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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.463 OF 2015

Tata Chemicals Limited ...Petitioner
V/s.
G.V. Puntambekar & Sons Pvt. Ltd. & Anr. ...Respondents

Mr.Mustafa Sabiyuddin with Mr.Abhishek Adke i/b Legasis Partners for the Petitioner.

Mr.Sandesh Deshpande for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 25TH JUNE, 2015.

P.C. :-

1. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996, the petitioner seeks an order and direction against respondent no.1 to deposit an amount of Rs.2,85,48,467/- and also seeks an injunction restraining the respondents from in any manner selling, transferring, disposing of, or alienating or encumbering or mortgaging or charging or parting with possession of etc. any right, title or interest in favour of anyone else in respect of movable and immovable properties.

2. It is the case of the petitioner that respondent no1 was appointed as distributor on a non exclusive and principal to principal basis from 1st April, 2012 to 31st March, 2014 under an agreement arrived at between the parties. Respondent no.1 had deposited a sum

of Rs.10.00 lacs as and by way of security with the petitioner. The petitioner supplied the products to respondent no.1 and raised various invoices from time to time upon respondent no.1. Respondent no.1 however, did not honour the invoices raised by the petitioner. According to the petitioner as on 28th February, 2014, an amount of Rs.2,82,51,272.30 ps. was due and payable by respondent no.1 to the petitioner. The petitioner issued notice of demand on 21st April, 2014, calling upon respondent no.1 to pay the said amount with further interest thereon. The respondent vide its letter dated 5th May, 2014, accepted the said liability however, requested the petitioner to grant time till 30th June, 2014 for making repayment on the ground that respondent no.1 was allegedly undertaken to financial crunches. Respondent no.1 did not pay the said sum despite assurance.

3. This Court has after giving detailed reasons passed an ad-interim order dated 10th February, 2015, granting various ad-interim measures and also directed respondent no.1 to file an affidavit of disclosure. On 4th March, 2014, this Court passed further ad-interim reliefs in faovur of the petitioner. None of these orders are impugned by respondent no.1 by filing an appeal.

4. Pursuant to the order passed by this Court, respondent no.1 has filed an affidavit in reply and also affidavit of disclosure. A perusal of the affidavit in reply and affidavit of disclosure, makes it clear that respondent no.1 has admitted the liability of the petitioner. Insofar as various properties disclosed by respondent no1. In the affidavit of disclosure is concerned, according to respondent no.1, all such properties are already mortgaged in favour of third parties. Respondent no.1 is heavily indebted to various parties. In my view, there is no answer to the claim of the petitioner on merits by

respondent no.1 in the affidavit in reply. The petitioner has good chances of succeeding in the arbitration proceedings.

5. Learned counsel for the petitioner invited my attention to the judgment of this Court in *L & T Finance Limited vs. Duplex Industries Ltd. & Anr. 2013 (3) Mh.L.J. 864* in support of his submission that since all the properties of respondent no.1 are already encumbered and there are no other unencumbered properties available with respondent no.1 and respondent no.1 having admitted the claim of the petitioner, in this situation if respondent no.1 is not directed to furnish a security to the extent of the claim made by the petitioner, even if the petitioner succeeds, the petitioner would not be able to recover any amount from respondent no.1 and there would be a paper decree.

6. This Court, in the said judgment has taken a view in the identical facts and has directed the respondent to secure the claim of the petitioner by furnishing the security to the satisfaction of the Prothonotary & Senior Master of this Court. In my view, the judgment of this Court in the case of *L & T Finance Limited* (supra) squarely applies to the facts of this case.

7. The petitioner has made out a case for an order for directing the security by respondent no1. In favour of the petitioner as prayed for.

8. I therefore, pass the following order :-

i). Arbitration petition is made absolute in terms of prayer clause (a).

ii). It is made clear that the amounts shall be deposited within a period of two weeks from today. However, within a period of two weeks from today, respondent no.1 shall be at liberty to furnish the bank guarantee in the name of the Prothonotary & Senior Master of a nationalized bank for an amount of Rs.2,85,48,467/- with prior intimation to the petitioner's advocate in lieu of the said deposit.

iii). If respondent no.1 does not exercise the option to furnish any such bank guarantee within a period of two weeks, the order passed in terms of prayer clause (a) to deposit the said amount within a period of two weeks from today shall be complied with as directed.

iv). The arbitration petition is also made absolute in terms of the *ad-interim* order passed on 10th February, 2015 and 4th March, 2015. No order as to costs.

(R.D. DHANUKA, J.)