

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.567 OF 2016

L & T Finance Ltd.

.. Petitioner

V/s.

Yashas FRP Manufacturing
Co.

..Respondent

Ms. Shakuntala Joshi along with Anand Poojari , Ms. Nikita Pawar and Ms. Jalpa Pithadia i/b M/s. S.I. Joshi & Co. for the Petitioner.

None for the Respondents though served.

CORAM : S.J. KATHAWALLA, J.

DATE : 01st 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 Respondent. The Petition is served on the Respondent and an affidavit proving service dated 17th March, 2016 is on record. The Petition is taken up for final hearing. However, none appear for the Respondent.

2. By Facility Agreement dated 24.12.2014 (Exhibit "A" to the Petition) the Petitioner provided to the Respondent Pre-Shipment Vendor Finance Facility in the sum of Rs.45,00,000/- (Rupees Forty Five Lakhs Only) for a period of 90 days on revolving basis.

3. The Loan amount of Rs.45,00,000/- (Rupees Forty Five Lakhs Only) was repayable by the Respondent to the Petitioner with interest @ 15 % per annum within a period of 90 days from the date of disbursement. The Respondent had agreed and undertaken that in case of delay or default in payment the Respondent will pay delayed payment charges @ 18% p.a. on the defaulting amount as provided in the Repayment Schedule I annexed to the facility agreement.

4. Clause 8 of the Facility Agreement provides for the events of default; Clause 9 provides for Consequences in Events of Default and Clause 11 provides for arbitration. There has been a default on the part of the Respondent and the Respondent failed to pay to the Petitioner a sum of Rs.23,43,677/- (Rupees Twenty Three Lakhs Forty Three Thousand Six Hundred and Seventy Seven Only) as on 14.12.2015. The Petitioner therefore invoked the arbitration clause in the Agreement.

5. In the present Petition, the Petitioner has sought injunction, disclosure and appointment of the Court Receiver, High Court Bombay as the Receiver of the property

of the Respondent more particularly described in Exhibit “E” to the Petition. The Respondent is not present before the Court today. 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 interim measures of protection pending the arbitration proceedings. Since the Respondent has defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner by directing the Respondent to furnish security and injunction on the property described in Exhibit “E” to the Petition. Hence, the following order:

(i) The Respondent is directed to furnish security in favour of the Prothonotary and Senior Master, High Court, Bombay in sum of Rs.23,43,677/- (Rupees Twenty Three Lacs Forty Three Thousand Six Hundred and Seventy Seven Only with further overdue compensation at the rate of 18% p.a. from 15.12.2015, within two weeks from the date of communication of this order to the satisfaction of Prothonotary and Senior Master, High Court, Bombay.

(ii) Pending the hearing and final disposal of arbitration proceedings there shall be an injunction restraining Respondent from selling, encumbering, parting with possession and/or creating third party rights in respect of properties/assets more particularly described in Exhibit “E” to the Petition.

(iii) The Respondent is directed to disclose on Affidavit all the immovable properties, movable asset and other encumbered and unencumbered properties of the Respondent within a period of 4 weeks from receipt of this order and to forthwith forward a copy of the Affidavit to the Advocate for the Petitioner.

6. The Arbitration Petition is accordingly disposed of with liberty to the Petitioner to take out fresh Petition seeking further reliefs.

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

(S. J. KATHAWALLA, J.)