

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION NO.1390 OF 2014**

Tata Capital Financial Services Ltd. ... Petitioner

Versus

Katha Mediatrix Ltd. ... Respondents

Tanvi Nandgaonkar i/b MDP & Partners for the Petitioner.

None for Respondent.

CORAM : S.J. KATHAWALLA .J.

DATED : 7th January 2015

P.C.:

1. The above Petition is filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondent. The Petition, is served on the Respondents and an Affidavit proving service dated 4th December 2014 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan cum Hypothecation cum Guarantee Agreement dated 31st December 2011, the Petitioner provided a loan of Rs.74,62,000/- (Rupees Seventy Four Lacs Sixty Two Thousand only) to

the Respondent for purchase of a new vehicle more particularly described in Exhibit-E to the Petition.

3. The Loan amount of Rs. 74,62,000/- was repayable by the Respondent to the Petitioner with interest @ 12.71% per annum in 60 monthly installments.

4. Clause 17.1(a)(i) of the Agreement provides for the events of default; Clause 18.1 for the consequences of default and the rights of the Petitioner on default including repossession of the asset. Clause 23.1 provides for arbitration. There has been a default on the part of the Respondents and the Respondents failed to pay to the Petitioner a sum of Rs.45,75,326/- (Rupees Forty Five Lacs Seventy Five Thousand Three Hundred Twenty Six only). The Petitioner therefore invoked the arbitration clause in the Agreement dated 31st December 2011.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated vehicle, more particularly described in Exhibit "E" to the Petition. The Respondents have not filed their Affidavit in Reply and are also not present before the Court. In absence of any defense or contest by the Respondents, the averments contained in the Petition have remained uncontroverted. I see no reason why the statements/submissions made by

the Petitioner in the Petition should not be accepted. As the Respondents have defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the hypothecated vehicle. The appointment of the Receiver is necessary in order to ensure that the hypothecated vehicle is not wasted or alienated, thereby defeating the rights of the Petitioner. Section 9 empowers the Court to pass interim measures of protection. Hence, the following order:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the hypothecated vehicle, more particularly described in Exhibit "E" to the Petition, with direction to take forcible physical possession of the said hypothecated vehicle with police assistance, if required, and without any prior notice to the Respondents;

(ii) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondents, in writing to act as an agent of the Receiver in respect of the said hypothecated vehicle. The Respondents shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receiver's communication/letter to exercise

such an option. In the event of the respondent/s being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver, subject to deposit of security and payment of royalty. The Receiver shall determine the quantum of security and having royalty regard to the terms and conditions contained in the Loan Agreement (Exhibit "D" to the Petition) ;

(iii) In the event that the Respondents do not communicate their willingness to the Receiver to act as agents within a period of two weeks from the date of receipt of the communication from the Court Receiver, it would be open to the Petitioners to apply to the Court for further orders including sale of the hypothecated vehicle by private treaty ;

(iv) There shall also be an interim injunction restraining the Respondent from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the hypothecated vehicle described in Exhibit "E" to the Petition.

6. All concerned to act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court.

7. The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)

