IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 60 OF 2016

Tata Capital Financial Services Limited … Petitioner

V/s

Kalpataru Vanijya Private Limited & Ors. ...Respondents
Ms. Nelly Mehta i/b MDP & Partners for the Petitioner
None for the Respondents

CORAM : S.J.KATHAWALLA, J.

DATE : 21st APRIL 2016

P.C.

1. This 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 upon the Respondents at the addresses mentioned in the cause title of the present Petition. An Affidavit proving service is already on record. However, none appear for the Respondents.

2. In or about August 2012, the Respondent No. 1 approached the Petitioner with a request to grant a Working Capital Demand Loan Facility upto an amount of Rs. 1,75,00,000/- (Rupees One Crore Seventy Five Lakhs only). The Respondent No. 1's request was acceded to by the Petitioner by sanctioning the Working Capital Demand Loan Facility to the Respondent No. 1 to the maximum extent of Rs. 1,75,00,000/- vide its Sanction Letter dated 14th August, 2012. Subsequently, a Working Capital Demand Loan Agreement dated 6th September, 2012 for a loan amount upto the maximum limit of Rs. 1,75,00,000/- was entered into between the Petitioner and the Respondent No. 1. As per the aforesaid Sanction letter and the Working Capital Demand Loan Agreement, the Respondent No. 1 was required to repay the loan amount alongwith interest thereon at the rate of the Short Term Lending Rate (STLR) minus 3% (STLR being 16.5% per annum at the relevant time) i.e. 13.5% per annum and additional interest @ 6% per annum over and above the agreed interest rate in case of delay/default in the repayment of the principal and/or interest amount. The Respondents thereafter executed various security documents in favour of the Petitioner as more particularly set out in paragraph 4 of the Petition.

3. Thereafter, in or about February 2013, the Respondent No. 1 requested the Petitioner to renew and enhance the credit facility for a further amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) and the maximum extent of the aggregate of the said facility being Rs. 2,25,00,000/- (Rupees Two Crores Twenty Five Lakhs only). The Respondent No. 1's request was acceded to by the Petitioner and the said renewal and enhancement were recorded by the Petitioner vide its Renewal cum Enhancement of Credit Facility letter dated 13th February, 2013. Pursuant thereto, a Supplemental Agreement dated 14th February, 2013 for Enhancement of Working Capital Demand Loan enhancing the facility /loan amount upto Rs. 2,25,00,000/- was executed between the Petitioner and the Respondent No. 1. Thereafter, the aforesaid facility was renewed from time to time and various security documents were executed by the Respondents in favour of the Petitioner as also more particularly set out in paragraph 4 of the Petition.

4. The Respondent No. 1 by a Deed of Hypothecation dated 3rd December, 2012 and a Deed of Further Charge by Extension of Hypothecation dated 6th May, 2013 hypothecated the assets as more particularly described in the Schedule at Exhibit "PP" to the Petition. The Respondent No. 5 by two Negative Lien Letters dated 7th September, 2012 and 14th February, 2013 created a negative lien in respect of the immovable property more particularly described in the Schedule at Exhibit "J" to the Petition.

5. According to the Petitioner, the Respondents have availed and utilized the said Working Capital Demand Loan Facility. Subsequently, there has been default on the part of the Respondents to make payments. Accordingly, on 9th December, 2015, a Notice was sent to the Respondents by the Petitioner's Advocates calling upon them to immediately repay to the Petitioner a sum of Rs. 2,46,58,986/- (Rupees Two Crores Forty Six Lakhs Fifty Eight Thousand Nine Hundred Eighty Six Only) due as on 4th December, 2015 along with interest @ 14% per annum and additional interest @ 6% per annum from 5th December, 2015 till payment and/or realisation. However, as the packets containing the said Notice were returned undelivered in respect of the Respondent No. 5, the Advocates for the Petitioner, by their letter dated 4th January, 2016, served a copy of the said Notice to the Directors of the Respondent No. 5. The Petitioner states that the Respondents failed to respond to the Petitioner's requests and reminders, and to also repay the amounts due and payable to the Petitioner.

6. According to the Petitioner as on 4th December, 2015, a sum of Rs. 2,46,58,986/- (Rupees Two Crores Forty Six Lakhs Fifty Eight Thousand Nine Hundred Eighty Six Only) is due and payable by the Respondents to the Petitioner as per Particulars of Claim at Exhibit "OO" to the present Petition.

7. By an ad-interim Order dated 4th February, 2016, this Court granted injunction of the immovable property as more particularly described in the Schedule at Exhibit "J" to the Petition.

8. The Petitioner has therefore sought injunction in respect of the hypothecated assets described in the Schedule at Exhibit "PP" as well as the immovable property belonging to Respondent No. 5 described in the Schedule at Exhibit "J" to the Petition as well as the immovable property belonging to the Respondent No. 2. The Respondents have not filed their affidavits 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 reason why the statements/submissions made by the Petitioner in the Petition should not be accepted. Section 9 of the Act empowers the Court to pass an interim measure of protection. 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 granting injunction in respect of the property described at Exhibit "J" to the Petition. The claim of the Petitioner is huge and unless adequately protected, the Petitioner may suffer irreparable harm and injury. The balance of convenience also warrants the grant of relief. Hence the following order is passed:

(i) Pending the hearing and final disposal of the arbitration proceedings, there shall be an injunction restraining the Respondents from selling, alienating, encumbering, parting with the possession and/or creating third party rights in respect of the immovable property as more particularly described in the Schedule at Exhibit "J" to the Petition in respect of which negative lien is created.

9. The Arbitration Petition is accordingly disposed of with liberty to the Petitioner to make appropriate application seeking further reliefs.

{S.J. KATHAWALLA, J}