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

% *Date of Decision: 25th April, 2025*

+ O.M.P.(I) (COMM.) 62/2024 and I.A. 4288/2024 and 10075/2025

M/S V AND L DIAGNOSTICS CENTRE LLPPetitioner
Through: Mr. Dev Roy, Advocate.

versus

M/S CLIX CAPITAL SERVICES PVT LTDRespondent
Through: Ms. Deepika V. Marwaha, Senior
Advocate with Mr. Puneet Raj Banderwal, Mr.
Tanishq Sharma, Mr. Sarthak Gupta and Mr. Ravi
Shankar Garg, Advocates.

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+ O.M.P.(I) (COMM.) 406/2024 and I.A. 46444/2024

CLIX CAPITAL SERVICES PVT. LTDPetitioner
Through: Ms. Deepika V. Marwaha, Senior
Advocate with Mr. Puneet Raj Banderwal, Mr.
Tanishq Sharma, Mr. Sarthak Gupta and Mr. Ravi
Shankar Garg, Advocates.

versus

M/S V AND L DIAGNOSTIC CENTRE LLP
AND ORS.Respondents
Through: Mr. Dev Roy, Advocate.

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+ O.M.P.(I) (COMM.) 407/2024 and I.A. 46446/2024

CLIX CAPITAL SERVICES PVT LTDPetitioner
Through: Ms. Deepika V. Marwaha, Senior
Advocate with Mr. Puneet Raj Banderwal, Mr.
Tanishq Sharma, Mr. Sarthak Gupta and Mr. Ravi
Shankar Garg, Advocates.

versus



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M/S V AND L DIAGNOSTIC CENTRE LLP
AND ORS.

.....Respondents

Through: Mr. Dev Roy, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. O.M.P.(I) (COMM.) 62/2024 is preferred on behalf of M/s V and L Diagnostics Centre LLP (hereinafter referred to as “V&L”) under Section 9 of the Arbitration and Conciliation Act, 1996 (‘1996 Act’) for restraining M/s Clix Capital Services Pvt Ltd (hereinafter referred to as “Clix Capital”) from taking possession of the hypothecated assets and/or any coercive steps with respect to the said assets such as sale/auction.
2. Case of V&L as set up in the petition is that V&L is a Limited Liability Partnership engaged in the business of running a medical diagnostic centre providing services such as MRI scan, CT scan etc. V&L approached Clix Capital to avail loan facility and seek financial assistance for purchase and procurement of medical equipments used for endoscopy, laparoscopy and ventilators, monitors, etc. for its Diagnostic Centre and accordingly, a Facility-cum-Hypothecation Agreement (‘Agreement’) was executed and signed between the parties on 28.06.2022.
3. It is averred that prior to the execution of the Agreement, Clix Capital issued sanction letter dated 22.06.2022 enumerating the terms and conditions for disbursement of the loan, which included the payment schedule. Clix Capital vide letter dated 29.06.2022 issued delivery order for medical equipments for V&L in favour of Wipro GE Healthcare mentioning therein



that the money was to be paid on receipt of delivery order. V&L states that it started making payments of EMIs towards the loan availed *bonafidely* as per the schedule, however, despite the execution of the Agreement in June, 2022, it was only in March, 2023 that V&L was able to procure the machines from Clix Capital and the machines were installed only on 27.11.2023. In view of this, V&L requested Clix Capital to reconcile the account statements, but instead of doing so, Clix Capital coerced V&L to issue 03 post-dated cheques. Apprehending that Clix Capital would sell the machines hypothecated to it, which were the backbone of the Diagnostic Centre, in the interest of the patient care, V&L filed the present petition when Clix Capital illegally vide letter dated 05.01.2024 terminated the Agreement.

