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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 08th May 2025*

+ O.M.P.(I) (COMM.) 16/2025 & I.A. 1130/2025

CLIX CAPITAL SERVICES PVT LTDPetitioner

Through: Mr. Puneet Raj Banderwal, Advocate.

versus

VISALAKSHI V & ORS.Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This petition is preferred on behalf of the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking a direction to appoint Shri Samuel J. Biju, Officer of the Petitioner Company, as Receiver to take over possession of the finance medical equipment mentioned in the petition from the possession of the Respondents and to restrain the Respondents from encumbering the equipment in any manner.

2. Petitioner is a Company engaged in business of advancing/financing loan to the borrowers and is also registered as a Non-Banking Financial Company. Respondent No. 1 approached the Petitioner for financial assistance for purchase of machines/medical equipment under a loan, representing that Respondents were financially sound and will repay the loan regularly as per the instalments schedule. Based on the representation, Petitioner sanctioned Medical Equipment Loan on 24.07.2023 for a sum of Rs. 2,45,33,613/-.



3. It is averred that Respondents executed the Facility-cum-Hypothecation Agreement ('FHA') dated 24.07.2023 along with other documents and the loan was disbursed on 25.07.2023, repayable in 75 monthly instalments of Rs. 5,17,789/- and medical equipment were purchased by the Respondents. It was agreed by the Respondents that to secure the loan, they shall provide additional security deposit of Rs. 26,88,000/- and therefore, after deducting this amount, balance amount of Rs. 2,15,04,000/- was disbursed. Medical equipment, which is the subject matter of this petition, is '*Premium Full Field Digital Mammography Selenia Dimensions 3D Tomosynthesis*'.

4. It is averred that contrary to the assurance to repay the loan, Respondents defaulted in payment of the EMIs and Petitioner issued a Loan Termination Notice dated 25.11.2024. Petitioner asserts that as on 10.01.2025, the net default amount is Rs. 10,52,128/-, while the foreclosure amount is Rs. 2,24,54,543.75/-.

5. Learned counsel for the Petitioner submits that Respondent No. 1 is the principal borrower as well as proprietor of M/s Gene-X Women Care Laboratories, a Proprietorship Firm and Respondents No. 2 and 3 are the guarantors. Clause 3.1 of FHA provides for cross collateral of the medical equipment and consequences of Event of Default are provided in Clause 7.3, which stipulates that notwithstanding any other right that may be available to the lender on the happening of an Event of Default, lender may by notice to the borrower terminate either whole or part of the facility and repossess the hypothecated assets. It is urged that Loan Termination Notice was sent on 25.11.2024 to the Respondents and till date, the net default amount is Rs.10,52,128/-, while the foreclosure is Rs. 2,24,54,543.75/-. Since



Respondents have failed to pay the default amount, Petitioner has become entitled to repossess the medical equipment hypothecated towards the loan sanctioned on 24.07.2023.

6. In support, learned counsel places reliance on the judgment of this Court in *GE Capital Services India v. Vasan Health Care Pvt. Ltd., 2016 SCC OnLine Del 1547*, wherein Court had permitted the Respondent/Borrower to clear the outstanding dues within four weeks failing which the Receiver appointed by the Court was to take possession of the hypothecated machines and medical equipments financed by the Petitioner/Lender to the Respondent. Report was to be filed by the Receiver before the Arbitrator, which the Petitioner was proposing to appoint. It was further directed that in case Respondent failed to clear the amount, Petitioner could sell the machinery in the open market after giving the first choice to the Respondent to exercise the option of purchasing. This judgment was taken up in appeal by the Borrower and the Division Bench disposed of the appeals by order dated 08.04.2016 appointing two Receivers, one of the Lender and one of the Borrower. Division Bench was of the opinion that permitting the Receiver to take charge of the machines used for diagnostic purposes would mean that warehouse charges would have to be incurred by the Lender and machinery would lie idle till sold. In these circumstances, direction of the learned Single Judge was modified to the extent that hypothecated property would be in deemed possession of joint receivership but under physical possession of Borrower's Receiver who would be responsible for its custody, subject to payment of Rs.5 lacs per week by the Borrower. Subsequently, on reviews being filed by the Lenders on the ground that there was non-cooperation from the Borrowers and lot of hypothecated machinery was not found



at the places it was installed, order dated 08.04.2016 was recalled and appeals were dismissed and as a result the Receiver appointed by the learned Single Judge was to act as a sole Receiver and take charge of the hypothecated machinery. SLPs No.15717-15724/2016 filed against order dated 24.05.2016 in review petitions were dismissed by the Supreme Court on 12.07.2016.

7. Reliance is also placed on an order dated 25.04.2025 passed by the Co-ordinate Bench in O.M.P.(I) (COMM.) 97/2025 in ***Clix Capital Services Pvt Ltd v. Uhealth India Private Limited & Ors.***, where in similar circumstances and considering the same Clause 7.3(c) of the Agreement, Court appointed a Receiver to take possession of financed hypothecated medical equipments as the borrower had defaulted to repay the loan amount and the loan facility was terminated.

