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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION (L) NO.25053 OF 2026

Siemens Financial Services Private Limited ... Petitioner

Vs.

1. Nadeem Ahmad Khandey

2. Dr. Manzoor Ahmad Dar

3. Hameem Rashid

... Respondents

ATUL
GANESH
KULKARNI

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Mr. Anoshak Daver with Ms. Khushboo Rupani, Mr. Gaurav Jain, and Mr. Sharan Shetty i/by India Law LLP for the Petitioner

Ms. Aayushi Chauhan i/by Mr. Manindra Pandey for Respondent Nos.1 and 3.

Mr. Sanjay Kumar Lalit for Respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 15, 2026.

PRONOUNCED ON : OCTOBER 19, 2026

JUDGMENT:

1. The present Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. By this Petition, the Petitioner seeks interim and ad-interim reliefs.

2. According to the Petitioner, the facts which led to the filing of the present Petition are as follows. The Petitioner and

Respondent No.1 entered into a Finance Agreement under which the Petitioner sanctioned a loan of Rs.1,05,00,000/- to Respondent No.1 for purchasing the medical equipment which was to remain hypothecated with the Petitioner. The loan was subject to the terms of the Agreement, Schedule-I and the Finance Schedule. The loan was granted for a period of 72 months at an interest rate of 11.50% per annum. On 19 December 2023, upon the request of Respondent No.1 for financial assistance, the Petitioner sanctioned and disbursed the loan amount of Rs.1,05,00,000/- for purchasing the hypothecated medical equipment, namely, "Somatom Go Now Compact with accessories". The Petitioner accordingly issued a Sanction Letter dated 19 December 2023, and Respondent Nos.1 to 3 executed the Finance Agreement and other related documents. For repayment of the loan, Respondent Nos.1 to 3 agreed that the amount would be repaid in Equated Monthly Instalments (EMIs) through ECS/NACH, as provided in the repayment schedule forming part of the Finance Agreement. According to the Petitioner, although Respondent No.1 availed of the loan facility, it repeatedly failed to pay the instalments as agreed under the Finance Agreement. As a result, the loan account was classified as a Non-Performing Asset (NPA) on 27 November 2024. Thereafter, by a Pre-Litigation Notice dated 27 November 2025, Respondent Nos.1 to 3 were informed that an amount of Rs.1,06,58,167/- was outstanding under the Agreement. They were called upon to appear before the National Lok Adalat on 13 December 2025 to explore the possibility of settling the dispute amicably. Subsequently, by a Surrender Letter dated 23 February

2026, Respondent No.1 expressed its willingness to hand over possession of the hypothecated machinery, stating that it was unable to regularise the loan account and clear the outstanding dues. The Petitioner states that, despite repeated reminders, the Respondents admitted the outstanding liability, sought time to make payment and assured the Petitioner that the loan account would be regularised. However, they failed to pay the outstanding amount and continued to remain in default.

3. The Petitioner states that, on 13 May 2026, having regard to the continued defaults and the failure of the Respondents to repay the loan despite repeated opportunities and efforts to settle the dispute, it issued a Loan Recall Notice. By this notice, the Petitioner recalled the loan facility, invoked arbitration and called upon Respondent Nos.1 to 3 to jointly and severally pay the entire outstanding amount, together with applicable interest, charges and costs. According to the Petitioner, despite repeated assurances, admissions and representations made by Respondent No.2, neither Respondent No.1 nor Respondent Nos.2 and 3 took steps to regularise the loan account or pay the outstanding dues. They continued to commit defaults under the Finance Agreement. The Petitioner relies upon the reply dated 19 May 2026 sent by Respondent No.1, which, according to the Petitioner, admits the contractual relationship between the parties, the Petitioner's security interest in the machinery and the outstanding liability. The Petitioner submits that, although Respondent No.1 had issued a Surrender Letter and assured repayment, it continued to retain possession of the hypothecated machinery and failed to cooperate

with the Petitioner in taking possession of it. The Petitioner apprehends that Respondent No.1 may sell or transfer the machinery or create third-party rights in respect of it. According to the Petitioner, under the Finance Schedule and the Pre-Termination Statement, an amount of Rs.1,22,61,244/- was payable by the Respondents as on 2 June 2026. The Petitioner claims default interest at the rate of 36% per annum from 3 June 2026 until payment or recovery of the amount. In these circumstances, the Petitioner filed the present Commercial Arbitration Petition on 8 July 2026.

