IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1691 OF 2014

L & T Finance Ltd. … Petitioner

V/s

M/s. Cosmos Pharmacls Ltd. and others ..Respondents

Mr. Girish Thakur for the Petitioner.
Mr. Rahul Oak for Respondent No.14.
Mr. Mahesh Londhe, instructed by M/s. Sanjay Udeshi & Co., for Respondent No. 17.
Mr. D.A. Athvale, for Respondent No. 18.

CORAM : S.J.KATHAWALLA, J.

DATE : 27th JANUARY 2015

P.C.

1. This 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 upon the Respondents and an Affidavit proving service dated 14th January 2015 is taken on record. The Petition is taken up for final hearing. However, none appear for the Respondents.

2. Respondent No. 1 – M/s. Cosmos Pharmacls Ltd. has obtained a loan from the Petitioner – L & T Finance Ltd. Respondent Nos. 2 to 5 are the

original guarantors who have guaranteed the due repayment of the total loan amount taken by the Respondent No. 1 from the Petitioner. Respondent Nos. 6 to 10 are the new guarantors guaranteeing the due repayment of the total loan amount taken by the Respondent No.1 from the Petitioner pursuant to the amendment to the loan agreement. Respondent Nos. 11 to 18 are the debtors of Respondent No.1 and have been joined as parties to the present petition to secure the claim of the Petitioner against Respondent No.1.

3. According to the Petitioner, in the month of November, 2010, the Respondent no.1 had approached the Petitioner with a request for a secured term loan of Rs. 20,00,00,000/- ("the said loan") for a period of sixty months for the purpose of expansion of the group Companies of Respondent No.1. The said loan of Rs. 20 crores was sanctioned by the Petitioner to the Respondent No. 1 vide their sanction letter dated 9th November, 2010 on terms and conditions mentioned therein. The Respondent Nos. 2 to 5 had accepted and acknowledged all the terms of the said sanction letter. A loan agreement dated 23rd December, 2010 ("the said agreement") was thereafter executed by and between the Petitioner and Respondent No. 1 whereunder the Respondent No. 1 inter alia agreed and undertook that in case of delay in payment of the loan instalments or interest or any other monies on the respective due dates as stipulated therein, the Respondent No.1 shall pay overdue compensation at the rate of 36 per cent per annum as delay payment

charges on such defaulted amount from the date of default till the date of payment as per clause 3.4 of the said agreement. Clause 3 of the said agreement pertains to payment of loan, interest and other charges. Clause 6 provides for appropriation of payments to lenders. Clause 8 pertains to events of default. Clause 9 pertains to consequences in the event of default and clause 11 pertains to arbitration.

4. In consideration of the loan granted by the Petitioner, the Respondent No. 1 agreed and undertook to secure the said facility by inter alia creation of charges on their property and pledge of shares as more particularly set out in paragraph 6 of the Petition. Respondent No. 1 hypothecated in favour of the Petitioner its movable properties, current assets, equipments, rights under project agreements, accounts, receivables, rights under insurance policies, intellectual property and specific assets. Respondent Nos. 2 to 5 executed a deed of guarantee dated 23rd December, 2010, thereby unconditionally and irrevocably guaranteeing the performance of all the terms and conditions by Respondent No.1 under the said Agreement, including specifically the condition in respect of payment of instalments on the due dates and the secured obligations under the said Agreement. The Respondent Nos. 2 to 5 also agreed and undertook that in the event of failure by Respondent No. 1 for any reason, payment of the loan outstanding amount and/or any amount due

under the said agreement, the Respondent Nos. 2 to 5 shall repay the same without any demur or protest.

5. According to the Petitioner, right from the inception of the said agreement, Respondent No. 1 was irregular in payments and there were delays and defaults on the part of Respondent No. 1 towards repayment of principal as well as interest,. The cheques given by Respondent No.1 towards repayment of the said facility were dishonoured by the Bankers of Respondent No.1 when presented for payment by the Petitioner. The Respondents therefore became liable for payment of delayed payment charges as well as cheque bouncing charges.