8. Be it noted that when this petition was listed on 09.04.2025, none appeared on behalf of the Respondents despite the matter having been called twice. Noting that as per affidavit of service filed by the Petitioner, Respondents were served, adverse orders were deferred and matter was adjourned to 01.05.2025. On the said date also, there was no appearance for the Respondents and adverse order was again deferred, adjourning the matter for today. This is the second call of the matter. None appeared for the Respondents on the first call and none appears on the second call. Accordingly, Respondents are set *ex parte* and Court proceeds to hear the petition.

9. Indisputably, a loan in the sum of Rs. 2,45,33,613/- was sanctioned in favour of Respondent No. 1 as a borrower vide sanction letter dated 24.07.2023 and Respondents No. 2 and 3 stood guarantors. The loan was to



be repaid in 75 equal monthly instalments of Rs. 5,17,789/-. Respondents failed to repay the loan and Loan Termination Notice was issued by the Petitioner on 25.11.2024. FHA provides for cross collateral and Respondents hypothecated the medical equipment aforementioned in favour of the Petitioner. Consequences of Event of Default are provided in Clause 7.3 and relevant sub-Clause (c) read as follows: -

“7.3 Consequences of Events of Default:

(c) declare the Security created, if any, pursuant to the terms of the Transaction Documents to be enforceable, and the Lender or such other person in favour of whom such security or any part thereof is created shall have, inter alia, the following rights:

i. to enter upon and take possession of the assets comprised within the Security (Including the Hypothecated Assets), if any, and/or to transfer the assets comprised within the Security created, if any, to any person including the Lender, by way of lease, leave and license, sale or otherwise;

ii. seize, recover, receive, appoint receivers or remove, or take possession of all or any part of the said assets comprised within the Security and also of the books of accounts, papers, documents and vouchers and other records relating thereto;

iii. remove and/or sell the Hypothecated Assets or any of them by public auction or private contract with or without intervention of the court and subject to such terms and conditions as the Lender may think fit, and to give valid and effectual receipt(s) and discharge(s) for the same transfer, deliver or otherwise deal with or dispose of the Hypothecated Assets or any rights or claims relating thereto In any manner whatsoever and upon such terms and conditions as the Lender may think fit, but without being bound to exercise any of these rights or powers or be liable for any loss or shortfall or consequence in the exercise thereof, save and except for the loss Se negligence or wilful misconduct of the shortfall caused due to or the gross Lender, and notwithstanding that there pay be any pending suit or other proceedings, and

iv. exercise any right, power or remedy permitted to it by law, including by suit, in equity, or by action at law, or both, or otherwise, whether for specific performance of any covenant, condition or term contained in this Agreement or other Transaction Documents or for an injunction against a violation of any of the terms and conditions of this Agreement or other Transaction



Documents, or in aid of the exercise of any power or right granted in this Agreement or other Transaction Documents and/or as a creditor.”

10. As per the Petitioner, the net default amount as on 10.01.2025 is Rs.10,52,128/-, while total foreclosure amount is Rs. 2,24,54,543.75/-. In these circumstances, I am of the view that Petitioner is right in claiming repossession of the medical equipment ‘Premium Full Field Digital Mammography Selenia Dimensions 3D Tomosynthesis’, hypothecated under the FHA. In similar circumstances, Co-ordinate Bench of this Court in **GE Capital Services India (supra)** directed repossession of the hypothecated equipment. For taking repossession, I appoint Mr. Samuel J. Biju, (Mobile No. 9884827838) as a Receiver.

11. However, considering that the equipment is a medical equipment, Respondents are granted five weeks’ time to pay the net default amount of Rs. 10,52,128/- to the Petitioner and till such time, the equipment will be in deemed custody and possession of the Receiver and Respondents will not take any step to encumber the equipment in any manner whatsoever.

12. At this stage, learned counsel for the Petitioner submits that steps will be taken within three weeks to invoke the arbitration agreement, being Clause 8.7 of FHA for appointment of an Arbitrator. In this light, it is further directed that in case the amount as directed is paid by the Respondents within the time granted by this Court, Receiver will not repossess the equipment and further order on this aspect will be passed by the learned Arbitrator after entering upon reference. However, in case of failure to make the payment, Receiver will take possession of the equipment and Respondents will not create any obstruction in taking peaceful possession.



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13. Needless to state, in case of hindrance created by the Respondents in taking repossession, Receiver will be at liberty to take assistance of Police from the local police station and if sought, assistance will be rendered by the concerned SHO.

14. Receiver will file his report before the Arbitrator and in case, possession is taken, sale of the equipment will be as per the directions of the Arbitrator, but in that event, first offer shall be given to the Respondents to purchase the medical equipment. Only when Respondents fail to purchase, equipment may be sold in the open market. Parties would be at liberty to seek modification of this order before the Arbitrator, if the circumstance would so require.

15. Petition along with pending application stands disposed of in the aforesaid terms.

JYOTI SINGH, J

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