IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.766 OF 2016

L & T Finance Ltd. ..Petitioner
V/s.
St. John Freight Systems Ltd. & Anr. ..Respondents

Ms. Shakuntala Joshi a/w Anand Poojari, Nikita Pawar, Jalpa Pithadia i/b S.I. Joshi & Co. for Petitioner.

None for the Respondents though served. Affidavit of service filed.

CORAM : S.J. KATHAWALLA, J.

DATED : 23rd June, 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 Respondents and an Affidavit proving service dated 03.03.2016 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By Loan Agreement dated 07.09.2011 the Petitioner provided to the Respondent No.1 the Secured Term Loan of Rs.20,00,00,000/- (Rupees Twenty Crores Only). As more particularly described in Offer letter Respondent No.1 also created exclusive charge by way of equitable mortgage on various lands and properties as described in the Exhibit "A" together with all building, constructions and appurtenances thereon and thereunder in favour of the Lender.

3. Respondent No.2 also personally guranteeed to repay the loan amount and executed a Deed of Guarantee in favour of the Petitioner being Exhibit "C" to the Petition.

4. The Loan amount of Rs.25,75,16,303/- (Rupees Twenty Five Crores Seventy Five Lacs Sixteen Thousand Three Hundred and Three Only) was repayable by the Respondents to the Petitioner with interest @ 13.25 % per annum repayable within a period of 4 years in 48 monthly equated installments 1st installments is of Rs. Rs.53,90,349/- and rest of the installments including last installments is of Rs.53,64,382/- commencing from 15.10.2011 and ending on 15.09.2015 as provided in the Repayment Schedule annexed to the loan agreement.

5. Clause 9 of the Loan Agreement provides for the Events of Default; Clause 10 provides for Consequences in Event of Default and Clause 12 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. 6,48,17,120/- (Rupees Six Crores Forty Eight Lakhs Seventeen Thousand One Hundred and Twenty Only) as on 04.02.2016. The Petitioner therefore invoked the arbitration clause in the Agreement.

6. In the present Petition, the Petitioner has sought injunction, disclosure and appointment of the Court Receiver, High Court Bombay as the Receiver of the mortgaged property, more particularly described in Exhibit "F" to the Petition. The Respondents are not present before the Court today. They have also not filed

their Affidavit in Reply opposing the above Petition. I see no reason why the statements/submissions made in the Petition should not be accepted. The statements/submissions made in the Petition have therefore, remained uncontroverted. Section 9 empowers the Court to pass interim measures of protection. Since 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 said mortgaged property. The appointment of the Receiver is necessary in order to ensure that the said mortgaged property is not wasted 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 said mortgaged property, more particularly described in Exhibit "F" to the Petition, with direction to take forcible physical possession of the said mortgaged property 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 possession, give an option to the Respondents, in writing to act as agent of the Receiver in respect of the said mortgaged property. 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. The Receiver shall determine the quantum of security and royalty having regards to the terms and conditions contained in the Loan Agreement (Exhibit "A-1" to the Petition);

(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 orders;

(iv) 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 mortgaged property described in Exhibit "F" to the Petition.

7. The Arbitration Petition is accordingly disposed of.

8. All concerned to act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court.

(S.J. KATHAWALLA, J.)