

**IN THE COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ARBITRATION PETITION NO. 487 OF 2016**

India Factoring Finance Solutions Pvt. Ltd. ... Petitioner

Versus

R. G. Shaw & Sons Private Limited & Ors. ... Respondents

Mr. Vivek Patil a/w Yogendra Shirwadkar, Sandesh Godse, Sharayu Pednekar i/b  
Vivek Patil & Associates for the Petitioner.

None for Respondents.

**CORAM : S. J. KATHAWALLA, J.**

**DATED : 23<sup>rd</sup> June 2016**

**P.C.:**

1. The Petition is filed by the Petitioner under section 9 of Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Arbitration Petition is served on the Respondents and an affidavit proving service is on record. The Petition is accordingly heard today finally at the stage of admission. None appear for Respondents.

2. Petitioner has granted factoring facilities to the Respondent No. 1 which were guaranteed by Respondent Nos. 2 to 9. Respondent Nos. 2 and 3 are also directors of Respondent No. 1. Respondent Nos. 10 and 11 are approved debtors to factoring facilities availed by Respondent No. 1.

3. On 21<sup>st</sup> March, 2012, Petitioner sanctioned a loan of Rs. 10,00,00,000/- in favour of Respondent No.1. The said facility of Rs.10,00,00,000/- was revised by the Petitioner vide sanction letters dated 16<sup>th</sup> May, 2013 and 15<sup>th</sup> November, 2013. Respondents have executed various loan

documents to secure these facilities availed from the Petitioner including Factoring Agreements dated 27<sup>th</sup> March, 2012 and 10<sup>th</sup> October, 2013 (Exhibit-C and I-1 to the Petition).

4. Respondent No. 1 under Notices of Assignment dated 21<sup>st</sup> March, 2012 also assigned in favour of the Petitioner the receivables due and payable to them by Respondent Nos. 10 and 11.

5. Respondent No. 1 agreed to settle outstanding dues of the Petitioner. The Respondent no. 1 and Petitioner therefore entered into a Settlement Agreement dated 12<sup>th</sup> August, 2014.

6. Respondents failed and neglected to make payments as agreed under the said factoring agreements and Settlement Agreement. In the light of the default of Respondents the Petitioner issued Demand Notice dated 28<sup>th</sup> January, 2016 and demanded the entire outstanding amount of Rs. 7,46,00,506.39/- due and payable as on 31<sup>st</sup> December 2015.

7. In spite of receipt of the notice dated 28<sup>th</sup> January, 2016, Respondents failed and neglected to make the outstanding amount to the Petitioner.

8. Clause 18 of the agreement provides for the events of default and remedies and Clause 23 provides for arbitration. There has been default on the part of the Respondents. In view thereof Respondents became liable to pay to the Petitioner a sum of Rs. 7,46,00,506.39/- as on 31<sup>st</sup> December, 2015 along with further interest @21% p.a. from 1<sup>st</sup> January, 2016 till realization thereof as per Particulars of Claim annexed and marked as "Exhibit-O" to the Petition. The

Petitioner therefore invoked the arbitration clause in the Agreement dated 27<sup>th</sup> March, 2012 and 10<sup>th</sup> October 2013.

9. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as Receiver of the said properties more particularly described in Exhibit-P to the Petition. In absence of any defence or contest by the Respondents, 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. Since Respondents have defaulted in repayment of the outstanding dues, it is necessary to safeguard the interest of the Petitioner by appointing the Court Receiver, High Court, Bombay as Receiver of properties more particularly described in Exhibit-P to the Petition. The balance of convenience is in favour of the petitioner. The properties as described in Exhibit-P are the only significant security to secure the claim of the Petitioner, which needs to be secured/protected in order to ensure that in the event of an Award being passed in favour of the Petitioner, the Award is not rendered merely a paper Award. Therefore, the appointment of the Receiver is necessary in order to ensure that the said properties is not transferred or alienated, thereby defeating the rights of the Petitioner. Hence the following order.

- (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 properties more particularly described in Exhibit - P to the Petition with direction to take symbolic possession of the same 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 symbolic possession, give an option to the respondent in writing to act as agents of the Receiver in respect of the said property described in Exhibit – P 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 option. In the event of the Respondents being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver, subject to security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Factoring Agreements;
  - (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 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. The Arbitration Petition is accordingly disposed of.

(S. J. KATHAWALLA J.)