6. Respondent No.1 therefore approached the Petitioner to reschedule the payment of the outstanding amount vide request letter dated 30th April, 2013. In view thereof an amendment to the loan agreement dated 23rd December, 2010 came to be executed between the Petitioner and Respondent No.1 being the borrower, Respondent Nos. 2 to 5 being the “original guarantors” and Respondent Nos. 6 to 10 being the “new guarantors” on 25th June, 2013 (“the new agreement”). Respondent Nos. 6 to 10 being the new guarantors executed a deed of guarantee thereby guaranteeing the repayment of the outstanding dues by executing separate deed of guarantee dated 25th June, 2013, in favour of the Petitioner in addition to the guarantee given by Respondent Nos. 2 to 5.

7. Respondent No. 1 also committed breach of the terms and conditions of the said amended loan agreement dated 23rd December, 2010. The Petitioner therefore issued a demand notice dated 29th September, 2014, through their Advocates calling upon the Respondent Nos. 1 to 10 to pay jointly and severally a sum of Rs. 2,01,49,046/- comprising of overdue loan instalments of Rs. 1,76,56,776/- , overdue compensation of Rs. 16,44,813/- and cheque bouncing and other charges of Rs. 8,47,457/-.The Petitioner further informed the Respondents that if they fail to make the said payments, the Petitioner shall become entitled to terminate the loan agreement and the amended loan agreement. Upon termination a sum of Rs. 14,40,50,410/- will become forthwith due and payable comprising of overdue loan instalments of Rs. 1,76,56,776/-, overdue compensation of Rs. 16,44,813/-, cheque bouncing and other charges of Rs. 8,47,457 and unmatured loan instalments of Rs. 12,39,01,364/- with further overdue compensation thereon at the rate of 36 per cent per annum from 30th September, 2014 till payment and/or realization as per the terms of the said loan agreement and amended loan agreement. The Petitioner also recorded that upon termination of the loan agreement and amended loan agreement, the Petitioner shall also be entitled to invoke the guarantees given by Respondent Nos. 2 to 10 and thus Respondent Nos. 2 to 10 will jointly and severally become liable to pay Rs. 14,40,50,410/- and the disputes, differences and claims shall be deemed to

have arisen under the said agreement, amended loan agreement and deed of guarantees and the said disputes, differences and claims will stand referred to the sole arbitration of Shri Bharat B. Jain, Advocate, High Court, as per the terms of the said agreement. Since the Respondents failed to respond to the said notice or to make any payments, the Petitioner sent a termination notice and invoked the guarantee given by Respondent Nos. 2 to 10 vide termination notice dated 16th October, 2014. The Respondents therefore became liable to pay to the Petitioner a sum of Rs. 14,40,50,410/- as stated hereinabove.

8. The Petitioner has therefore sought appointment of the Court Receiver, High Court, Bombay, as a Receiver in respect of immovable properties, movable assets, current assets as more particularly described in Exhibits-I, J and K to the Petition. The Respondents have not filed their affidavits in reply. As the Respondents have 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 in respect of immovable properties, movable assets, and current assets more particularly described in Exhibits-I, J and K to the Petition. The appointment of Court Receiver is necessary in order to ensure that the said assets are not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner as on 29th September, 2014, is Rs. 14,40,50,410/- and unless adequately protected, the

Petitioner may suffer irreparable harm and injury. The balance of convenience also warrants the grant of relief. Section 9 of the Act empowers the Court to pass an interim measure of protection. Hence the following order is passed:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver, High Court, Bombay, is appointed as Receiver in respect of immovable properties, movable assets, current assets, as more particularly described in Exhibits-I, J and K to the Petition. The Court Receiver shall take symbolic possession of the properties/assets, as more particularly described in Exhibits-I, J and K to the Petition and after preparing an inventory of the same file his report before this Court and seek further directions qua the said properties and assets.

(iii) pending the hearing and final disposal of the arbitration proceedings, there shall be an injunction restraining the Respondent No.1 from selling, alienating, encumbering, parting with possession and/or creating third party rights in respect of properties/assets as more particularly described in Exhibits-I, J and K to the Petition.

(iv) The Respondents are directed to disclose on Affidavit all the immovable properties, movable assets and other encumbered and unencumbered properties of the Respondents within a period of four weeks from the date of receipt of this order and to forthwith forward a copy of the Affidavit to the Advocate for the Petitioner.

9. The Arbitration Petition is accordingly disposed of with liberty to the Petitioner to take out a fresh petition seeking further reliefs.

All parties, including the Court Receiver to act on a copy of this order duly authenticated by the Learned Associate of this court.

{ **S. J. KATHAWALLA, J.** }