

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.602 OF 2016

L & T Finance Ltd.

... Petitioner

V/s.

Precision Engineers Fabricators
Pvt. Ltd. & Ors.

... Respondents

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

Parikshit Desai for Respondent No.5.

CORAM : S.J. KATHAWALLA, J.

DATED : 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 and an Affidavit proving service dated 28.03.2016 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents except for Respondent No.5.

2. By Loan Agreement dated 10.03.2015 (Exhibit "A" to the Petition) the Petitioner provided to the Respondent No.1 a Loan of Rs.3,00,00,000/- (Rupees Three Crores Only) for Long Term Working Capital. Respondent No.1 also created security in favour of the Petitioner i.e., 2nd pari passu charge by way of mortgage on a property located in Falta Industrial Growth Centre, Plot No.815, Kolkata.

3. Respondent Nos.2 and 3 have guaranteed due repayment of the loan amount. Clause 8 of the Agreement provides for the events of default; Clause 9 for the consequences of default; Clause 11 provides for arbitration. There has been a default on the part of the Respondent No.1 to 3 and the Respondent Nos.1 to 3 failed to pay to the Petitioner a sum of 4,77,38,767/- (Rupees Four Crores Seventy Seven Lakhs Thirty Eight Thousand Seven Hundred and Sixty Seven Only) as on 07.03.2016. The Petitioner therefore invoked the arbitration clause in the Loan Agreement dated 10.03.2015.

4. Respondent No. 1 has worked for/provided services to Respondent Nos. 4 to 8 for which the Respondent No. 1 has to receive payments from Respondent Nos. 4 to 8.

5. The Loan amount of Rs.3,00,00,000/- (Rupees Three Crores Only) was repayable by the Respondent Nos.1 to 3 to the Petitioner with interest @ 13% per annum in 84 installments commencing from 16.04.2015 and ending on 16.03.2022.

6. In the present Petition, the Petitioner has sought injunction, directions for furnishing security in favour of Petitioner, disclosure of encumbered and un-encumbered properties of the Respondent Nos.1 to 3, disclosure of the amount due and payable by the Respondent Nos. 4 to 8 to the Respondent No.1 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.

7. I see no reason why the statements/submissions made by the Petitioner in the Petition should not be accepted. Since, the Respondent Nos.1 to 2 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 i.e., situate at Falta Industrial Growth Centre, Plot No.815, Kolkata. 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. Section 9 empowers the Court to pass interim measures of protection. Hence, the following orders:

- (i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the immovable property, more particularly described in Schedule to the loan agreement being Exhibit “A” to the Petition, with direction to take symbolic possession of the said property;
- (ii) Pending the hearing and final disposal of the arbitration proceedings, there shall be an injunction restraining the Respondent Nos.1 to 3 from selling, alienating, encumbering, parting with possession and/or creating third party rights in respect of properties/assets as more particularly described in Exhibit “F” to the Petition;
- (iii) The Respondent Nos. 4 to 8 are directed to disclose on affidavit amount due and payable to the Respondent No.1 and direct them to deposit the disclosed amount with Prothonotary Senior Master, High Court, Bombay within period of three weeks from the date of receipt of this order.

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

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

(S.J. KATHAWALLA, J.)