4. Be it mentioned that by order dated 23.02.2024, this Court restrained Clix Capital from seizing, possessing or auctioning the equipments/assets noting the submission of V&L that the equipments were required at the Diagnostic Centre to subserve the interest of the patients and stayed the arbitral proceedings commenced by Clix Capital, on a *prima facie* opinion that unilateral appointment of a sole Arbitrator was hit by the judgment of the Supreme Court in *Perkins Eastman Architects DPC and Another v. HSCC (India) Ltd., (2020) 20 SCC 760*. By the same order, V&L was restrained from creating third party rights or interest in or in any manner dissipating or alienating the hypothecated equipments and assets. Parties were referred for mediation on their request before the Delhi High Court Mediation and Conciliation Centre.

5. As the chronology goes, parties settled their disputes before the Mediation Centre and a Settlement Agreement was executed and signed on



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25.04.2024. V&L agreed to pay the overdue amount till 25.04.2024 in 04 equal installments subject to the disputed interest amount. It was also undertaken that monthly installments from May, 2024 will be paid as per the re-payment schedule. One of the terms of the settlement was that in case V&L defaulted in the agreed payment including regular monthly installments, it shall surrender peaceful possession of the medical equipments hypothecated under the loan facility agreement. Certain other terms were also incorporated in the Settlement Agreement.

6. Clix Capital thereafter filed an application being I.A. 10075/2025 for vacation of interim order dated 23.02.2024 on the ground that having failed to make payments as per the Settlement Agreement, V&L became liable to surrender possession of the equipments in terms of paragraph 6 of the Settlement Agreement, which was the default clause. It was brought forth in the application that Clix Capital had extended the credit facility vide two separate sanction letters dated 22.06.2022 and 25.08.2022 for a sum of Rs.3,73,30,107/- and Rs.1,40,18,342/- respectively and that default had increased manifolds. It was stated that as on 13.04.2025, defaulted receivable was to the tune of Rs.2,94,82,598/- and foreclosure amount was Rs.6,21,91,889.80 for the five loans. It was also stated in the application that despite the interim order having been passed on 23.02.2024 and making repeated assertions that a petition under Section 11(6) of 1996 Act was being filed by V&L seeking appointment of an Arbitrator, the petition had not seen the light of the day and V&L had no intent to commence the arbitral proceedings.

7. Subsequently, Clix Capital also filed two petitions under Section 9 of the 1996 Act, being O.M.P.(I) (COMM.) 406/2024 and O.M.P.(I) (COMM.)



407/2024 for appointment of Receivers to re-possess the following medical equipments hypothecated against the loan amount of Rs.3,73,30,107/-, sanctioned vide letter dated 22.06.2022, disbursed in Tranche-I, Tranche-II and Tranche-III on 28.06.2022:-

S. No.	Equipment	Manufacturer	Dealer	Unit
1.	Wato 10	Mindray	Myramedcare	1
2.	Wato 20	Mindray	Myramedcare	1
3.	Wato ex 35	Mindray	Myramedcare	1
4.	Laparoscopy	Mindray	Myramedcare	1
5.	Ventilator SV 800	Mindray	Myramedcare	3
6.	SV 300	Mindray	Myramedcare	3
7.	SV 300 neo mode	Mindray	Myramedcare	2
8.	SV 600	Mindray	Myramedcare	1
9.	UMEC 12 With 2ch IBP and ETCO2	Mindray	Myramedcare	2
10.	UMEC 12 With 2 ch IBP	Mindray	Myramedcare	7
11.	UMEC 105 para	Mindray	Myramedcare	14
12.	UMEC with neo accessories	Mindray	Myramedcare	6
13.	UMEC 10 Patient Monitor	Mindray	Myramedcare	7
14.	Dual Dome LED Multicolor	Mindray	Myramedcare	2
15.	R12 ECG Machine	Mindray	Myramedcare	2
16.	R3 ECG Machine	Mindray	Myramedcare	1
17.	Defibrillator	Mindray	Myramedcare	2
18.	Defibrillator	Mindray	Myramedcare	2

8. Learned counsel for V&L submits, on instructions, that V&L is ready and willing to appoint an Arbitrator to adjudicate the *inter se* disputes between the parties and till such time the Arbitral Tribunal is constituted and enters upon reference, interim order dated 23.02.2024 be continued considering that the hypothecated medical equipments are being used in a diagnostic lab and if Clix Capital is permitted to re-possess the equipments,



it will cause irreparable harm to patient care. On the offer to pay the outstanding dues, it is asserted that V&L is willing to pay a sum of Rs.10 lacs and that too, within two months.

