

KABC170027912025



**IN THE COURT OF LXXXIV ADDL. CITY CIVIL &
SESSIONS JUDGE, AT BENGALURU (CCH-85)
(Commercial Court)**

THIS THE 24th DAY OF OCTOBER 2025

PRESENT:

**SRI. ANAND T. CHAVAN. B.Com.,LL.B.(Spl.)
LXXXIV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com.AA.No.368/2025

Petitioner:- **M/s Volvo Financial Services (India)
Private Limited,**
Formerly known as M/s Volvo Asset
Finance India Private Limited,
Having its Corporate Office at No.65/2,
Bagmane Tech Park, Block-A,
5th Floor, Parin Building,
CV Raman Nagar, Bengaluru-560093.
Rep by its Authorized Signatory,
Mr. Varadaraj.

(By M/s J.S Advocates)

// versus //

- Respondents:-**
- 1. M/s. S S Constructions,**
Plot No.87-Jubileehills,
Road No.72, Prashasan Nagar,
Sri. Veta Hatcheries Hyderabad,
Telangana-500033,
Rep by its Managing Partner,
Mr. Althuru Sahini Reddy.

 - 2. Mr. Althuru Sahini Reddy,**
S/o Mr. Althuru Girish Reddy,
Aged about 29 years,
No.8-2-293/82/N1/41,
Road No.10C MLA, MP Colony,
Near Diamond House,
Hyderabad, Telangana-500033.

(By Sri. Vikhar Ahmed B -Advocate)

ORDER ON IA No.3

The respondents have filed present application Under Order 39 Rule 4 of CPC, 1908 seeking to set aside and vacate the exparte injunction order and appointment of receiver order dtd.06.09.2025 passed by this court, to direct petitioner to deliver back the assets/ trippers to the project sites at its own cost and give its' custody and possession back to the respondents. It is further prayed to fasten punitive exemplary costs upon petitioner for such acts and indulgence of suppression of facts of the case and for

wasting valuable time of the court by filing misleading petition.

2. It is averred in the said application that, the petitioner has approached this court with unclean hands and suppressed vital facts in the petition. Since the court was not appraised of true and correct facts of the case by petitioner in its pleadings, the court in the interest of furtherance of justice passed order dtd.06.09.2025, unknowingly on the basis of false and misrepresented pleadings. The court further directed to issue notice to respondents and posted the case for next hearing fixed on 26.09.2025. Thereafter counsel for respondents filed memo dtd.26.09.2025 before this court by enclosing materials documents, which clearly show the act and indulgence of suppression of facts on part of petitioner in this case. Hence petitioner is not entitled for any reliefs from this court and on very count of misrepresentation and hiding of vital facts of the case, petitioner is summarily liable for punitive cost to be burdened by this court for unclean approach, misguiding the court and dishonestly obtaining aforesaid ex parte interim injunction order. It is

further averred that the memo along with documents filed by respondents dtd.26.09.2025 bring out following material facts, which are suppressed by petitioner.

i) The impugned Arbitral Award dtd.01.08.2025 passed by Sole Arbitrator Mr. P. Chandrashekar Advocate appointed unilaterally by the petitioner, is under challenge before Gurugram, Commercial Court, since November 2024 by way of Sec.34 petition filed by these respondents in ARB-169-2024.

ii) The Gurugram Court vide order dtd.05.11.2024 had passed Exparte interim order for stay of operation of said award and the case proceedings underway before the court. However petitioner i.e., respondent in said case is not appearing before the court.

3. The petitioner has approached this court under pretext of one arbitration notice dtd.03.06.2025, wherein they have again unilaterally appointed the same Sole Arbitrator namely Mr. P Chandrashekar Advocate, who rendered earlier award dtd.01.08.2024, which is under challenge before Gurugram Commercial Court being non-est and void in law as aforesaid. The petitioner has approached this court by completely misrepresenting the fact that loan agreements were signed between the

parties at Gurgaon, now known as Gurugram. In other words, these loan agreements do not confer upon jurisdiction Bengaluru courts, which fact has been purposely suppressed/ misrepresented by the petitioner.

