No.587 of 2025. As on date, the respondent is in arrears of 7 installments, which works out to Rs.3,05,942/-.

5. The applicant is empowered to repossess respective vehicles / machineries from the respondent, as per the terms of the respective loan agreements, in case, he commits default in the repayment of the loan. The applicant claims that they are having difficulties in repossessing the vehicle / machinery on their own. Only under those circumstances, they have filed these applications seeking for appointment of an Advocate Commissioner to repossess the respective vehicles / machineries from the respondents or wherever it is available. The respective Loan Agreements contains an arbitration clause. The applicant has expressed its willingness to go for arbitration in accordance with the arbitration clause.

6. 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 vehicle / machinery are repossessed by the Advocate Commissioner, to enable the respondent to use the vehicle / machinery once again, he must be put on terms for getting back the vehicle / machinery from the applicant after re-possession. In order to strike a balance, the following order is passed by this Court:

a) Mr. S. Vinod, Advocate having office at No.365, New Additional Law Chamber, High Court Buildings, Madras High Court, Chennai – 600 104 (Mobile No.9543368833) is appointed as the Advocate Commissioner to re-possess the vehicle / machinery morefully described in the schedule to the respective 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 vehicle / machinery is kept in a locked premises in the presence of the police after taking proper inventory.

c) On repossession of the subject vehicle / machinery, the Advocate Commissioner shall send a Communication to the respondents intimating that insofar as Arb. Appln. No.586 of 2025 is concerned, a sum of Rs.3,48,918/- is due and payable by the respondent to the applicant and insofar as Arb. Appln. No.587



of 2025 is concerned, a sum of Rs.3,05,942/- is due and payable by the respondent to the applicant in respect of the aforesaid loan agreements.

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 respective vehicles / machineries 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 vehicle / machinery shall also be redelivered back to the respondents by the applicant unconditionally;

f) The Advocate Commissioner shall be paid an initial remuneration of Rs.30,000/- (Rs.15,000/- for each application) 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.

7. Notice to the respondents returnable by 02.06.2025. Private Notice is also permitted.

Post the matter on **02.06.2025.**"

3. Pursuant to the above order, the vehicle was seized by the Advocate Commissioner and it was handed over to the applicant bank.

4. The matter was adjourned from time to time to make an attempt to resolve the dispute amicably between the parties. However, efforts taken by the parties have failed and therefore, the matter has to be necessarily adjudicated before the Arbitral Tribunal.



5. Learned counsel for applicant submitted that a Sole Arbitrator has already been appointed and arbitration proceedings are underway.

6. In the considered view of this Court, the Sole Arbitrator appointed by the applicant is admittedly a unilateral appointment, which ultimately will yield no result since the award passed by such an Arbitrator will be hit by the judgment of the Apex Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd. [(2020) 20 SCC 760]***.

7. In view of the above, it is left open to the applicant to initiate fresh proceedings for appointment of an Arbitrator. On filing such application, this Court will appoint an Arbitrator and give liberty to the respondent to move an application under Section 17 of the Act and seek interim relief. Till then, the present *status quo* shall be maintained.

In the result, this application is disposed of in the above terms.

03.02.2026

Index:yes/no
NCC:yes/no
gm



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N.ANAND VENKATESH, J.

gm

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