IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 940 OF 2014

Tata Capital Financial Services Ltd. ….. Petitioner

VERSUS

Sankardev Commercial Private Limited & Ors. ….. Respondents

Mr.Chetan Kapadia, a/w. Mr.Hiren Mehta, Mr.Parikshit Desai for the Petitioner.
Mr.Ameya Gokhale, i/b. Mustafa Bantawala for Respondent Nos. 1, 2 and 5.
Mr.Gautam Ankhad, a/w. Mr.Renben Vakil, a/w. Mr.M.Punjabi, i/b. VND & Associates for the Respondent Nos. 3 and 4.

CORAM : R.D. DHANUKA, J.

DATED : 22nd JULY, 2015

P.C.

By this petition 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 also the personal properties of respondent nos. 2 to 5. According to the petitioner, the petitioner has to recover a sum of more than Rs.5 crores from the respondents.

2. On 10th December, 2014, this court has passed an order recording the statement made by the Zonal Manager of the Central Bank of India, Guwahati Zone that the dues of the Central Bank of India as on that day were Rs.7.53 crores inclusive of interest. The Central Bank of India agreed for creation of a second charge on the Mall property by the respondents in favour of the petitioner. This court also recorded the statement made by the learned counsel representing the respondents that the respondents were willing to execute the necessary documents in favour of the petitioner as regards the creation of second charge qua the Mall

property in their favour is concerned.

3. By an order passed by this court on 26th December, 2014, this court recorded that the only securities executed by the respondents in favour of the petitioner are the letter of lien and hypothecation of certain moveables under the Deed of Hypothecation dated 27th April, 2012. This court passed an order that the petitioner shall have the second charge on the primary security i.e. land, building, Plant and machinery of the Cube Mall.

4. Learned counsel appearing for the parties invited my attention to the documents exchanged between the petitioner and the Central Bank of India such as memorandum of entry dated 11th June, 2015, inter-se agreement and also the letter addressed by the petitioner to the Central Bank of India on 11th June, 2015 which are exchanged between those parties pursuant to the ad-interim order passed by this court.

5. Learned counsel appearing for respondent nos. 1, 2 and 5 states that whatever steps were required to be taken by respondent nos.1, 2 and 5 for the purpose of creating second charge in respect of the Mall property in favour of the petitioner is concerned, the same are already complied with by them. He states that if any further writing is required to be executed to effectuate the creation of second charge in respect of the said property in favour of the petitioner, his clients would co-operate with the petitioner in that regard. Statement is accepted.

6. Learned counsel appearing for the petitioner states that the creation of a second charge in favour of the petitioner would not be sufficient to secure the claim of the petitioner. In support of this submission, learned counsel invited my attention to the affidavit of disclosure filed by the respondent nos. 1, 2 and 5 and submits that most of the properties of these three respondents are already

encumbered and they are heavily indebted.

7. Learned counsel appearing for respondent nos. 1, 2 and 5 on the other hand submits that though the respondent nos. 1, 2 and 5 are indebted to some of the parties, those parties are fully secured in respect of their respective claims. He submits that admittedly the claim of the Central Bank of India against respondent no.1 was at Rs.7.53 crores inclusive of interest indicated before this court by the said Bank on 10th December, 2014. He submits that the said Mall property on which the second charge is created in favour of the petitioner is valued more than Rs.20 crores. He submits that the petitioner is thus admittedly secured. He submits that even according to the petitioner, the claim of the petitioner is not more than approximately Rs.5.5 crores. It is submitted that this court thus need not pass any further orders for appointment of court receiver in respect of the properties disclosed by the respondent nos. 1, 2 and 5 in the affidavits of disclosure. He submits that the petitioner has not even appointed any arbitrator so far though the the arbitration petition was filed in the month of June 2014.

8. In rejoinder, Mr.Kapadia learned counsel appearing for the petitioner states that the petitioner would appoint arbitrator within two weeks from today and would proceed with the matter diligently. He submits that the petitioner has not taken any steps to appoint any arbitrator till date in view of the parties negotiating for the settlement.

9. In my view since the second charge in respect of the Mall property has been already created in favour of the petitioner value of which is stated to be more than Rs.20 crores and as against that the claim of the Central Bank of India and the petitioner herein would not be more than the value of the property, no further orders are required to be passed for appointment of the court receiver in respect of

the other properties disclosed in the affidavits of disclosure. I, therefore, pass the following order :-

(a) Ad-interim order passed by this court on 10th December, 2014 and 26th December, 2014 to continue till disposal of the arbitral proceedings and for a period of four weeks thereafter.

(b) The petitioner shall appoint an arbitrator in accordance with the arbitration agreement within two weeks from today and shall proceed with the arbitration proceedings without any further delay.

(c) Respondent nos. 1, 2 and 5 are directed to execute any further writing if necessary in favour of the petitioner so as to effectuate the second charge in respect of the Mall property within two weeks from the date of receipt of communication if any from the Central Bank of India.

(d) Central Bank of India is also directed to co-operate with the petitioner to effectuate second charge in respect of the Mall property. If any document is required to be executed further in favour of the petitioner by Central Bank of India to effectuate the second charge, the same shall also be done within two weeks from today. The petitioner is directed to convey this order to the Central Bank of India.

10. Arbitration petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]