IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1682 OF 2014

TATA Capital Financial Services Ltd .....Petitioner
Versus
Shree Gopi Ispat Private Limited & Another .....Respondents

Mr. Nikhil Mehta i/b. KMC Legal Venture for the Petitioner.
None for Respondents.

CORAM: S.J. KATHAWALLA, J.
DATED: 11th 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. However, none appear for the Respondents.

2. By a Loan cum Hypothecation Agreement ("said Agreement") dated 24th January 2012 , the Petitioner provided a loan of Rs. 22,99,000/- (Rupees Twenty Two Lacs Ninety Nine Thousand Only) to the Respondents for purchase of asset being CEQ LPK 2518 AND BEARING CHASSIS/MACHINE NO. MAT448120B3P37492 ("said Asset") more particularly described in paragraph 2 of the Petition and on the terms described in the Loan-cum-Hypothecation Agreement dated 24th January 2012. 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. 22,99,000/- (Rupees Twenty Two Lacs Ninety Nine Thousand Only) was repayable by the Respondents to the Petitioner

with interest @ 12.51% per annum in 23 monthly installments, the 1st installment of Rs 1,18,964/- and the subsequent 22 installments of Rs 1,18,700/- each.

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. 6,85,261.46/- (Rupees Six Lacs Eighty Five Thousand Two Hundred and Sixty one and Forty Six Paise only) as on 15.09.2014. 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 16.07.2013. The Petitioner therefore invoked the arbitration clause in the Loan-cum-Hypothecation Agreement dated 24th January 2012.

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 not filed their Affidavit in Reply and are also not present before the Court. In absence of any defence 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. 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 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.6.85 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.)