9. Learned Senior counsel for Clix Capital *per contra* vehemently opposes the continuation of interim order on multiple grounds. It is contended that Section 9(2) of the 1996 Act requires that where Court passes an order for any interim measure or protection, the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such time as the Court may determine. It is a settled law that if the party having an interim order in his favour does not initiate steps to resort to arbitration, the interim order must be vacated and in this context, reliance is placed on the judgment of Division Bench of this Court in ***Ezen Aviation Pty Limited and Another v. Big Charter Private Limited, 2021 SCC OnLine Del 5369***. The argument is that over a year has passed since the interim order was passed on 23.02.2024 and apart from making statements before the Court that petition under Section 11(6) of 1996 Act will be listed in near future, no concrete steps have been taken towards commencement of the arbitral proceedings and till date no such petition is listed.

10. It is further argued that cross collateral of the medical equipments was provided under Clause 3.1 of the Agreement and consequences of event of default were provided in Clause 7.3, which provides that notwithstanding any other right that may be available to the Lender or anything contrary contained in any of the Transaction Documents, on the happening of an Event of Default, the Lender may by a notice to the Borrower terminate either whole or part of the facility and re-possess the hypothecated assets apart from other options. It is submitted that loan recall notice was issued to



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V&L and as on 13.04.2025 in respect of all 05 loan accounts, default receivables have risen to Rs.2,94,82,598/- and foreclosure amounts are Rs.6,21,91,889.80. The borrower DPD has passed 600 days and in this backdrop, Clix Capital has become entitled to re-possess the equipments hypothecated for the loans taken in three tranches under sanction letter dated 22.06.2022, which is the subject matter of these petitions and thus a Receiver be appointed to take possession. In support, reliance is placed on the judgment of Co-ordinate Bench 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.

11. Reliance is also placed by learned Senior Counsel 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.

12. Heard learned counsel for V&L and learned Senior counsel for Clix Capital.

13. It is not dispute that a Facility-cum-Hypothecation Agreement was entered into between the parties on 28.06.2022 and cross collateral of the equipments in question was provided by virtue of Clause 3.1 of the Agreement. Consequences of Event of Default are provided in Clause 7.3 and relevant sub-Clause (c) reads 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.”

14. These petitions concern loans taken by V&L in three tranches under sanction letter dated 22.06.2022 and the total amount was Rs.3,73,30,107/-. Under a separate sanction letter dated 25.08.2022, loan for an amount of Rs.1,40,18,342/- was taken by V&L in two tranches on 31.08.2022. Clix Capital issued loan recall notice and terminated the loan facility. As



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brought out by Clix Capital against all 05 loan accounts, the default receivables as on 13.04.2025 are Rs.2,94,82,598/- while foreclosure amount is Rs.6,21,91,889.80. In this background, Clix Capital seeks repossession of 18 equipments/machineries as aforementioned in a tabular form. Significantly, the only argument put forth on behalf of V&L is that it is ready and willing to appoint an Arbitrator and at best, would pay a sum of Rs.10 lacs in two months.

