

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO. 555 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 557 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 560 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 569 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 570 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 573 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 602 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 616 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 617 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 618 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 620 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 638 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 642 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 666 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 667 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 865 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 866 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 867 OF 2015****ALONGWITH****ARBITRATION PETITION NO. 868 OF 2015**

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ARBITRATION PETITION NO. 870 OF 2015
ALONGWITH
ARBITRATION PETITION NO. 872 OF 2015
ALONGWITH
ARBITRATION PETITION NO. 873 OF 2015
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ARBITRATION PETITION NO. 881 OF 2015
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ARBITRATION PETITION NO. 896 OF 2015
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ARBITRATION PETITION NO. 897 OF 2015
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ARBITRATION PETITION NO. 911 OF 2015
ALONGWITH
ARBITRATION PETITION NO. 912 OF 2015
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ARBITRATION PETITION NO. 913 OF 2015
ALONGWITH
ARBITRATION PETITION NO. 914 OF 2015
ALONGWITH
ARBITRATION PETITION NO. 940 OF 2015**

Tata Capital Financial Services Ltd. Petitioner

VERSUS

Kalinga Commercial Corporation Limited & Anr. Respondents

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

Ms.Amrita Panda, a/w.Mr.Anand Upadhay, a/w.Mr.Pravin Kamble for Respondent No.1.

Mr.Depesh Panda, a/w. Mr.Anand Upadhay, i/b.ANP Chambers for the Respondent No.2.

CORAM : R.D. DHANUKA, J.

DATED : 12th AUGUST, 2015

P.C.

By all these petitions filed under section 9 of the Arbitration and

Conciliation Act, 1996 the petitioner seeks appointment of the Court Receiver and injunction in respect of the hypothecated assets and other reliefs.

2. Learned counsel appearing for the respondents seeks time to file affidavit in reply. However, the respondents have brought to my notice certain orders passed by the Orissa High Court as well as the order passed by the Division Bench of this court in Appeal (L) No.337 of 2015 and other connected matters.

3. It is not in dispute that the respondent no.1 has filed a writ petition before the High Court of Orissa (523 of 2013) against Orissa Mining Corporation Ltd. and others. The petitioners herein are impleaded as respondent nos. 5 and 10 in the said proceedings. By an order dated 5th November, 2014, the Orissa High Court after rendering reasons has directed that opposite party nos. 2 to 11 thereof including the petitioners herein not to take any coercive action against the respondent no.1 herein until further orders. The said Writ Petition No.523 of 2013 is pending before the High Court of Orissa.

4. In the meanwhile the learned arbitrator has rendered an award against the respondents which has been already impugned by them within the time prescribed under section 34(3) of the Arbitration and Conciliation Act, 1996 and the said petition is pending.

5. Learned counsel appearing for respondent no.2 states that the respondent no.2 was not a party to the alleged loan agreement and did not execute any guarantee on behalf of the respondent no.1 or personal guarantee and thus cannot be impleaded as party respondent to the present proceedings. He submits that the name of the respondent no.2 thus shall be deleted from the cause title of the

petition.

6. Learned counsel appearing for the respondent no.1 raises an issue of maintainability of this petition on various grounds. It is submitted that no amount was given as and by way of loan to the respondent no.1 by the petitioner under the loan agreement annexed to the petition. It is submitted that in any event the said loan agreement was not sufficiently stamped. Learned counsel invited my attention to the order dated 4th August, 2015 passed by the High Court of Orissa in Contempt Petition No.679 of 2015 in which Mr.Chandan Das, State Head of the petitioner and the Managing Director have been impleaded as contemptuous. By the said order the Orissa High Court has continued the interim order passed by the writ court and also has clarified that the coercive action will also include appointment of any receiver or commissioner in respect of the properties of the respondent no.1 herein.

7. Learned counsel also invited my attention to the order passed by the Division Bench of this court in Appeal (L) No. 337 of 2015 and states that though the Division Bench had directed the petitioner herein to raise all contentions before Orissa High Court in the writ petition, the petitioner has not filed any proceedings before the Orissa High Court for redressal of its grievances.

8. Mr.Mehta,learned counsel appearing for the petitioner on the other hand after perusing the orders passed by Orissa High Court states that the petitioner would apply before the High Court of Orissa for vacating and/or modifying the orders passed by the Orissa High Court in Contempt Petition No.679 of 2015 and in Writ Petition No.523 of 2013. It is however submitted that even Division Bench of this court in the order said dated 10th April, 2015 has not stayed the order of

injunction and the order directing the respondent no.1 therein to file affidavit of disclosure.

9. Insofar as issue of stamp duty raised by the learned counsel appearing for respondent no.1 is concerned, it is stated by the learned counsel for the petitioner that the petitioner would apply for adjudication of the loan document and would pay requisite stamp duty within two weeks from the date of adjudication of the stamp duty by the Collector of Stamps without prejudice to the rights and contentions of the petitioners. Statement is accepted.

10. Learned counsel appearing for the respondent no.1 states that insofar as the hypothecated assets described in the petition are concerned, without prejudice to the rights and contentions of the respondent no.1 raised herein and in arbitration petition filed by it under section 34 of the Arbitration Act, the respondent no.1 would not create any third party rights in respect of such assets till the petitioner applies for appropriate order for modification and/or for vacating the order passed by the Orissa High Court and till any orders are passed therein.

11. Learned counsel appearing for respondent no.1 also states that the respondent no.1 within two weeks from today, without prejudice to the rights and contentions of respondent no.1 will also inform about the exact location of the hypothecated assets to the petitioner. Statement is accepted.

12. A perusal of the order passed by the Division Bench in other group of matters between the same parties clearly indicates that though the appeal filed by the respondent no.1 has been admitted, the Division Bench has not stayed the order of injunction and the direction to the respondent no.1 to disclose its assets. I am

thus not inclined to accept the submission of the learned counsel for the respondent no.1 that no such order shall be passed. Even otherwise in my prima facie view, the order for disclosure of assets is not barred under the orders passed by the Orissa High Court.

13. Learned counsel appearing for the respondent no.1 states that if respondent no.1 has not complied with the order passed by the Division Bench thereby directing the disclosure of the assets, respondent no.1 would comply with the said order within one week from today. Statement is accepted. In my view, in view of this statement made by the learned counsel for the respondent no.1 separate order for the same relief is not necessary.

14. In view of the orders passed by Orissa High Court granting injunction from taking any coercive action including the appointment of the Court Receiver against the respondent no.1 by the petitioner, I am not inclined to pass any order for appointment of Court Receiver at this stage.

15. However it is made clear that the petitioner would be at liberty to seek appointment of Court Receiver after interim orders passed by the Orissa High Court are vacated. If any such application is made at that stage, it would be considered on its own merits.

16. Arbitration petitions are disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]