IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 44 OF 2015

L & T Finance Ltd. … Petitioner

Versus

Vitthal Rama Atole & Anr. … Respondents

Mr. Nilesh Gala i/b. Law Square 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 Respondents 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 09.11.2012, the Petitioner provided a loan of Rs.52,07,500/- (Rupees Fifty Two Lakhs Seven Thousand Five Hundred Only) to the 1st Respondent for purchase of DOWN DW 20G Rock Breaker bearing Serial No. 12J20G732JS and No. Sans SY 215 Hydraulic Excavator bearing Serial No. SY215C9M2k ("said Assets") more particularly described in Exhibit-F to the Petition and on the terms described in the Loan-cum-Hypothecation

Agreement dated 09.11.2012. Under the said agreement, the said assets were hypothecated with the Petitioner by the Respondent No. 1, as security for repayment of the Loan amount.

3. The Loan amount of Rs.52,07,500/- (Rupees Fifty Two Lakhs Seven Thousand Five Hundred Only) was repayable by the Respondents to the Petitioner i.e. Rs 12,78,000/- (Rupees Twelve Lakhs Seventy Eight Thousand Only) repayable in 30 equated monthly installments of Rs.42,600/- alongwith interest @ 8.89% commencing from 10/12/2012 and ending on 10/05/2015 in respect of schedule no. EFD016070R1200571010 and Rs.51,41,800/- (Rupees Fifty One Lakhs Fourty One Thousand Only) repayable in 47 equated monthly installments of Rs.1,09,400/- alongwith interest @ 6.18% commencing from 10/01/2013 and ending on 10/11/2016 in respect of schedule no. EFD016070R1200571011.

4. Respondent No.2 guaranteed the due repayment of the loan. Clause 12 of the Loan-cum-Hypothecation Agreement provides for the events of default; Clause 13 provides for the consequences of event of default; Clause 14 provides for Repossession of Asset. Clause 17 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.37,60,523/- (Rupees Thirty Seven Lacs Sixty Thousand Five Hundred and Twenty Three Only) due as on 27.11.2014. 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 01.12.2014. The Petitioner therefore invoked the arbitration clause in the Loan-cum-Hypothecation Agreement dated 09.11.2012.

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 Exhibit “F” to the Petition. The Respondents have not filed their Affidavit in Reply and are also not present before the Court. In absence of any defense or contest by the Respondents, the averments contained in the Petition have remained uncontroverted. I see no reasons 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, Bombay High Court as Receiver of the Hypothecated Asset. The appointment of the Receiver, Bombay High Court 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 (e) also needs to be granted to protect the rights of the Petitioner. The claim is over Rs.37.60 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:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver, Bombay High Court is appointed as Receiver in respect of the said asset, more particularly described in Exhibit "F" 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;

(ii) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondents, in writing to act as an agent 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 Respondent/s 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)

(iii) 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;

(iv) There shall also be an interim injunction restraining the Respondents from disposing of, alienating, encumbering, and parting with possession or creating any third party rights in respect of the said Asset described in Exhibit "F" to the Petition.

(v) The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)