

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1593 OF 2014

TATA Capital Financial Services Ltd

.....Petitioner

Versus

National Construction Company & Another

.....Respondents

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

Mr. Chaitanya B. Nikte for Respondents.

CORAM: S.J. KATHAWALLA, J.

DATED: 13th March 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 Respondents. The Petition, is served on the Respondent and an Affidavit proving service is on record. The Petition is taken up for final hearing. The Respondents appeared and file their Affidavit in Reply.
2. By a Loan cum Hypothecation Agreement ("said Agreement") dated 31st March 2011, the Petitioner provided a loan of Rs. 79,50,000/- (Rupees Seventy Nine Lacs Fifty Thousand Only) to the Respondents for purchase of asset being KOMATSU BULL DOZERD AND BEARING CHASSIS/MACHINE NO. 67102 ("said Asset") more particularly described in paragraph 2 of the Petition and on the terms described in the Loan-cum-Hypothecation Agreement dated 31st March 2011. Under the said Agreement, the said Asset was hypothecated with the Petitioner by the Respondents, as security for repayment of the Loan amount.

3. The Loan amount of Rs. 79,50,000/- (Rupees Seventy Nine Lacs Fifty Thousand Only) was repayable by the Respondents to the Petitioner in 47 equated monthly installments of Rs 2,09,542/- as per the terms and conditions of the aforesaid Loan Agreement dated 31st March 2011.
4. Respondent No.2 has executed the Loan Agreement in the capacity as Guarantor of the aforesaid Loan. Clause 17 of the Loan-cum-Hypothecation Agreement provides for the events of default; Clause 18 for the consequences of default; Clause 18.1 provides for Repossession of Asset. Clause 23 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. 51,13,377.66/- (Rupees Fifty One Lacs thirteen Thousand Three Hundred and Seventy Seven and Paise Sixty Six only) as on 05.08.2014. The events of default having taken place in terms of the Loan-cum-Hypothecation Agreement, the Petitioner became entitled to recall and have recalled the entire loan. There was no reply to the Loan Recall Notice dated 15.04.2013. The Petitioner therefore invoked the arbitration clause in the Loan-cum-Hypothecation Agreement dated 31st March 2011.
5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated Asset, more particularly described in paragraph 2 to the Petition. The Respondents have filed their Affidavit in Reply and have admitted their debt to the Court. The Respondents have themselves at Exhibit D to their Affidavit in Reply annexed a statement that in so far as the present Loan Agreement is concerned they owe a huge sum of Rs 42,86,588.98/- as on 30.09.2014 to the Petitioner herein. The Affidavit in Reply further fails to make any defence or contest to the Claim of the Petitioner herein. I

therefore see no reason as to why the statements/ submissions made by the Petitioner in the present Petition should not be accepted. As the Respondents have admittedly 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 Asset. The appointment of the Receiver is necessary in order to ensure that the said Asset is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction in terms of prayer clause (c) also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs.51.13 lakhs and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of relief. Section 9 empowers the Court to pass an interim measure of protection. Hence, the following order is passed:

- a) Pending the hearing and final disposal of the arbitration proceedings and the execution of Award, if any under Section 36 of the Arbitration & Conciliation Act 1996, the Court Receiver is appointed as Receiver in respect of the Hypothecated Asset, more particularly described in paragraph 2 to the Petition, with direction to take forcible physical possession of the said Asset with police assistance, if required, and without any prior notice to the Respondents;
- (b) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondents, in writing to act as agents of the Receiver in respect of the said Asset. The Respondents shall be given two weeks time by the Court Receiver from the date

of receipt of the Court Receivers communication/letter to exercise such option. In the event of the Respondents 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 royalty having regard to the terms and conditions contained in the Loan-cum-Hypothecation Agreement (Exhibit A to the Petition);

- (c) 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 Petitioner to apply to the Court for further orders including sale of the said Asset by private treaty;
 - (d) There shall also be an interim injunction restraining the Respondents from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the said Asset described in paragraph 2 to the Petition.
- 6) The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)