

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO.246 OF 2015****M/s.Tata Capital Financial Services Ltd.****..... Petitioners****VERSUS****M/s.Gian Motors & & Ors.****..... Respondents**

Mr.Sankalp Anantwar, i/b. India Law for the Petitioner.

None for the Respondents.

CORAM : R.D. DHANUKA, J.**DATED : 17th JUNE, 2015****P.C.**

This Petition is filed by the petitioner under section 9 of the Arbitration and Conciliation Act, 1996 for seeking interim measures i.e. for appointment of Court Receiver, injunction and other reliefs against the respondents.

2. Learned counsel for the petitioner states that the respondents are served. The petitioner has already filed affidavit of service. None appeared for the respondent though served.

3. On 1st December, 2011 the petitioner had sanctioned a loan amount of Rs.6 crores to the first Respondent. The respondent no.1 executed Channel Finance Agreement. Respondent nos. 2 to 4 executed personal guarantee in favour of the petitioner on 1st December, 2011. The said facility was renewed till 8th January, 2014 for a credit limit upto Rs.3.50 crores.

4. On 5th December, 2011 the respondent nos. 2,4 and 5 executed an undertaking to mortgage. On 25th January, 2012, respondent nos. 2, 4 and 5 created an equitable mortgage by way of deposit of title deed of various properties of respondent no.2. The same was recorded vide Memorandum of Entry

Recording Mortgage by Deposit of title deeds dated 25th January, 2012.

5. The respondents committed default in making repayment of the installments. The petitioner issued notice of demand calling upon the respondents to pay on 11th March, 2014, 5th April, 2014, 26th May, 2014 calling upon to pay a sum of Rs.27,63,768/- with further interest thereon. There is no repayment. The respondents by their letters dated 11th June, 2014 and 4th July, 2014 requested for waiver of certain charges however did not deny its liability.

6. A perusal of the documents annexed to the petition prima facie indicates that the respondents have committed default in making repayment of the amount. There was no denial to the claim. In my view, prima facie case is made out for appointment of the Court Receiver in respect of the properties described at Exhibit –W to the petition. In absence of any defence or contest by the Respondents, the averments contained in Petition would have to be accepted. There has been a default in payment of the outstanding dues. It would, therefore, be necessary to safeguard the interest of the Petitioner by appointing the Court Receiver as Receiver of the properties. The appointment of the Receiver is necessary in order to ensure that the properties are not wasted or alienated, thereby defeating the rights of the Petitioner. Section 9 empowers the Court to pass an interim measure of protection. Hence, the following order:-

- i) The Court Receiver, High Court, Bombay is appointed as a Receiver in respect of the properties described at Exhibit-W. The Court Receiver shall give an option to the Respondents in writing to act as agents of Receiver in respect of the said properties. The Respondents shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receiver's communication letter to exercise such option. In the event of the respondent/s being desirous of acting as agents of the Receiver, they shall be

appointed as agents of the Receiver, subject to security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Channel Finance Agreement (*Exhibit –A* to the Petition).

- ii) 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, Court Receiver to take forcible possession of the properties and if necessary with the assistance of police from the respondents. It would be open to the Petitioner to apply to the Court for further orders including sale of the properties by private treaty.
- iii) Until the Receiver takes possession, there shall be an interim injunction restraining the Respondents from alienating, encumbering, parting with possession or creating any third party right in respect of the properties described in Exhibit–W to the Petition.

5. Petitioner is directed to approach the office of the Court Receiver for enforcement of this order within 4 weeks from today.

6. If the petitioner does not take steps for appointment of the arbitrator within four weeks from today, if not already appointed, interim order passed today to stand vacated without further reference to the Court.

7. The Arbitration Petition is accordingly disposed of. No order as to costs.

8. Parties as well as the Court Receiver to act on an authenticated copy of this order.

[R.D. DHANUKA, J.]