IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (L) NO.32056 OF 2025

Tata Capital Limited	..	Petitioner
Versus		
Shri Cement Transport Company & Anr.	..	Respondents

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Mr.Nikhil Mehta i/b KMC Legal Venture for the Petitioner.

CORAM: BHARATI DANGRE, J.

DATE : 4th DECEMBER, 2025

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P.C:-

1. The Section 9 Petition is filed by the Tata Capital Limited (erstwhile Tata Capital Financial Services Ltd.), the company involved in the business of providing financial facility, such as Auto Loan, Personal Loan, Business Loan, Home Loan, Asset Loan etc. Loan was sanctioned in favour of the Respondents upon the request for sanction of Construction Equipment Loan against the purchase of construction machinery and the sanction letter was followed by a loan-cum-hypothecation agreement dated 11/10/2023 executed with the Respondents.

The agreement specifically set out the facility and recorded that the Borrower agreed to borrow and the Lender agreed to grant to the Borrower the facility of the specified amount alongwith the moratorium period set out in the agreement, subject to such terms and conditions stated in Annexure appended to the agreement.

The agreement also contain a specific clause for repayment and interest alongwith a clause for penal charges and a specific clause for security.

In terms of the security clause, the Obligors hypothecated the assets and/or security in favour of the Lender on such terms and conditions as provided in the agreement and in the form and manner acceptable to the satisfaction of the Lender for securing the facility together with all interests, costs, fees and expenses and all other monies payable in terms of the facility document. The Obligors also specifically agreed, acknowledged and confirmed that they shall not sale, damage, destroy, dispose, transfer, lease, export or part with possession or create any other encumbrance on the assets, without prior written consent/permission from the Lender and any breach of the same shall be deemed to be a criminal misappropriation of property and the Obligors shall be liable for criminal prosecution. A specific clause in the agreement also recorded that the Obligors confirmed and undertaken that assets so hypothecated to the Lender shall remain in India during the tenure of the facility. It also comprised of a clause for guarantee and as a result, the agreement also involve the Borrowers as well as the Guarantors.

2. According to the Petitioner, subsequent to the execution of the agreement, since the Respondents defaulted the payment, a loan recovery notice dated 06/02/2025 was sent

by the Advocate to the Respondents, which refers to the amount due and payable as outstanding amount in the loan account and the notice indicated that if the amount is not paid within two days from the date of receipt of the notice, the entire loan facility granted in favour of the Borrowers shall be recalled and the amount unpaid shall be determined as due and recoverable. It also made reference to the disputes and differences arising between the parties to be referred to a sole Arbitrator under the provisions of the Arbitration and Conciliation Act, 1996. The notice also asked the Borrower to produce the asset for inspection of the company during normal business hours within two days from the date of receipt of the recall notice along with all original documents.

3. Despite the issuance of the said notice, since no action was initiated at the hands of the Respondents, the Petitions under Section 9 of the Arbitration and Conciliation Act, 1996 are filed, seeking various interim reliefs, which include the relief of appointment of the Court Receiver, High Court, Bombay to take possession of the assets in each of the case, whether in the possession of the Respondents and/or any third party and a relief is also sought to hand over the asset to the Petitioner for its sale. Interim relief in terms of prayer clause (c) reads thus :-

> *"(c) The Respondents, by themselves, their servants and/or agents be restrained from dealing, selling, alienating, disposing and/or creating third party rights in respect of the Asset being ASHOK LEYLAND LIMITED: CEQ OF AL U 4923 TT MULTI AXLE TRAILER , ENGINE NO: JAPZ136832, CHASSIS NO: MB1UPKHDSJPAE6861 VIDE REGISTRATION NO: RJ09GD2869 in any manner whatsoever and an order of permanent injunction be passed in that regard in favor of the Petitioner herein."*

4. Learned counsel Mr.Mehta has placed before the Court the affidavit of service in each of the Petition, indicating that the notice has been served privately upon the Respondents and this is so attempted to be depicted through the tracking report. However, he concede to the fact that an acknowledgment from India Post is not placed on record. In such circumstances, I deem it appropriate to issue notice to the Respondents, making it returnable on 14th January, 2026.

Apart from the court notice, notice is also permitted to be served upon the Respondents once again by private mode of service.

However, pending the service being effected upon the Respondents and also consideration of the ad-interim relief in terms of prayer clauses (a), (b) and (d), since it is noted that the Petitioner has already forwarded loan recall notice and granted an opportunity to deposit the amount and, since, there was no compliance, I deem it appropriate to grant ad-interim relief in terms of prayer clause (c), which is already reproduced above.

(BHARATI DANGRE, J.)