

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.1631 OF 2104

M/s.Tata Capital Financial Services Ltd. Petitioners

Versus

M/s.Automobile Kapoors' (I) Pvt. Ltd. & Ors.Respondents

Mr.Chetan Kapadia i/b M/s.Indialaw for the Petitioner

None for Respondents

CORAM: S.J. KATHAWALLA, J.

DATED: 27th January, 2015

P.C.:

1. The above Petition is filed by the Petitioner under the section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Petition is served on the Respondents and an Affidavit proving service dated 23rd July, 2014 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan Agreement dated 11th February, 2012 the Petitioner provided a loan of Rs.7,50,00,000/- (Rupees Seven Crores Fifty Lacs Only) to the Respondents. The Loan amount was repayable by the Respondents to the Petitioner with interest @18% per annum.

3. Respondent No.2 and 3 has guaranteed the due repayment of the loan. Clause VIII of the Agreement provides for the events of default; Clause IX for the consequences of default; Clause IX (2) provides for the rights of the Petitioners to enforce the security. Clause XVII 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.4,76,01,648/-

(Rupees Four Crores Seventy Six Lakhs One Thousand Six Hundred and Forty Eight Only) due as on 10th July 2014. The Petitioner therefore invoked the arbitration clause in the Agreement dated 11th February, 2012.

4. In the present Petition, the Petitioner has sought disclosure of the details of the movable and immovable properties belonging to the respondents with encumbrances, if any. 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. Since the Respondents have defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner by directing the respondents to disclose on oath the details of movable and immovable properties with encumbrances, if any to secure the claim of the Petitioners. Section 9 empowers the Court to pass interim measures of protection. Hence, the following order:

- i) The respondents are directed to disclose on oath the details of all movable and immovable properties belonging to them within a period of 4 weeks.
- ii) The petitioners are at a liberty to apply to the court for an order of injunction in respect of all the movables and immovable assets disclosed by the Respondents pursuant to the direction of this Hon'ble Court.

6. The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)