4. Mr. Daver, learned Advocate appearing for the Petitioner, invited my attention to Clause 8 of the Finance Agreement. He submitted that Clause 8(b) provides that, in the event of default, the borrower is required to immediately hand over possession of all the assets to the lender whenever demanded. He referred to Clause 9, which defines the events of default. According to him, these events include failure to pay any amount on its due date under the repayment schedule and a change in the borrower's business. He submitted that the Agreement treats deterioration in the borrower's financial condition as a matter relating to insolvency. Mr. Daver then invited my attention to three emails sent by Respondent No.1 on 18 March 2026. He submitted that, in these emails, Respondent No.1 specifically admitted that it had been facing internal and financial difficulties for the preceding few months. Respondent No.1 accepted that the operations of its medical centre and its cash flow had been affected. It stated that it was concentrating on stabilising the operations of the centre and

arranging funds to clear the outstanding dues. Mr. Daver referred to paragraph 2 of the notice issued by the Advocate for Respondent No.1, which is at page 125 of the record. He submitted that even this notice acknowledges the financial difficulties, operational problems and reduction in revenue faced by the medical establishment. Mr. Daver submitted that Respondent Nos.1 and 3 had filed a suit before the Court of the Munsiff/Civil Judge at Kulgam. According to him, the suit appears to have been filed in collusion between the parties. In that suit, the parties were directed not to create any third-party interest by selling or transferring the CT Scan Unit operated under the name and style of Moumin Poly Clinic and Diagnostic Centre. He submitted that the Petitioner is not a party to that suit. Therefore, according to him, the order passed by the Civil Court does not prevent the Petitioner from exercising its contractual rights under Clause 8 of the Finance Agreement. Mr. Daver submitted that the loan was granted to the sole proprietorship business of Respondent No.1. However, without obtaining the Petitioner's permission, Respondent No.1 converted the proprietary business into a partnership business. According to him, this amounts to a breach of the terms of the Finance Agreement. He submitted that the financial disclosure made by the Respondents in compliance with the order passed by this Court shows that Respondent No.1 is not in a position to repay the loan. He stated that the outstanding dues have now increased to approximately Rs.1.27 crore.

5. Respondent No.2, who is a guarantor for the loan transaction, invited my attention to the communication sent by

him to the Petitioner in response to the Petitioner's notice. By that communication, Respondent No.2 called upon the Petitioner to exercise its contractual and legal rights and immediately take possession of the hypothecated machinery from the borrower. Relying upon the communication dated 17 May 2026 issued by Respondent No.2, it was submitted that this Court should appoint a Court Receiver to take possession of the hypothecated machinery.

6. Ms. Chauhan, learned Advocate appearing for Respondent No.1, opposed the Petition. She submitted that granting the relief of taking possession of the machinery at this stage would amount to granting the final relief sought by the Petitioner. She submitted that the income generated from the hypothecated machinery is the only source of income of Respondent No.1. She invited my attention to Civil Suit No.215 of 2026 filed by the partner against Respondent No.1 before the Munsiff/Civil Court at Kulgam. She submitted that, by an order dated 30 May 2026, the Civil Court granted ad-interim relief restraining the parties to that suit from creating any third-party interest in respect of the CT Scan Unit. Ms. Chauhan submitted that the Petitioner has not produced any material to show that the Respondents are attempting to sell or dispose of the machinery with the intention of defeating the arbitration proceedings or frustrating the enforcement of any future arbitral award.

7. Ms. Chauhan submitted that the Petitioner has received repayment of Rs.24,96,328/- and that the balance amount would be paid. She contended that the machinery in question generates income and is essential for carrying on the Respondents' business.

According to her, appointing a Court Receiver or stopping the use of the machinery would bring the business to a standstill. She challenged the amount claimed by the Petitioner, particularly the default interest charged at the rate of 36% per annum. She submitted that, because of this high rate of interest, the claim of Rs.1.22 crore is substantially inflated.

REASONS AND FINDINGS:

8. I have considered the submissions made by Mr. Daver, learned Advocate for the Petitioner, Ms. Chauhan, learned Advocate for Respondent No.1, and the submissions made on behalf of Respondent No.2.

