

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION NO. 395 OF 2016**

Tata Capital Financial Services Limited

... Petitioner

V/s

Kalpataru Impex & 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. 3,25,00,000/- (Rupees Three Crores Twenty 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. 3,25,00,000/- vide its Sanction Letter dated 16th August, 2012. Subsequently, a Working Capital Demand Loan Agreement dated 6th September, 2012 for a loan amount upto the maximum limit of Rs. 3,25,00,000/- 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 @ 3% below the Short Term Lending Rate (STLR) (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. Thereafter, the Respondents executed various security documents in favour of the Petitioner.

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. 1,00,00,000/- (Rupees One Crore only) upto an amount not exceeding Rs. 4,25,00,000/- (Rupees Four 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 upto Rs. 4,25,00,000/- 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.

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 June, 2013 hypothecated the assets as more particularly described in the Schedule at Exhibit “RR” to the Petition. The Respondent No. 5 by a Memorandum of Entry dated 6th September, 2012 and a Memorandum for recording extension of Mortgage dated 14th February, 2013 created mortgage by deposit of title deeds in respect of the property more particularly described in the Schedule at Exhibit “SS” to the Petition. Also, the Respondent No. 2 is the owner of the immovable property more particularly described in the Schedule at Exhibit “TT” 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. 4,59,97,508/- (Rupees Four Crores Fifty Nine Lakhs Ninety Seven Thousand Five Hundred Eight 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 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. 4,59,97,508/- (Rupees Four Crores Fifty Nine Lakhs Ninety Seven Thousand Five Hundred Eight only) is due and payable by the Respondents to the Petitioner as per Particulars of Claim at Exhibit "QQ" to the present Petition.

7. By an ad-interim Order dated 4th February, 2016 passed in the captioned Arbitration Petition, the Hon'ble Bombay High Court granted injunction in respect of the mortgaged property as more particularly described in the Schedule at Exhibit "SS" to the Petition as well the immovable property belonging to the Respondent No. 2 as more particularly described in the Schedule at Exhibit "TT" to the Petition.

8. The Petitioner has therefore sought injunction in respect of the hypothecated assets described in the Schedule at Exhibit "RR" as well as the mortgaged property described in the Schedule at Exhibit "SS" and the immovable property belonging to Respondent No. 2 described in the Schedule at Exhibit "TT" to the Petition. The Petitioner also prayed for the appointment of the Court Receiver, High Court, Bombay, as a Receiver in respect of the mortgaged property described in the Schedule at Exhibit "SS" to the Petition. 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 reasons 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 appointing Court Receiver, High Court, Bombay as Receiver in respect of the mortgaged property described in the Schedule at Exhibit “SS” to the Petition. The appointment of Court Receiver is necessary in order to ensure that the said mortgaged property is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction in respect of the properties described at Exhibit “SS” and Exhibit “TT” to the Petition also needs to be granted to protect the rights of the Petitioner. 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, the Court Receiver, High Court, Bombay, is appointed as Receiver in respect of the mortgaged property described in the Schedule at Exhibit “SS” to the Petition. The Court Receiver shall take symbolic possession of the mortgaged property described in the Schedule at Exhibit “SS” to the Petition.
- (ii) The Court Receiver shall within a period of two weeks after taking symbolic possession, give an option to the Respondents, in writing, to act as an agent of the Receiver in respect of the said mortgaged property

described in the Schedule at Exhibit “SS” to the Petition. 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 an 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.

- (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, the Court Receiver shall take forcible physical possession of the mortgaged property with the assistance of police, if required.
- (iv) 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 mortgaged property described in the Schedule at Exhibit “SS” as well as the immovable property belonging to the Respondent No. 2 described in the Schedule at Exhibit “TT” to the Petition.

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

10. A copy of this order shall be forthwith served on the Respondents by hand delivery and also by Speed Post A.D.

11. All parties, including the Court Receiver to act on a copy of this order duly authenticated by the Learned Associate of this Court.

{S.J. KATHAWALLA, J}