

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 5 OF 2016
IN
COMMERCIAL ARBITRATION PETITION NO.16 OF 2016

M/s. Bhushan Steel Ltd.	Petitioner
V/s.	
Tata Capital Financial Services Ltd	Respondent

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Mr. Pradeep Sancheti, Senior Advocate a/w. Mr. Atit Shukla a/w.
Mr. