

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 394 OF 2016

M/s. Siemens Financial Services Private Limited ... Petitioner

Versus

M/s Gratolite India Pvt. Ltd. & Ors. ... Respondents

Shavez Mukri, along with Mr. Srinivas Atreya i/b. M/s Indialaw for the Petitioner.

None for Respondents.

CORAM: S.J. KATHAWALLA, J.

DATED: 21st April, 2016

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 Respondent and an Affidavit proving service is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan Agreement (“said Agreement”) bearing Reference No A001000582001 dated 23.04.2013, the Petitioner provided a loan of Rs.72,00,000 (Rupees Seventy Two Lakhs only) to the Respondent No.1 for purchase of assets being 1. Blocker OTO Type 480 MM Wire Drawing Machine with accessories (6 Nos.), 2. Spooling Machine Din-710, 3. Weigh Bridge Pit Type and 4. DG set 160 KVA (“said Assets”) as more particularly set out in Schedule 2 to the said Agreement and described in Exhibit: ‘H’ of the Petition and on the terms

described in the Loan Agreement dated 23.04.2013.. By a Deed of Hypothecation dated 23rd April, 2013, the said Assets were hypothecated by the Respondents in favour of the Petitioner. Under the said Agreement, the said Assets were hypothecated with the Petitioner by the Respondents, as security for repayment of the Loan amount.

3. The Loan amount of Rs.72,00,000 (Rupees Seventy Two Lakhs only) was repayable by the Respondents to the Petitioner with interest @ 15% per annum and the tenor of the said Agreement was for 48 months.

4. Respondent No.2 has executed the Loan Agreement in his capacity as Director and Guarantor of Respondent No. 1 of the aforesaid Loan. Clause 13 of the said Agreement provides for the events of default; Clause 17 for the rights and remedies of the Petitioner including procedure for Repossession of Assets. Clause 28 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.59,57,337/- (Rupees Fifty Nine Lakh Fifty Seven Thousand Three Hundred Thirty Seven only) as on 02.02.2016. The events of default having 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 08.09.15. The Petitioner therefore invoked the arbitration clause in the said Agreement dated 23.04.13.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the Hypothecated Asset, more particularly described in paragraph 2 to the Petition. The Respondents have not filed their Affidavit 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 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 the Court Receiver as Receiver of the Hypothecated Assets. The appointment of the Receiver is necessary in order to ensure that the said Assets are not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction in terms of prayer clause (b) also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs.59,57,337/- and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of relief.

Hence, the following order is passed:

a) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the Hypothecated Assets, more particularly described in Exhibit: 'H' of the Petition with a direction to take

physical possession of the said Assets with police assistance, if required, and without any prior notice to the Respondents;

(b) The Court Receiver 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 assets. 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 the Respondents being desirous of acting as agents of the Court Receiver, they shall be appointed as agent/s 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 Agreement (being Exhibit 'B' 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 filing of the said publication by the Petitioner, it would be open to the Petitioner to apply to the Court for further orders including sale of the said Assets 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 Assets described in Exhibit: 'H' of the Petition.

6. A copy of this order shall be forthwith served on the Respondents by Speed Post A.D.

7. The Arbitration Petition is accordingly disposed off.

(S.J. KATHAWALLA, J.)