IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1665 OF 2014

SBI Global Factors Limited … Petitioner

Versus

M/s. Acropetal Technologies Limited and Ors. … Respondents

Mr.Rohit Gupta a/w. Mr. Aly A. Basith i/b. PKA Advocates for the Petitioner.
Mr. Deepan Dixit for Respondent Nos. 1 and 2.
Mr.Ketan Trivedi, 1st Assistant to Court Receiver, present.

CORAM : S.J. KATHAWALLA, J.
DATED : 27TH FEBRUARY, 2015

P.C.

1. The present Petition is filed by the Petitioner – SBI Global Factors Limited against Respondent No. 1 – M/s. Acropetal Technologies Limited and others under Section 9 of the Arbitration and Conciliation Act, 1996 (the Act) seeking appointment of the Court Receiver in respect of the immovable property admeasuring 2 Acres 32 Guntas situated at Survey No.90/2, Kammanahalli Village, Begur Hobli, Bangalore (the said property), which is mortgaged by Respondent No. 2 in favour of the Petitioner and also for an order and injunction restraining the Respondents from selling, alienating, encumbering, parting with possession or creating third party rights in respect of the said property.

2. On 30th April, 2007 the Petitioner sanctioned a loan of Rs.2,50,00,000/- in favour of Respondent No. 1 (the facility). The said facility was enhanced to Rs.12,00,00,000/- vide sanction letter dated 24th January, 2011. The Respondents executed various loan documents to secure the facility availed from the Petitioner including Global Account Receivable Management Agreement dated 13th December, 2011 (Exhibit-I to the Petition).

3. On 29th May, 2009 Respondent No. 2 created mortgage over the said property in favour of the Petitioner for a sum of Rs.7,00,00,000/- which is recorded in the Memorandum of Deposit of Title Deeds dated 29th May, 2009.

4. On 16th June, 2009 Respondent No. 2 executed a Rectification Deed stating therein that Respondent No. 2 has mistakenly executed the Memorandum of Deposit of Title Deeds dated 29th May, 2009 in favour of the Petitioner as the Managing Director of Respondent No. 1. Further, it was stated that the said Memorandum of Deposit of Title Deeds is to be treated as executed by Respondent No. 2 in his individual capacity instead of the Managing Director of Respondent No. 1.

5. Respondent No. 2 also extended mortgage over the said property in favour of the Petitioner for a sum of Rs.12,00,00,000/- availed by Respondent No. 1. Thereafter, Respondent No. 1 stopped making payment

under the facility availed from the Petitioner

6. In the light of the default of Respondent No. 1, the Petitioner recalled the entire outstanding i.e. Rs.10,34,34,475.38/- as on 20th February, 2014 vide demand notice dated 21st February, 2014.

7. The Petitioner through its demand notice dated 24th July, 2014 invoked the personal guarantee of Respondent Nos. 2 and 3 and called upon them to make payment of Rs.10,34,34,475.38/- as on 20th February, 2014.

8. On 23rd August, 2014 the Petitioner issued a notice to the Respondents thereby invoking the arbitration Agreement and appointing sole Arbitrator as per Section 10 (2) of the Act.

9. On 4th November, 2014 the learned sole Arbitrator was requested to arbitrate the dispute between the Petitioner and the Respondents. The learned Arbitrator by his letter dated 17th November, 2014 fixed the date of the arbitral meeting and informed the parties of the same vide letter dated 17th November, 2014.

10. Thereafter, the Petitioner filed the present Petition seeking the aforestated reliefs. The Petitioner pointed out in the Petition that the amount due and payable by the Respondents to the Petitioner is Rs.11,54,46,534.23/- as on 18th September 2014 with further interest at the rate of 18% per annum compounded from the due dates till full

repayment, out of which the Respondents have acknowledged dues of Rs.9,06,15,826.79/- as on 4th February, 2012 vide undertaking cum acknowledgement of debt dated 4th February, 2012.

11. By an order dated 24th December, 2014, this Court passed an ad-interim order restraining Respondent No. 2 from selling, alienating, encumbering, parting with possession and / or creating third party rights in respect of the said property until further orders.

