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

ARBITRATION PETITION NO.1094 OF 2015

L & T Finance Ltd. ...Petitioner
V/s.
M/s.Kambo Minerals & Ors. ...Respondents

Ms.S.I.Joshi with Ms.Bijal Vora and Ms.Nikita Pawar i/by M/s.S.I. Joshi & Co. for the Petitioner.

None for Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 9TH SEPTEMBER, 2015.

P.C. :-

1. This Petition is filed by the petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking interim measures i.e. for appointment of Court Receiver, injunction and other reliefs against the respondents.

2. Learned Counsel appearing for the petitioner tenders an affidavit of service and states that the respondents have been served. The affidavit of service is taken on record. None appears for the respondents, though served. No affidavit in reply is filed.

3. The Petitioner had provided a loan of Rs.1,98,00,000/- to the first Respondent under a Loan-cum-Hypothecation Agreement entered into on 26th December, 2011. The loan was repayable in 35 equated monthly installments. Clause 12 of the Agreement provides

for the events of default; Clause 13 provides consequences in the event of default and Clause 14 provides for the rights of the Petitioner on default including repossession of the asset. Clause 17 provides for arbitration. There has been a default on the part of the Respondents. Petitioner issued legal notice dated 23rd April, 2015 and called upon the respondents to pay Rs.24,20,804/- with further interest from 2nd April, 2015 till payment. There was no response to the notice of demand. Perusal of the record indicates that respondents have committed default in making payment of installments. The respondents were liable to pay to the petitioner a sum of Rs.24,20,804/-. The petitioner has invoked the provision of arbitration.

4. In the present Petition, the Petitioner has sought appointment of the Court Receiver as Receiver of the hypothecated equipment, more particularly described in Exhibit-F to the Petition. In absence of any defence or contest by the Respondents, the averments contained in Petition would have to be accepted. There has been a default in payment of the outstanding dues. It would, therefore, be necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the hypothecated equipment. The appointment of the Receiver is necessary in order to ensure that the equipment is not wasted or alienated, thereby defeating the rights of the Petitioner. Section 9 empowers the Court to pass an interim measure of protection. Hence, the following order:-

i) The Court Receiver, High Court, Bombay is appointed as a Receiver in respect of the equipment at Exhibit-F. The Court Receiver shall give an option to the Respondents in writing to act as agents of Receiver in respect of the said equipment. 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 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 security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Loan-cum-Hypothecation Agreement (*Exhibit –A* to the Petition).

ii) 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, Court Receiver to take forcible possession of the equipment and if necessary with the assistance of police from the respondent. It would be open to the Petitioner to apply to the Court for further orders including sale of the equipment by private treaty.

iii) Until the Receiver takes possession, there shall be an interim injunction restraining the Respondents from alienating, encumbering, parting with possession or creating any third party right in respect of the equipment described in Exhibit–F to the Petition.

5. Petitioner is directed to approach the office of the Court Receiver for enforcement of this order within 4 weeks from today.

6. If the petitioner does not take steps for appointment of the arbitrator within four weeks from today, if not already appointed, interim order passed today to stand vacated without further reference to the Court.

7. The Arbitration Petition is accordingly disposed of. No

order as to costs.

8. Parties as well as the Court Receiver to act on an authenticated copy of this order.

(R.D. DHANUKA, J.)

"Certified to be true and correct copy of original signed order."