4. It is further averred that loan agreements LNVEN0005965,66,67,68, LNVEN7138,39,39,40,41 and LNVEN725859,60,61,62, so taken note of by this court in its order dtd.06.09.2025 are the same loan agreements, which are subject matter of case under Sec.34 which are pending before Gurugram Commercial Court to set aside award dtd.01.08.2025. The petitioner by dishonestly obtaining such ex parte interim order dtd. 06.09.2025 from this court, approached the project site on 22.09.2025, where defendants assets/ trippers were working and took possession of the same and moved them to near by location/ its godown away from project site. Thus all operations of defendants have come to stand still leading to great daily loss of income/ trippers deployment earning costs. For these reasons it is prayed to discharge, set-aside and vacate the

impugned order dtd.06.09.2025, by allowing the application.

5. The petitioner has filed its objections to above application, wherein it is averred that, the application is not maintainable and same is liable to be rejected on following grounds.

- a) No affidavit is accompanying the application;
- b) In one application several prayers are sought;
- c) Petitioners have not suppressed the information and in fact respondents have presented the application by not disclosing the real facts;
- d) After availing the credit facility and admitting the execution of loan agreements, have not whispered about their credit obligations and fraud they have played on the petitioner.

6. It is further averred that award dtd.01.08.2025 being challenged under Sec.34 of the Act and same is pending before Gurugram Commercial Court. The said fact is not suppressed by petitioner and relevant pleadings with respect to the same is available in para No.14 of the main petition. Further the award was passed on 01.08.2024 and not on 01.08.2025 as contended in the application. The respondents after availing the facility had failed to adhere to credit

obligations as per loan agreements, the petitioner with no other option left had re-terminated the facilities and issued loan recall notices to the respondents to repay the entire outstanding in respect of above mentioned loan accounts on 05.02.2024. Thereafter petitioner appointed the Arbitrator to resolve dispute by issuing reference notice on 26.03.2024, the claim was presented before Arbitrator and in view of non-contest of the same, the award dtd.01.08.2024 was passed. After passing the award, respondents admitted the liability, however requested the regularize the loan account, same was permitted and loan account had got normalized. Since the loan accounts were regularized, Award dtd.01.08.2024 was non-est in law. Further the very fact that respondents were permitted to pay installments post award dtd.01.08.2024 shows that the award passed had become infructuous. Hence the appeal under Sec.34 pending before Gurugram Court is not maintainable as award that was challenged has become infructuous and the fact that there is a bar under Sec.42 of the Arbitration and Conciliation Act. It is

further averred by the respondents that petitioners are not contesting the appeal and as per page No.29 of the documents i.e., order sheet produced by petitioners reflect necessary exparte application filed and same is pending consideration.

7. It is further averred that even though earlier award is under challenge, reference notice is issued on 03.05.2025 and award dtd.01.08.2024 has become infructuous. Thereafter fresh LRN dtd.26.03.2025 was issued and when same was not complied, reference notice dtd.03.05.2025 was issued. If respondents were aggrieved with appointment, they could have disputed the same or approached Hon'ble High Court under Sec.11 of Arbitration and Conciliation Act. Further respondents could have appeared before Arbitrator and challenged his appointment. Having failed to do so, respondents are making frivolous allegations against petitioner. Further it is denied that the courts of Gurugam have jurisdiction and it is specifically stated that Clause No.16.14 of the Agreement clearly stipulate the seats of arbitration as Bengaluru and hence this court has jurisdiction to entertain the

present petition. Further respondents after availing credit facility, had to repay the same with interest in equated monthly installments and schedule assets had to be registered before RTO. However respondents have registered only five vehicles and 10 vehicles were not registered. Further the assets are maintained in very bad condition and very spare parts are removed. If interim order is vacated, respondents will succeed in disposing of the assets or remove it from local limits of this court, which would result irreparable loss and injury to the petitioner and execution of the award drawn by Arbitrator would become impossible. These amongst other grounds, it is prayed to reject the application.

