IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1288 OF 2014

KARVY FINANCIAL SERVICES LTD ...PETITIONER

V/S

KALPESH M. PATEL ...RESPONDENTS

Mr. Mayur Khandeparkar a/w Mr. Omar Khaiyam Shaikh i/b Vikas Salvi & Associates for the Petitioner.

None for the Respondents

CORAM: S. J. KATHAWALLA J

DATE: APRIL 1, 2016

P.C:

Vide order dated 28th March, 2016 passed in Chamber Order No.158 of 2016, the Advocates for the Respondent were discharged. Today when the matter appeared on board for hearing and final disposal, none present for the Respondent. Affidavit in Reply is also not filed by the Respondent. I have heard the Learned Counsel for the Petitioner who presses for disposal of the present Arbitration Petition in terms of prayer clause (a) to the Arbitration Petition. The prayer clause (a) to the Arbitration Petition reads as under:

(a) Pending the hearing and final disposal of the Arbitration proceedings before the Learned Sole Arbitrator and till the award is put to execution, this Hon'ble Court may be pleased to direct the Respondent to furnish solvent security of the value equivalent to the Petitioner's claim i.e. ***Rs.15,37,22,244/- (Rupees Fifteen Crores Thirty Seven Lacs Twenty Two***

Thousand Two Hundred and Forty Four Only) *due as on 22/4/2014, within such time as this Hon'ble Court may deem fit and proper failing which the property namely Premises being 202, Atlantic – IV, near Natubhai Centre, Race Course, Vadodara – 390 007 be attached;*

2. The Learned Counsel for the Petitioner submits that pursuant to the Loan Agreement dated 27th July, 2010 executed by and between the Petitioner and the Respondents, an amount of Rs.14,00,00,000/- was advanced to the Respondent with interest @ 16% p.a. repayable in 12 months. As a security towards repayment of the Loan amount, the Respondent had pledged 31.88 lacs shares of Kemrock Industries & Exports Ltd, the value of each share at that time was Rs.510/-. He submits that at the time of filing of the Arbitration Petition, the value of shares was Rs.39.50 only and today it is even less than this amount.

3. The Learned Counsel for the Petitioner further submits that the Respondents had also executed a demand promissory note in favour of the Petitioner to the tune of Rs.14,00,00,000/-. The Respondent also executed Letter of Authorisation dated 21st September, 2011 in favour of the Petitioner wherein the Respondent undertook to maintain the margins at the level prescribed by the Petitioner from time to time. It was also stated in the said Letter of Authorisation that the Petitioner is empowered to immediately and without any reference or notice to the Respondent to dispose of all or any other securities by sale or otherwise and forthwith transfer the proceed towards liquidation of amounts due to the Petitioner.

4. The Learned Counsel for the Petitioner also submits that the cheques issued by the Respondent in favour of the Petitioner are dishonoured and therefore the Petitioner has filed proceedings u/s 138 of

the Negotiable Instruments Act as against the Respondent and that the same is pending before the competent Magistrate's Court.

5. The Learned Counsel for the Petitioner submits that when the Petitioners noticed that there is sharp decline in the market value of the shares of Kemrock Industries & Export, they repeatedly called upon the Respondent to pledge additional shares or pay the margin deficit amount. The Respondent failed to comply with the request and therefore the Petitioner recalled the entire loan amount vide Loan Recall Notice dated 24th August, 2012 and also invoked arbitration as there was no money forthcoming from the Respondents.

6. The Learned Counsel for the Petitioner has drawn my attention to order dated 10th June, 2015 (Coram: R.D. Dhanuka J) passed in the present Petition pursuant to which the Respondent was directed to file Disclosure Affidavit within two weeks. It is stated that in the Disclosure Affidavit filed by the Respondent he has clearly stated that he does not possess any movable or immovable property. The Counsel for the Petitioner has drawn my attention to paragraphw 2, 3 & 4 of the said Affidavit. He also points out that the said Disclosure Affidavit is affirmed in United Kingdom where the Respondent is presently residing and that he has left the country for ever and has no intention to return.

7. The Learned Counsel for the Petitioner has also drawn my attention to order dated 5th August, 2011 wherein this Court (Coram: R.D. Dhanuka J) has in para 1 thereof taken note of various disclosures made in the Disclosure Affidavit dated 15th July, 2015, which reads as under:

> *"Pursuant to the direction issued by this Court, the Respondent has filed an affidavit dated 15th July, 2015 in which it is alleged that he has no assets whether movable or immovable and has no investments in the real estate/development or in the share*

> *market and does not have any Demat Account standing in his name. It is alleged that in so far as the immovable property described in para 4 of the affidavit is concerned, the said property stands in the name of his wife and is her self owned property and is mortgaged with the ICICI bank Limited. The Respondent has disclosed that he has certain policies issued by the Life Insurance Corporation of India in his name. According to the respondents, he holds 4.11% of the total shares having present value of Rs.1.81 crores approximately which are pledged/encumbered to the Petitioner and other lenders of the Company. The learned counsel for the petitioner disputes the statement made by the respondent in his affidavit dated 15th July, 2015".*

In the said order, the Respondent was directed to produce certified copies of the Balance Sheet of the Respondent and also copies of the Income Tax Returns duly certified by the Chartered Accountant for the Assessment year 2010 – 2011 till date. This order is partly complied with by the Respondent.

8. The Learned Counsel for the Petitioner has also drawn my attention to the Additional Affidavit dated 30th September, 2014 and pointed out to Exhibit – A which is an article published in the Times of India stating that an FIR is registered by the Enforcement Directorate against the Kemrock Industries and its Directors for committing offence of money laundering. He has also drawn my attention to Exhibit – B to the said Affidavit which is a list of defaulters published by the All India Bank Employees Union and in that list, the name of Kemrock Industries is at Sr. No.13 having defaulted to the tune of Rs.929 crores.

9. No Affidavit in Reply is filed by the Respondent till date though various opportunities were granted to him. I have considered the submissions of Learned Counsel for the Petitioner and also perused various documents and also the conduct of the Respondent in the present matter. I am of the opinion that the Petitioners have made out a case for grant of relief in terms of prayer clause (a) to the Petition and accordingly I proceed to pass the following order:

(a) The Respondent is directed to furnish solvent security of the value equivalent to the Petitioner's claim i.e. Rs.15,37,22,244/- (Rupees Fifteen Crores Thirty Seven Lacs Twenty Two Thousand Two Hundred and Forty Four Only) due as on 22/4/2014, to the satisfaction of Prothonotary & Senior Master, within 4 weeks from the date of service of this order upon him;

(b) The Petitioner to serve the copy of this order upon the Respondent by hand delivery/post/e-mail in addition to serving the present order through the Indian Embassy in the United Kingdom;

(c) Parties to act on the authenticated copy of this order.

(d) The Petition is accordingly disposed off with no order as to cost.

(S.J. KATHAWALLA,J.)