

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: January 13, 2015

+ **OMP 47/2015**

L & T FINANCE LIMITED

..... Petitioner

Through: Mr.Joginder Sukhija, Advocate

versus

OM CONSTRUCTIONS & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

IA No. 366/2015

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

OMP 47/2015

1. This petition has been filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act' in short) seeking appointment of a representative of the petitioner company as a Receiver to take possession of a vehicle/asset/construction equipment of the respondents, financed by the petitioner under a loan-cum-hypothecation agreement dated 15.08.2012. The averments in the petition are duly supported by the affidavit and documents wherefrom, it is seen that the

petitioner company had sanctioned a loan of Rs. 41,38,000/- to the respondents for purchase of construction equipment namely TATA HITACHI MODEL EX 200 HYDERALIC EXCAVATOR. The loan was to be paid back in 35 Equated Monthly Instalments of Rs. 1,44,000/-. It is the case of the petitioner that the respondents have failed to comply with the terms and conditions of the loan facility. It is further stated, in terms of clause 14 of the agreement, the petitioner has the right to repossess the equipment. It is further averred that the respondents have defaulted in payment of the loan amount and the total amount due from the respondents jointly and severally was Rs.21,94,794/- as on 21.11.2014. It is further averred that as per clause 17 of the loan-cum-hypothecation agreement, it was specifically agreed between the parties that any dispute arising out of or in connection with the said loan facility shall be referred to and resolved by the arbitration and the petitioner constrained to terminate and recall the loan facility and the dispute has been referred to the arbitration of the Sole Arbitrator Mr. Bharat B. Jain, Advocate, High Court.

2. Having heard the learned counsel for the petitioner, it is noticed that in view of the respondents' default in payment of the loan amount, the petitioner has issued notice to the respondent terminating the agreement. In terms of clause 17 of the agreement, the petitioner has

appointed the Arbitrator. The equipment stands hypothecated with the petitioner and under clause 14, the petitioner has rights to repossess the said equipment. In these circumstances, this Court hereby appoints Mr. Rajeev Singh, authorized representative of the petitioner, as a Receiver to repossess the aforementioned vehicle/asset/construction equipment of the make TATA HITACHI MODEL EX 200 HYDERALIC EXCAVATOR bearing Serial No. 200150646.

3. In the event, the respondents make the payment of the entire outstanding loan amount, the Receiver shall release the said equipment to the respondents on superdari. The respondents are restrained from parting with the possession of, or selling or creating any third party interests in such equipment released to them on superdari.

4. The SHO/In-charge of the police station concerned is directed to render necessary aid and assistance to the Receiver. After taking over possession, the Receiver shall preserve and maintain the equipment till further orders of this Court or any other Court of competent jurisdiction or of the Arbitrator.

5. This order shall remain in force till the respondents make the payment of the loan amount or till it is modified by the learned Arbitrator during arbitration proceedings or till the termination of the arbitration proceedings.

6. The Arbitrator is free to decide the disputes referred for arbitration uninfluenced by this order. The respondents are also at liberty to apply to the Court for modification of this order.
7. The petition is disposed of in the above terms.
8. Order be given dasti.

(V.KAMESWAR RAO)
JUDGE

JANUARY 13, 2015
akb