

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.580 OF 2016

L & T Finance Ltd.

... Petitioner

V/s.

Taurus Flexible Pvt. Ltd.
& Ors.

... Respondents

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

None for the Respondents.

CORAM : S.J. KATHAWALLA, J.

DATE : 24th 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 by email on their email id's *bhuvan@taurus flexible.com* and *rkg@taurusflexibles.com*. An Affidavit proving service dated 15.03.2016 is on record.

2. By Agreement for Lease dated 17.10.2011 (Exhibit "A" to the Petition) the Petitioner provided to the Respondent No.1 the Lease Finance Facility of Rs.1,15,00,000/- (Rupees One Crores Fifteen Lakhs Only) for purchase of "PLANT & MACHINERY" (leased asset) more particularly described in the Exhibit "F" to the Petition.

3. Under the said agreement for lease, the Respondent No.1 had agreed and undertook to repay the lease rentals within period of 48 months as per the summary schedule with interest @18% p.a. payable with monthly interests on such terms and conditions more particularly mentioned in the summary schedule to the lease agreement.
4. Respondent Nos.2 and 3 have guaranteed due repayment of the lease rentals.
5. Clause 10 of the Agreement provides for the events of default; Clause 11 for the consequences of default; Clause 12 provides for the rights of the Petitioner on default including repossession of the asset Clause 17 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 12,14,945.61 (Rupees Twelve Lakhs Fourteen Thousand Nine Hundred Fourty Five and Sixty One Paise Only) as on 14.01.2016. The Petitioner therefore invoked the arbitration clause in the Lease Agreement dated 17.10.2011.
6. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the leased asset, more particularly described in Exhibit "F" to the Petition. The Respondents have not filed their Affidavit in Reply and are also not present before the Court. In the 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 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 leased asset. The appointment of the Receiver is necessary in order to ensure that the leased asset 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 leased asset, more particularly described in Exhibit “F” to the Petition, with a direction to take forcible physical possession of the said leased asset 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 an agent of the Receiver in respect of the said leased asset. 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 regard to the terms and conditions contained in the Lease Agreement (Exhibit “A” 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 Petitioners to apply to the Court for further orders including sale of the said leased asset by private treaty;

(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 leased asset as described in Exhibit "F" to the Petition.

(v) The Respondent Nos.2 and 3 be restrained by an order of injunction from leaving the country without permission of this Hon'ble Court.

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

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

(S. J. KATHAWALLA, J.)