

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 32 OF 2015

Bajaj Finance Limited ... Petitioner

Versus

Online Tourism & Freight Private Limited & Ors. ... 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 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 Secured Loan Agreement 21st December 2011(said Agreement), the Petitioner provided a loan of Rs 2,16,00,000/- (Rupees Two Crores Sixteen Lacs only) to the Respondents against the mortgage of immovable property by deposit of title deeds as described in paragraph 2 of the Petition (“said asset”) and on the terms described in the said Agreement.

Under the said agreement, the said asset is mortgaged with the Petitioner by the Respondent No.1, as security for repayment of the Loan amount.

3. The Loan amount of Rs 2,16,00,000/- (Rupees Two Crores Sixteen Lacs) was repayable by the Respondents to the Petitioner with interest at 19.75% per annum in 120 equated monthly installments of Rs 3,25,704/- each (under the Agreement Exhibit A to Arbitration Petition No. 32 of 2015).

4. Respondent No.2 and 3 are the Co-Borrowers. Clause 7 of the said Agreement provides for events of default. Clause 8 for the remedies of the Lender. 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 2,07,66,357.20/- (Rupees Two Crores Seven Lacs Sixty Six Thousand Three Hundred and Fifty Seven and Paise Twenty only). The events of default have taken place in terms of the said Agreement, the Petitioner became entitled to recall and have recalled the entire Loan. There was no reply to the Loan Recall Notice dated 23rd August 2014. The Petitioner therefore invoked the arbitration clause in the said Agreement dated 21st December 2011.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the asset , more particularly described in Exhibit D to the Petition. The Respondents have

been served and an affidavit proving service has been filed on record. The Respondents neither filed their reply nor are they present before the Court. In the absence of any 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, High Court Bombay as Receiver of the said 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 (g) also need to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs 2 crores 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, High Court, Bombay is appointed as Receiver in respect of the asset, more particularly described

in Exhibit D to the Petition, with direction to take symbolic possession of the said Asset with police assistance, if required, and without any prior notice to the Respondents;

(b) The Court Receiver, High Court, Bombay 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 Respondents being desirous of acting as agents of the Receiver, they shall be appointed as agent 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 agent 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 Exhibit D to the Petition.

6) The Arbitration Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)