8. The following points arise for consideration;

1. Whether respondents have made out grounds to set aside and vacate the exparte order of appointment of Receiver dtd.06.09.2025 and to direct petitioner to deliver back the possession of petition schedule equipments/ assets/ trippers to respondents at their project site, at its own cost and to fasten punitive exemplary costs on petitioner, as prayed for in the application?

2. What order?

9. Heard arguments of both sides, perused records.

10. My answer in the above points are as under:

Point No.1:- Partly in the Affirmative.

***Point No.2:- As per final order,
for the following***

REASONS

11. Point No.1:- The petitioner has filed present petition against the respondents seeking to pass an order confirming the interim order for taking the possession of the schedule assets from the respondents or from whomsoever possession it is found and to permit the petitioner company to retain the schedule asset in its custody and to direct the jurisdictional police to assist the petitioner company in taking the custody/ possession of the schedule assets.

12. It is averred in the application that, petitioner company is registered under Companies Act having its Corporate Office at Bengaluru along with several other branches across Karnataka and other states. It is engaged as non-banking financial company in the business of extending financial facilities in the form of loans to the borrowers. Respondent No.1 being a

partnership firm and respondent No.2 being co-borrower approached petitioner company seeking credit facility and considering their request, petitioner company sanctioned credit facilities against hypothecation of vehicles to the tune of Rs.6,16,32,000/- and same were disbursed under loan account bearing Nos.LNVEN0005965, LNVEN0005966, LNVEN0005967, LNVEN0005968, LNVEN0005969, as per offer letter dtd.01.07.2021. Respondents executed commercial vehicle/ construction Equipment Master loan cum hypothecation cum guarantee agreement with other supporting documents dtd.07.07.2021 in respect of above loans. After utilizing the above loan, respondents purchased the schedule assets and hypothecated the same in favour of petitioner company, which had exclusive and paramount charge over the same.

13. Thereafter Respondents again approached petitioner company seeking to purchase Item Nos.6 to 9 schedule assets and as per their request, petitioner company sanctioned credit facilities against hypothecation of vehicles to the tune of

Rs.3,43,90,000/- and same were disbursed under loan account bearing Nos.LNVEN0007137, LNVEN0007138, LNVEN0007139, LNVEN0007140, LNVEN0007141. Respondents executed commercial vehicle/ construction Equipment Master loan cum hypothecation cum guarantee agreement with other supporting documents dtd.29.07.2022 in respect of above loans. After utilizing the above loan, respondents purchased Item Nos.6 to 10 schedule assets and hypothecated the same in favour of petitioner company, which had exclusive and paramount charge over the same.

14. Thereafter Respondents again approached petitioner company seeking to purchase Item Nos.11 to 15 schedule assets and as per their request, petitioner company sanctioned credit facilities against hypothecation of vehicles to the tune of Rs.3,43,90,000/- and same were disbursed under loan account bearing Nos.LNVEN0007258, LNVEN0007259, LNVEN0007260, LNVEN0007261 & LNVEN0007262. Respondents executed commercial vehicle/ construction Equipment Master loan cum hypothecation cum guarantee agreement with other

supporting documents dtd.29.07.2022 in respect of above loans. After utilizing the above loan, respondents purchased Item Nos.11 to 15 schedule assets and hypothecated the same in favour of petitioner company, which had exclusive and paramount charge over the same.