9. In the present case, the execution of the Finance Agreement and the grant and payment of the loan are not seriously disputed. The Petitioner had granted a loan of Rs.1,05,00,000/- to Respondent No.1 for purchasing medical machinery described as “Somatom Go Now Compact with accessories”. The loan amount was to be repaid in monthly instalments over a period of 72 months. The machinery was hypothecated in favour of the Petitioner as security for repayment of the loan. The Finance Agreement produced before the Court contains Clause 8, under the heading “Hypothecation of Assets and Undertakings”. Clause 8(b) provides as follows:

“Upon the occurrence and continuance of any Event of Default, the Lender or its nominees shall have declared all outstanding amounts as due and payable in accordance with the terms of the Agreement and in case such breach or default is not remedied by the Borrower to the satisfaction of

the Lender, within a period of 15 (fifteen) days from the date of intimation by the Lender or within such time as may be extended by the Lender in writing to the Borrower, then the Lender shall be entitled to take charge and/or possession of the Assets without intervention of the court and deal with all or any part of the said Assets as it deems appropriate, without prejudice to the Lenders rights and remedies of suit or otherwise and notwithstanding that there may be any pending suit or process or other proceeding. The Borrower undertakes to give immediate possession to the Lender on demand of the Assets and to transfer, and to deliver to the Lender all related bills, contracts, securities and documents and the Borrower hereby agrees to pay on demand by the Lender any shortfall or deficiency thereby shown by the Lender.”

10. The above clause shows that the parties had agreed that, if the borrower commits a default and does not correct it within the period mentioned in the Agreement, the Petitioner would be entitled to take possession of the hypothecated machinery, subject to the terms of the Agreement. Respondent No.1 had agreed to hand over possession of the machinery whenever demanded. The clause provides that the lender may exercise this right without approaching the Court.

11. Clause 9 of the Finance Agreement holds the circumstances which would amount to a default. Clause 9(a) deals with failure to pay an amount on its due date under the repayment schedule. Clause 9(b) refers to a change in the borrower's business or a change in the ownership of the asset. The provision relating to insolvency refers to a deterioration in the borrower's financial condition. These clauses are relevant because the Petitioner is

seeking possession of the same machinery which was purchased with the loan amount and given as security for repayment. Thus, the machinery is directly connected with the loan transaction.

12. The material placed before the Court shows that the default complained of is not limited to one instalment or a short delay in payment. According to the Petitioner, the loan account was classified as a Non-Performing Asset on 27 November 2024. Thereafter, a Pre-Litigation Notice dated 27 November 2025 was issued, stating that Rs.1,06,58,167/- was outstanding. The Respondents were called upon to appear before the National Lok Adalat so that an attempt could be made to settle the dispute amicably. Thereafter, Respondent No.1 issued a Surrender Letter dated 23 February 2026. By this letter, Respondent No.1 expressed its willingness to hand over possession of the hypothecated machinery because it was unable to regularise the loan account and pay the outstanding dues. This letter shows that Respondent No.1 had itself accepted that it was facing difficulty in repaying the loan and had expressed its willingness to surrender the machinery.

13. The subsequent events are relevant. The Petitioner issued a Loan Recall Notice dated 13 May 2026, demanding repayment of the outstanding dues. Respondent No.1 replied on 19 May 2026. According to the Petitioner, this reply accepts the contractual relationship between the parties, the Petitioner's security interest and the outstanding liability. Even after the Surrender Letter and the subsequent communications, the machinery has not been handed over to the Petitioner.

14. Mr. Daver has relied upon three emails dated 18 March 2026. According to him, Respondent No.1 admitted in these emails that it had been facing financial and internal difficulties for the preceding few months. The operations of the medical centre and its cash flow had been affected. Respondent No.1 had stated that it was trying to stabilise its business and arrange funds to pay the outstanding dues. Mr. Daver has relied upon paragraph 2 of the notice issued by the Advocate for Respondent No.1. According to him, that paragraph accepts that the medical establishment was facing financial difficulties, operational problems and a reduction in income.

15. Financial difficulty alone cannot be a reason to appoint a Receiver over the assets of every borrower. A business may face temporary financial problems and may still be able to repay its loan. However, in the present case, the financial difficulties have to be considered along with the repeated defaults, the demand for repayment, the Loan Recall Notice and the Surrender Letter. When all these circumstances are considered together, they support the Petitioner's concern regarding repayment and protection of its security.

