

**IN THE COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 474 OF 2016**

India Factoring Finance Solutions Pvt. Ltd. Petitioner

Versus

Kohinoor Steel 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 : 28th July, 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. By an order dated 21st April, 2016, this Court passed an ad-interim order restraining Respondents from selling, alienating, encumbering, parting with possession and/or creating third party rights in respect of the properties more particularly described in Exhibit-M to the Petition until further orders and directed to Respondents to disclose on affidavit particulars of their properties. The Petition is today taken up for final hearing. None appear for Respondents.

2. Petitioner has granted factoring facilities to the Respondent No. 1 which were guaranteed by Respondent nos. 2, 4 and 6. Respondent Nos. 2 to 5 are also directors of Respondent No. 1.

3. On 30th May, 2011 the Petitioner sanctioned a loan of Rs. 10,00,00,000/- in favour of Respondent No.1. The said facility was time to time revised to Rs.10,00,00,000/- vide sanction letter dated 08th August 2013. The Respondents executed various loan documents to secure the facility availed from the petitioner including Factoring Agreements dated 30th June 2011 and 27th August 2013 (Exhibit-C and I-1 to the Petition).

4. Respondent No. 1 agreed to settle outstanding dues of the Petitioner. The Respondent no. 1 and the Petitioner therefore entered into a Settlement Agreement dated 29th September 2014.

5. 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 19th March 2015 and demanded the entire outstanding amount of Rs. 10,88,52,089.11/- due and payable as on 28th February 2015.

6. Clause 11 of the agreement provides for the events of Termination and Clause 17 provides for arbitration. There has been a default on the part of the Respondents. In view thereof Respondents became liable to pay to the Petitioner a sum of Rs. 12,35,98,933.11/- as on 31st December 2015 along with further interest @19.75% p.a. from 1st January 2016 till realization thereof as per Particulars of Claim annexed and marked as "Exhibit-L" to the Petition. The Petitioner therefore invoked the arbitration clause in the Agreements dated 30th June 2011 and 27th August 2013 (Exhibit-C and I-1 to the Petition).

7. 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-M to the Petition. In absence of any defence 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. 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 the said properties. The properties as described in Exhibit-M 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. In my view, no harm or prejudice will be caused to the Respondents if in the above facts and circumstances, an order of injunction dated 21st April, 2016 be continued. The balance of convenience is in favour of the petitioner. Therefore, the appointment of the Receiver is necessary in order to ensure that the said properties are 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 is appointed as Receiver in respect of the properties more particularly described in Exhibit - M 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 Respondents in writing to act as agents of the Receiver in respect of the said property described in Exhibit - M 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;
- (iv) Ad-interim order dated 21st April, 2016, restraining the Respondents from alienating, encumbering, parting with possession or creating any third party rights in respect of the aforesaid properties more particularly described in Exhibit – M to the Petition shall also continue until the hearing and final disposal of the Arbitration proceedings and the enforcement of the arbitral Award passed therein

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

9. The Arbitration Petition is accordingly disposed of.

(S. J. KATHAWALLA J.)