15. The respondents had undertaken to repay the loan with interest accrued on it in terms of the agreement without committing default. However contrary to what was agreed, respondents failed to clear the outstanding in spite of repeated requests, demands and reminders of petitioner company. They failed, refused and neglected to make payment and thereby attracting overdue charges and other contractual levies as per terms and conditions governing the said facilities. In view of failure of respondents to meet credit obligations as per loan agreements, petitioner without any other option, re-terminated the facilities and had issued loan recall notices to respondents to repay the entire outstanding in respect of the above mentioned loan accounts on 05.02.2024 and thereafter appointed the Arbitrator to resolve the dispute issuing the reference

notice on 26.03.2024. Thereafter the claim was presented before the Arbitrator, same was not contested and award dtd.01.08.2024 was passed. After passing the award, respondents admitted the liability, however requested to regularize the loan amount. The same was permitted and loan account had got normalized.

16. Thereafter again respondents failed to meet the credit obligations under loan agreements and petitioner with no other option recalled the above loans by issuing loan recall notices to respondents to repay entire outstanding in respect of loan accounts. As on 30.07.2025 respondents are liable to pay consolidated amount of Rs.3,56,00,204/-. The respondents committed breach of terms of loan agreement and demands of petitioner in respect of outstanding amounts proved futile. When petitioner tried to trace the schedule assets for repossession, to their shock and surprise it is learnt from reliable sources that respondents are trying to dismantle the assets and to sell the same with ulterior motive to defeat the rights of petitioner. The loan agreements dtd.07.07.2021, 29.07.2022 and 31.08.2022 contain

Arbitration Clause 16.14 and in accordance with said Clause, petitioner issued an appointment of Arbitrator notice dtd.03.05.2025 and tribunal is constituted and matter is Sub-judice. If respondents succeed in parting in possession of schedule assets and they succeed in disposing of the only security, petitioner will suffer irreparable loss and injury. It is further specifically averred that, petitioner is having its registered office situated at Bengaluru and agreements executed by respondents depict the venue of arbitration shall be Bengaluru and petitioner company intends to adjudicate the dispute by referring to the same to arbitrator situated in Bengaluru. Hence this court has got jurisdiction to entertain the petition. Hence present application for above reliefs.

17. It is necessary to mention that, in pursuant to present petition and interim application under IA No.2 filed under Sec.9(d) of Arbitration and Conciliation Act R/w Order XL Rule 1 of CPC, this court as per urgency pleaded by petitioner passed an ex-parte order dtd.06.09.2025 by allowing IA No.2 and by appointing one Mr. Varadaraj of petitioner company

as a receiver to take interim possession of schedule assets/ equipments from whomsoever possession same are found, with assistance of jurisdiction police and to handover the same to petitioner company by authorizing petitioner to retain said equipments till disposal of the case.

18. Now the respondent has come up with present application on specific ground that, petitioner has suppressed material facts and obtained aforesaid *exparte* interim order on IA No.2 by misrepresentation of facts. The counsel for respondent has argued the grounds urged in above application with regard to Arbitral Award dtd.01.08.2025 passed by Sole Arbitrator by name Sri. P. Chandrashekar in Arbitration Case No.12204/2024, unilaterally appointed by petitioner, challenging the said award before Commercial Court Gurugram under case No.ARB-169-2024 and granting of *exparte* interim order of stay of operation of aforesaid award by said Commercial Court of Gurugram on 05.11.2024. In support of present application the respondent has produced copy of petition under Sec.34 of Arbitration and Conciliation

Act under ARB-169/2024, copy of interim application for stay filed in said case under Sec.36(2) of Arbitration and Conciliation Act, Copy of award passed by Sole Arbitrator in Claim Petition No.12204/2024 in respect of same equipments dtd.01.08.2024, wherein the present petitioner is held entitled for recovery of Rs.7,65,06,467/- with interest at the rate of 18% pa., from the date of filing till realization with liberty to petitioner to repossess the assets hypothecated and to adjust the sale proceeds towards loan outstanding. The filing of present petition and interim application before this court on 04.09.2025 clearly shows that, petitioner had not yet taken possession of aforesaid equipments till filing of this case in pursuant to said award.