16. Respondent No.2, who is stated to be the guarantor, sent a communication to the Petitioner on 17 May 2026. In that communication, Respondent No.2 called upon the Petitioner to exercise its contractual and legal rights and take immediate possession of the hypothecated machinery. Respondent No.2 has supported the request for appointment of a Court Receiver before this Court. The communication of Respondent No.2 cannot decide

the rights of Respondent No.1. The objections raised by the borrower must be considered. However, this communication supports the Petitioner's case that the loan transaction has reached a stage where possession of the secured machinery is being sought as a means of dealing with the continuing default.

17. Ms. Chauhan submitted that taking possession of the machinery would amount to granting the final relief sought by the Petitioner. This objection requires consideration. An order directing possession of the machinery would have an immediate and serious effect on the business of Respondent No.1. The Court cannot grant such relief merely because it has been sought under Section 9 of the Arbitration and Conciliation Act, 1996. At the same time, Section 9 permits the Court to appoint a Receiver and make arrangements for the interim custody of property. Such an order does not necessarily decide the final dispute between the parties. Its effect depends upon the purpose for which it is passed and the conditions imposed by the Court.

18. In the present case, if possession is taken only to preserve the machinery and the Receiver and the Petitioner are prohibited from selling or otherwise disposing of it, the order will remain an interim measure. It will not decide the final amount payable by the Respondents. It will not decide whether the default interest claimed by the Petitioner is legally payable. It will not decide the rights of the parties in arbitration. The machinery will remain preserved, and its use or disposal will be subject to the orders of the Court and the outcome of the arbitral proceedings.

19. Ms. Chauhan submitted that the income earned from the machinery is the only source of income of Respondent No.1. According to her, the machinery is the main equipment used for running the medical centre, and taking it away would bring the business to a standstill. This submission cannot be ignored. The Court must consider the effect of its order on the borrower, particularly because the machinery is used for providing medical diagnostic services. An order for taking possession cannot be passed merely to put pressure on the borrower to make payment. It cannot be used as a substitute for deciding the financial dispute. However, the interest of the Respondents in continuing their business must be considered along with the Petitioner's security interest and the circumstances showing continued default. The material available does not show that the loan account has been regularised. Respondent No.1 issued the Surrender Letter because it was unable to clear the outstanding dues. Despite issuing that letter, it did not hand over possession of the machinery. The Petitioner's demand for possession remains unfulfilled. The fact that the machinery generates income is relevant when considering its preservation. The machinery was purchased with the financial assistance given by the Petitioner and was hypothecated in its favour. If the machinery is damaged, transferred or placed beyond recovery before the dispute is decided, the Petitioner's security may be affected. The Court must balance the concern of the Respondents about their business against the need to protect the machinery. In my view, this concern can be addressed to some extent by limiting the relief to taking possession and preserving the

machinery. No power to sell, auction, transfer or otherwise dispose of the machinery is being granted. The Petitioner cannot treat the machinery as its own property or use this order to adjust its claimed dues by taking ownership of the machinery.

20. Ms. Chauhan submitted that the Petitioner has received repayment of Rs.24,96,328/- and that the balance amount will be paid. The amount repaid is relevant while calculating the outstanding dues. All payments received by the Petitioner must be given proper credit in the accounts. However, a statement that the balance amount will be paid does not show that the defaults have been corrected or that the loan account has been regularised. At this stage, no final finding is being recorded about the exact amount outstanding after giving credit for all payments. The purpose of the present order is not to decide the Petitioner's claim for money. The question is whether the machinery given as security should remain without effective protection when the loan has been recalled and possession has not been handed over despite the Surrender Letter and subsequent demands. The exact amount due, including the credit to be given for the payments made, will remain open for determination in the appropriate proceedings.

21. The objection regarding default interest at the rate of 36% per annum requires consideration. The Petitioner claims that Rs.1,22,61,244/- was due on 2 June 2026 and seeks default interest from 3 June 2026. Ms. Chauhan contends that the amount claimed is highly inflated because of the default interest charged at the rate of 36% per annum. At this stage, the Court is not required to decide whether the claimed rate of interest is enforceable under

the Agreement, whether the amount has been correctly calculated, or whether any adjustment is required. These questions can be decided in the appropriate proceedings after considering the Agreement, the accounts and the submissions of the parties. The objection regarding the rate of interest does not require the Court to refuse every form of protection for the machinery. Possession may be taken to preserve the secured asset without directing the Respondents to pay the entire amount claimed. Nothing in this order shall be treated as acceptance of the Petitioner's calculation of Rs.1,22,61,244/- or its claim for default interest at the rate of 36% per annum.