15. Learned Senior counsel for Clix Capital is right in her submission that Section 9(2) of 1996 Act requires that where Court passes an order of interim measure or protection, arbitral proceedings shall be commenced within a period of 90 days from the date of the order or within such time as the Court may determine. In *Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479*, the Supreme Court observed that party invoking the jurisdiction under Section 9 of the 1996 Act must satisfy the Court that it intends to take the disputes to arbitration and while passing the interim order and in order to ensure that effective steps are taken for commencement of arbitral proceedings, Court can pass a conditional order to put the applicant to such terms, as it may deem fit with a view to see that effective steps have been taken for commencing the arbitral proceedings. Relying on the said judgment, Division Bench of this Court in *Ezen Aviation Pty Limited (supra)*, set aside the order of the learned Single Judge passed under Section 9 of the Act on the ground that Respondent before the Division Bench had failed to initiate arbitral proceedings within the statutory period or even in the period far beyond 90 days. In the present case, interim order restraining Clix Capital from seizing, possessing or auctioning the equipments was passed on 23.02.2024 and while V&L repeatedly asserted



that petition under Section 11(6) of 1996 Act has been filed and will be listed soon, till date, the petition has not seen the light of the day and this, in my view, is sufficient reason to vacate the interim order.

16. At this stage, both parties agree that the three petitions can be disposed of by the Court appointing a sole Arbitrator and propose the name of Ms. Justice Mukta Gupta, former Judge of this Court. However, learned Senior counsel for Clix Capital submits that *dehors* the commencement of the arbitral proceedings, Receiver be appointed to take repossession of the equipments in question as their values are depreciating with permission to sell them and rival claims of the parties can be decided in the arbitral proceedings. Counsel for V&L reiterates that repossession of the medical equipments will jeopardize the interest of the patients since they are being used in a Diagnostic Centre.

17. Having given my thoughtful consideration, I am of the view that Clix Capital is right in claiming repossession of the medical equipments hypothecated under the Loan Agreement and in this view, I find strength from the judgment of the Co-ordinate Bench in *GE Capital (supra)*, which has been upheld upto the Supreme Court. Following the course of action followed by the learned Single Judge in the said case, I appoint Mr. Neeraj Dahiya, an officer of Clix Capital as a Receiver to take possession of the equipments, which are subject matter of these petitions, as proposed by Clix Capital. V&L is, however, granted four weeks' time to pay the default receivable amount under the 03 loans in question and till such time, the equipments will be in deemed custody and possession of the Receiver and V&L will not take any steps to encumber the assets in any manner whatsoever. In case the amount is paid within the time frame granted by the



Court, Receiver will not re-possess the equipments and further orders on this aspect will be passed by the learned Arbitrator. In case of failure to make the payment, Receiver will take possession on expiry of 04 weeks from today. Needless to state that V&L will not create any obstruction and its representative will permit the Receiver to take peaceful possession of the equipments. Receiver shall be at liberty to take the assistance of local police in case any hinderance is caused and if any such assistance is sought, the local police station shall render full co-operation. Receiver will file his report before the learned Arbitrator and in case possession of equipments is taken sale shall be carried out as per further directions of the Arbitrator but in that event first offer shall be given to V&L to purchase the same, but if it fails to purchase, the equipments may be sold in the open market. Parties are at liberty to apply before the learned Arbitrator for modification of this order, if the circumstances so require.

18. With the consent of the parties, Ms. Justice Mukta Gupta, former Judge of this Court (Mobile No.9650788600), is appointed as a sole Arbitrator to adjudicate the disputes between the parties. As agreed between the parties, the arbitration will be conducted under the aegis of Delhi International Arbitration Centre ('DIAC') and as per its rules. Fees of the learned Arbitrator shall be fixed in accordance with DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

19. Arbitrator shall make a disclosure as required under Section 12 of the 1996 Act.

20. It is made clear that this Court has not expressed any opinion on the merits of the case and the learned Arbitrator will adjudicate the disputes between the parties without being influenced by this order.



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21. All three petitions are disposed of in the aforesaid terms along with pending applications.

APRIL 25, 2025/shivam/KA

JYOTI SINGH, J