19. Most importantly, the respondent has produced copy of interim award passed by Addl.District Judge cum Presiding Judge, Exclusive Commercial Court at Gurugram in CIS No.ARB-169-2024 dtd.05.11.2024, which shows that, the said court by considering the grounds urged by respondent in said case has stayed the operation of impugned arbitral award

dtd.01.08.2024. Further respondent has also produced subsequent order dtd.21.08.2025, which reads thus;

“Today, reply to application for setting aside exparte order dtd.22.01.2025 has been filed by the petitioner. Copy of the same has been provided to learned counsel for applicant/respondent.

The case is now adjourned to 25.09.2025 for arguments on above mentioned application. Record of the arbitral proceedings be also summoned for the date fixed by writing a letter to the learned sole Arbitrator through proper channel. Interim order dtd.05.11.2024 is extended till next date of hearing.”

20. The aforesaid order clearly shows that, the present petitioner who is named as respondent in said case has very well appeared and filed an application for setting aside exparte order passed in favour of petitioner (respondent herein) and the said court has extended the interim order dtd.05.11.2024, which prohibits present petitioner from executing the award passed by sole arbitrator on 01.08.2024. However as rightly argued by respondent side, absolutely nothing is pleaded with regard to the aforesaid award and stay order passed by the Commercial Court of Gurugram.

21. In counter to aforesaid arguments of respondent, counsel for petitioner has produced photos of some of trippers and equipments and argued that, in para No.14 of the present petition, the petitioner has narrated the above facts and as such there is no suppression of facts. However on going through para No.14 of present petition it shows that, the petitioner has vaguely mentioned with regard to recall of aforesaid loan accounts by recall notice dtd. 05.02.2024, appointment of Arbitrator to resolve the dispute by reference notice dtd.26.03.2024, passing of award by said tribunal dtd.01.08.2024.

22. Apart from these averments, it is specifically mentioned that, after passing the said award, the respondents have admitted the liability and as per their request to regularize the loan account, the same is permitted and loan accounts had got normalized. The petitioner has not produced any documents either in respect of aforesaid award or regularization of loan accounts by respondent by admitting their liability. Most importantly, when respondents have challenged the validity of arbitral award in AC No.12204/2024 and when said award has

been stayed by Commercial court of Gurugram, question of respondents admitting the liability and regularization of loan account does not arise. Moreover, if the version of petitioner is believed, there was no necessity for petitioner to file application dtd.22.01.2025 before Commercial Court Gurugram seeking vacation of exparte order dtd. 05.11.2024. These all aspects are sufficient to believe that, the petitioner has filed present petition and interim application by suppression of facts.

23. Most importantly, the learned counsel for respondent has drawn attention of this court to Clause No.16.14 of Three Master Loan cum Hypothecation cum Guarantee Agreement executed between petitioner and respondents, which specifically states that, arbitration proceedings shall be conducted and venue of arbitration shall be at a suitable location identified by the lender i.e., petitioner in Bengaluru or at such other location in India as the lender may determine. The said counsel has further drawn attention of this court to schedule 1 of all three Master loan agreements, which clearly show that the aforesaid agreements were executed

at Gurgaon (now Gurugram) and the jurisdiction of courts is mentioned as Gurgaon itself. The counsel for respondent has relied upon following Judgment of Hon'ble Supreme Court and argued that the very filing of present petition before this Court is contrary to Master loan agreements and only Courts of Gurugram have got jurisdiction.

Caselaw reported in (2020) 4 SCC 310 between Hindustan Construction Company Ltd., V/s NHPC Limited & Anr., (Hon'ble Supreme Court)

5. Given the finding in this case that New Delhi was the chosen seat of the parties, even if an application was first made to the Faridabad Court, that application would be made to a court without jurisdiction. This being the case, the impugned judgment is set aside following BGS SGS Soma JV (supra), as a result of which it is the courts at New Delhi alone which would have jurisdiction for the purposes of challenge to the Award.