22. The Petitioner has submitted that Respondent No.1 was originally carrying on business as a sole proprietor but later changed it into a partnership business without obtaining the Petitioner's permission. According to the Petitioner, this amounts to a breach of the Finance Agreement. This submission is relevant because Clause 9(b) refers to a change in the borrower's business or a change in the ownership of the asset. However, having regard to the repayment difficulties and the other material discussed, it is not necessary at this stage to give a final finding on whether the alleged change in the nature of the business amounts to an additional event of default. This issue will remain open for consideration in the appropriate proceedings.

23. The Petitioner's request for interim protection does not depend only on this allegation. The repeated defaults, recall of the loan, Surrender Letter and failure to hand over possession provide separate grounds for considering the limited relief sought in this

Petition.

24. The Petitioner has referred to Civil Suit No.215 of 2026 pending before the Munsiff/Civil Court at Kulgam. Ms. Chauhan submitted that, by an order dated 30 May 2026, the Civil Court restrained the parties to that suit from creating third-party interests in respect of the CT Scan Unit. Mr. Daver submitted that the Petitioner is not a party to that suit and that the order does not prevent it from exercising its rights under the Finance Agreement. He alleged that the suit had been filed in collusion between the parties. The material placed before this Court is not sufficient to give a final finding that the civil suit is collusive. Such a finding cannot be recorded merely because a suit has been filed or an interim order has been passed. The rights of the parties to that suit must be considered by the Civil Court in the proceedings pending before it. At the same time, the mere filing of that suit does not defeat the Petitioner's request for protection under Section 9. The relief being considered here is limited to taking custody of the machinery through an officer of this Court. No sale, transfer or creation of third-party rights is permitted. The order passed by the Civil Court is neither set aside nor changed by this order. No finding is being recorded on the merits of the dispute pending before that Court. The Receiver shall preserve the machinery and shall not take any step to sell or otherwise dispose of it.

25. The judgment in *L & T Finance Ltd. v. G.G. Granites*, 2013 SCC OnLine Mad 2719, which helps in considering the rights of a lender over hypothecated movable assets. In paragraph 18, the learned Single Judge observed:

“Therefore, there can be no doubt about the fact that hypothecation creates a charge, without delivery of possession of the movable asset. Since hypothecation is not a statutory creation, the rights of the hypothecatee are governed by the terms of the contract.”

26. The judgment holds that, where the Hypothecation Agreement contains a specific clause permitting the lender to take possession in the event of default, that contractual right may be exercised subject to the law governing its enforcement. The learned Judge referred to the decision of the Supreme Court in *Indian Oil Corporation v. NEPC India Limited*, 2006 (4) CTC 60 (SC) : AIR 2006 SC 2780. In that case, the Supreme Court did not express any opinion on whether a creditor could take possession with or without approaching a Court of Law. Therefore, the decision in *L & T Finance Ltd.* cannot be understood to mean that every request for possession must automatically be granted. It supports the principle that the rights of the lender must be considered in the light of the contract. The Court must still examine whether the conditions for granting interim relief are satisfied in the facts of the particular case.

27. After considering all the material, I am satisfied that the Petitioner has made out a prima facie case for appointment of a Court Receiver. The loan transaction and the hypothecation are supported by the Finance Agreement. The defaults have continued for a substantial period. The loan was recalled, and Respondent No.1 had earlier expressed willingness to surrender the machinery but did not hand over possession. The financial difficulties admitted in the communications and the failure to regularise the

loan account create concern about the protection of the Petitioner's security.

28. The balance of convenience supports a limited order for protection. If possession is not secured and the machinery is later damaged, transferred or placed beyond recovery, the Petitioner's security may be affected. On the other hand, Respondent No.1 has a genuine concern because the machinery is stated to be its main source of income. This concern is a reason for not granting an immediate power to sell or dispose of the machinery. However, in the present circumstances, it does not require the Court to refuse appointment of a Receiver altogether, particularly when Respondent No.1 had itself earlier expressed willingness to surrender possession. The apprehension regarding the machinery must not be treated as proof that Respondent No.1 has tried to sell or transfer it. The order is not being passed on the basis of any finding of fraud or a proved attempt to defeat the arbitration proceedings. It is being passed because of the contractual security, the continued defaults, the failure to hand over possession and the need to preserve the machinery until the dispute is decided.