12. The Petition is now taken up for hearing and final disposal.

13. The Learned Advocate appearing for the Petitioner has submitted that a substantial amount of Rs. 11,54,46,534.23 is due and payable by the Respondents. The Respondents have not filed their affidavit in reply and have also failed to appear before the Arbitrator. The intention of the Respondents to pay the amounts due to the Petitioner is therefore doubtful. The Petitioner apprehends that in order to defeat its claim, the Respondent may dispose of and/or create third party rights in respect of the said property. He submits that in the facts and circumstances of the case, it is just and necessary to safeguard the said property mortgaged in favour of the Petitioner by appointing the Court Receiver, High Court, Bombay, as Receiver of the said property and to restrain the Respondents by an order and injunction of this Court from selling, alienating, encumbering, parting with possession and/or creating third party rights in

respect of the said property. The Petitioner has also placed reliance on the judgment passed by this Court viz. *State Bank of India V. Trade Aid paper & Allied Products (India) Limited and Others,* AIR 1995 Bom 268, wherein it is held that in the suit and proceedings initiated by the Bank and Financial Institution/s, the Receiver shall be appointed as a matter of course. It is further submitted that the Receiver is also required to be appointed to avoid multiple litigations which may arise because of default and attachments from various other authorities. It is submitted that the balance of convenience is also in favour of the Petitioner.

14. The Learned Advocate appearing for the Respondents objected to the appointment of the Court Receiver on the ground that since an ad-interim order dated 24th December, 2014, restraining the Respondent No. 2 from selling, alienating, encumbering, parting with possession and/or creating third party rights in respect of the said property has been passed, the same can be continued and the appointment of the Court Receiver in respect of the said property is not necessary. It is also submitted on behalf of the Respondents that the said property is not yet identified and bounded. This Court therefore directed the Court Receiver to visit the said property and also directed the parties to remain present and identify the said property. However, the Respondents chose to remain absent when the representative of the Court Receiver visited the said property on 7th February, 2015. In

any event, the property has been identified by the Petitioner in the presence of the representative of the Court Receiver.

15. From the aforestated facts, it appears that an amount of Rs. 11,54,46,534.23/- is due and payable by the Respondents to the Petitioner as on 18th September, 2014. The Petitioner has acknowledged that an amount of Rs.9,06,15,826.79/- is due and payable by the Respondents to the Petitioner as on 4th February, 2012. The Respondents have not filed their Affidavit in Reply. The Respondents have neither responded to the notice sent by the Petitioner nor have chosen to appear before the learned sole Arbitrator. Whether Respondent No. 1 will be in a position to repay the amounts due to the Petitioner is extremely doubtful. Further, none of the Respondents have made any efforts whatsoever to repay the amounts as set out in the demand notice addressed by the Petitioner to the Respondents. The intention of the Respondents to pay the amounts due to the Petitioner is therefore also doubtful and the Respondents may attempt to alienate the said property mortgaged by Respondent No. 2 in favour of the Petitioner. The mortgaged property is the only significant security created in favour of the Petitioner, which needs to be secured/protected in order to ensure that in the event of an Award being passed in favour of the Petitioner, the Award is not rendered merely a paper Award. In my view, no harm or prejudice will be caused to the Respondents if in the

above facts and circumstances, an order directing the Court Receiver to take symbolic possession of the said property is passed. The balance of convenience is in favour of the Petitioner. Hence, I pass the following order :

i. Pending the hearing and final disposal of the Arbitration proceedings and the enforcement of the arbitral Award passed therein, the Court Receiver, High Court, Bombay is appointed as the Receiver of the property admeasuring 2 Acres 32 Guntas situated at Survey No. 90/2, Kammanahalli Village, Begur Hobli, Bangalore. However, the Receiver shall take only symbolic possession of the said property.

ii. Ad-interim order dated 24^{th} December, 2014 restraining the Respondent No. 2 from selling, alienating, encumbering, parting with possession and / or creating third party rights in respect of the said property shall also continue until the hearing and final disposal of the Arbitration proceedings and the enforcement of the arbitral Award passed therein.

iii. The Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)