

OMP (I) (COMM.) 271/26
TATA CAP. LTD. Vs. MS SUNITA SHARMA

06.03.2026

Present: Sh. Anish Bhola, Id. Counsel for Petitioner.

Matter is listed for consideration on petition under section 9 of the Arbitration & Conciliation Act, 1996.

This is a petition under Section 9 of the Arbitration & Conciliation Act, 1996, alongwith application for appointment of receiver to take possession of hypothecated equipment/machine.

Case of the petitioner is that petitioner is a non banking finance company incorporated and registered under the Indian Companies Act. It is stated that respondent who is proprietor of M/s N.S Enterprises approached the petitioner company to avail loan facility to purchase equipment/machine **YMS20R-SMT PICK & PLACE 'YAMAHA'** and accordingly, an agreement for loan cum hypothecation agreement for equipment finance was executed between petitioner and respondent. Accordingly, petitioner sanctioned and disbursed the loan amount of Rs. 1,62,00,000/- (Rupees One Crore Sixty Two Lakhs Only) vide sanction letter dated 20.10.2023. The loan amount was repayable in 66 equated monthly installments (including 06 months moratorium) of Rs. 3,64,863/-. Equipment/ machine **YMS20R-SMT PICK & PLACE 'YAMAHA'**, is stated to be hypothecated in favor of petitioner / applicant, constituting primary security. After availing the said loan facility, respondent has failed to adhere to financial discipline

and committed willful default as borne out from the statement of account showing default of payment of EMIs and other dues outstanding to Rs. 28,13,894/- . It is stated that respondent has defaulted 09 EMIs as on 18.02.2026. There is an arbitration clause in the agreement.

Ld. Counsel for petitioner submits that the subject loan account already stands terminated vide loan recall notice dated 30.12.2025. He also submits that despite service of said notice, the respondent has failed to discharge the liability in terms thereof and as such, the present application has been moved seeking interim relief in the nature of appointment of receiver with the directions to take possession of the hypothecated property. Ld. Counsel for petitioner further submits that there is genuine apprehension of the petitioner that respondent may dispose of the equipment/machine against the terms of contract / agreement between the parties, which may frustrate the very purpose of execution of hypothecation agreement.

This Court has considered the above submissions advanced by Ld. counsel for the petitioner and also perused the documents filed alongwith the petition which is supported by the statement of truth of the AR of the petitioner.

Legal standard is well settled that while passing orders under Section 9 of the Arbitration & Conciliation Act, the Court is required to satisfy itself that (i) the applicant, before it, manifestly intends to initiate arbitral proceedings, (ii) the criteria for grant of interim injunction, which apply to Order 39 of the CPC, stands satisfied and (iii) circumstances also exist, which renders the requirement of ordering interim measures an

emergent necessity, which cannot await a Section 17 proceeding, before the arbitrator, or arbitral tribunal. In assessing whether such an emergent necessity exists, or not, the court essentially satisfies itself that failure to order interim measures, under Section 9, would frustrate, or would render the recourse, to arbitration, which is yet to take place, a futility.

Considering the totality of aforementioned facts and circumstances, this Court is of the opinion that a prima facie case exist in favour of the petitioner and rights of the petitioner may be prejudiced if an order for repossessing the equipment/machine is not passed.

Accordingly, Mr. Deepak Kaushik, Representative of the petitioner is appointed as Receiver to take the possession of the hypothecated equipment/machine **YMS20R-SMT PICK & PLACE 'YAMAHA'**. In case, any resistance is offered by the respondent, receiver is entitled to take police aid. In such an eventuality, Station House Officer of the concerned Police Station is directed to render all possible assistance to the Receiver in execution of this order. This order for appointment of receiver is subject to following further conditions:

(i) The receiver shall take over the possession of the equipment/machine from the respondent at the address given in the loan application. If the equipment/machine is not available at the said address(es), the receiver shall be at liberty to recover the equipment/machine wherever found.

(ii) The receiver shall also ensure that the repossession of the equipment/machine does not result any breach of peace. In the event of any breach of peace by the person occupying the equipment/machine, the receiver shall not proceed without the assistance of police.

(iii) At the time of taking custody of the equipment/machine, the receiver shall deliver copy of this order as well as petition and attached documents to the person from whom possession is taken.

(iv) At the time of taking custody of the equipment/machine, the receiver shall take the photographs of the equipment/machine from different angles alongwith the person occupying the equipment/machine as well as the place of taking over the possession.

(v) The receiver shall prepare an inventory of the articles/accessories found in the equipment/machine and shall furnish the copy of the inventory to the person from whom the possession is taken.

(vi) After taking the equipment/machine in possession, the receiver shall keep the equipment/machine in safe custody and if directed bring the equipment/machine within the jurisdiction of this court thereafter and the equipment/machine shall not be disposed of without the permission of this court and/or later on Ld. Arbitrator.

(vii) In case the equipment/machine is not repossessed within a period of 90 days from the date of this order, this order shall cease to be in operation, as the present proceedings are only interim measure with the dispute being required to be adjudicated by the Arbitrator.

(viii) If the respondent makes payment of the outstanding installments as on date of possession, the receiver shall release the equipment/machine in question to the respondent on superdari subject to an undertaking by the respondent to the receiver for regular payment of future monthly installments till the expiry of the tenure and on furnishing a declaration not to part with the equipment/machine or create third party interest in the equipment/machine without permission of the Arbitrator or until the entire due amount as per agreement or decided by

the Arbitrator is paid.

(ix) Petitioner shall initiate arbitration proceedings as per time limit mentioned in Section 9 of the Arbitration & Conciliation Act, 1996 within 90 days from today, failing which the Interim Order shall be deemed to be automatically vacated. Report of Receiver be filed within such time limit.

The application for interim ex-parte order, for appointment of receiver is allowed in above terms.

Issue notice of the petition to the respondent through all modes on filing of PF/RC etc., returnable on 07.04.2026.

Copy of this order be given dasti as prayed.

Put up on 07.04.2026 for further proceedings.

(LAL SINGH)
District Judge (Commercial Court)-12
Central District, Tis Hazari Courts /Delhi
06.03.2026(k)