29. The question of irreparable loss must be considered in this background. The Petitioner's claim is mainly for recovery of money, and the exact amount can be decided in arbitration. However, the Petitioner has a security interest over identified machinery. If the machinery is damaged, transferred or placed beyond recovery, the Petitioner's ability to enforce any future award may become more difficult. The Court can make an order to preserve the machinery, provided the order does not unnecessarily decide the final rights of

the parties. Appointment of a Receiver will ensure that possession is taken under the supervision of the Court. This will avoid the need for the Petitioner to use private recovery agents or adopt any method which may lead to a dispute about how possession was obtained. Police assistance, wherever required, will be given only to enable the Receiver to carry out the Court's directions peacefully and properly. However, the Petitioner has not made out a case at this stage for giving the Receiver any power to sell the machinery. The amount claimed, the default interest, the payments received and the final liability of the Respondents are matters which have to be decided in accordance with law. Taking possession does not make the Petitioner the owner of the machinery. Nor does it permit the Petitioner to adjust the value of the machinery against the claimed dues without orders. The machinery must be preserved. The Receiver may take physical possession and hand it over to the Petitioner, but the Petitioner shall hold it only as custodian legis, meaning that the machinery will remain in its custody on behalf of the Court. Neither the Receiver nor the Petitioner shall sell, auction, transfer, alienate, encumber, dismantle or otherwise dispose of the machinery, or create any third-party rights over it. No sale is permitted under the present order.

30. For the reasons stated above, I am satisfied that the limited reliefs sought in prayer clauses (c) and (d) deserve to be granted. Appointment of a Receiver and police assistance are necessary to secure and preserve the hypothecated machinery. At the same time, not granting any power to sell will protect the Respondents against disposal of the machinery before the rights and liabilities of

the parties are decided in the arbitral proceedings. The order will remain an interim measure for protection of the machinery. It shall not be treated as a final decision regarding the amount due, the validity of the claimed default interest or the ultimate rights of the parties under the Finance Agreement. Subject to these limits, the following order is passed.

31. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- (i) Prayer clause (c) of the Petition is allowed to the extent stated below;
- (ii) The Court Receiver, High Court, Bombay, or such fit and proper person as may be designated by the Court, is appointed as Receiver in respect of the hypothecated medical equipment described as “Somatom Go Now Compact with accessories”;
- (iii) The Court Receiver shall take physical possession of the aforesaid machinery, together with its accessories, from the premises where it is installed or kept, in accordance with law. The Receiver shall prepare an inventory of the machinery and accessories and record their existing condition at the time of taking possession;
- (iv) After taking possession, the Court Receiver shall hand over the machinery to the Petitioner, which shall hold it only as custodian legis, on behalf of the Court and subject to orders. The handing over of possession shall not confer ownership upon the Petitioner;

(v) The Court Receiver is authorised to seek police assistance for taking possession of the machinery. The concerned police authorities shall provide necessary assistance upon a written request made by the Court Receiver. If access to the premises is obstructed, or the premises are found locked, the Receiver may, where necessary, seek assistance to open the lock and enter the premises for the limited purpose of taking possession of the machinery, while recording the steps taken and the condition of the machinery;

(vi) Neither the Court Receiver nor the Petitioner shall have any power under this order to sell the machinery by public auction or private treaty, or otherwise dispose of, transfer, alienate, encumber, dismantle or create third-party rights in respect of the machinery. The machinery shall be preserved in its existing condition, subject to necessary measures for its protection and maintenance, until orders of the Court;

(vii) The Petitioner shall bear the initial expenses of the Receiver, including reasonable expenses for taking possession, transportation where necessary, preservation and custody of the machinery. Such expenses shall remain subject to orders of the Court and the final determination of the rights and liabilities of the parties;

(viii) Prayer clause (d) is allowed. Police assistance shall be made available to the Court Receiver for implementing this order, subject to the directions recorded above;

(ix) The order is confined to the interim protection of the hypothecated machinery. It shall not be treated as a final finding regarding the total amount due, the rate of default interest, the claim for prepayment fees, or any other dispute arising under the Finance Agreement;

(x) If the arbitral proceedings have not commenced, the Petitioner shall take the necessary steps for their commencement within the period prescribed under Section 9(2) of the Arbitration and Conciliation Act, 1996;

(xi) The Petition is allowed to the above extent. All other rights and contentions of the parties are kept open for adjudication in accordance with law.

(AMIT BORKAR, J.)