6. As a result of this judgment, the Section 34 application that has been filed at Faridabad Court will stand transferred to the High Court of Delhi at New Delhi. Any objections taken on the ground that such objection filed under Section 34 is out of time hence cannot be countenanced. The appeal is disposed of accordingly."

24. Hence respondents have raised serious objection with regard to jurisdiction of this Court, which has to be adjudicated as later stage. The

master Loan agreements produced by petitioner themselves, clearly show that, the petitioner/lender himself has chosen the venue and seat of arbitration as Gurgaon in aforesaid Master Loan Agreements and despite having knowledge that respondents have challenged the initial award dtd.01.08.2024 on the ground of very appointment of Arbitrator, the petitioner has filed present petition to this court by suppressing the aforesaid jurisdiction clause opted by both parties under aforesaid loan agreements.

25. These all aspects are sufficient to hold that the petitioner has obtained the exparte order dtd.06.09.2025 on IA No.2 by suppression of material facts and aforesaid stay order granted by Commercial Court of Gurugram in ARB Case No.169-2024 and as such the said interim order needs to be interfered and reconsidered as prayed for in the application.

26. As far as technical objections raised by petitioner with regard to non filing of affidavit in support of present application is concerned, Rule 18(2) of Karnataka Civil Rules of Practice mandates filing of affidavit only to the applications relating to

the relief's of temporary injunction, attachment, arrest, appointment of guardian or the appointment of receiver or amendment of a pleadings. Hence the said objection raised by petitioner does not hold any water. As far as plea of petitioner with regard to multiple reliefs claimed in present application is concerned, it shows that, the respondent has claimed the main relief of setting aside order of appointment of receiver and rest of the reliefs are consequential to main relief. Hence the present application does not suffer from any technical defects. Further for elaborate reasons narrated above, the respondent has sufficiently proved that, the petitioner has filed present petition and interim application by suppression of material facts with regard to pendency of case under ARB-169-2024 before Gurugram Commercial Court and stay of operation of Award dtd.01.08.2024 passed by Sole Arbitrator in said case. It clearly shows that, the present petitioner has obtained interim order on IA No.2 dtd.06.09.2025 by suppression of facts of above proceedings and thereby it has seized the schedule equipments from the project site of the respondents. Hence the petitioner is liable to restore possession of

said equipments to respondents and also to pay costs incurred by respondents for committing aforesaid act by suppression of stay order granted by Gurugram Commercial Court.

27. Further, though the aforesaid interim order dtd.06.09.2025 with regard to appointment of receiver cannot be set aside or vacated, same can be reconsidered and petitioner may be directed to restore/deliver back possession of schedule equipments to respondents. Accordingly, by allowing the present application petitioner may be directed to deliver back the petition schedule equipments/assets to respondents at their project site at its own costs within specific period and petitioner may be imposed suitable costs for act of suppression of material facts. The application deserves to be allowed in part under above terms. Accordingly, **Point No.1 is answered partly in the affirmative.**

28. Point No.2:- For the reasons stated and findings given on Point No.1, the following is:-

ORDER

IA No.3 filed by respondents

Under Order 39 Rule 4 of CPC, 1908 is hereby allowed, in part.

The petitioner is hereby directed deliver back the possession of petition schedule equipments/ assets/ trippers to respondents at their project site, from where it was seized, at it's own cost within 15 days from the date of this order. In case, petitioner fails to deliver back possession of said schedule equipments/ assets/ trippers to respondents within aforesaid period, petitioner shall be liable to pay cost of Rs.10,000/- per day to the respondents.

The petitioner is also liable to pay cost of Rs.50,000/- to respondents towards cost of this application.

[Dictated to the Stenographer Grade-III, directly on the computer, typed by her, then corrected and signed by me and pronounced in the Open Court, dated **this the 24th day of October 2025**]

(ANAND T. CHAVAN)

LXXXIV Addl.City Civil & Sessions Judge,
Bengaluru.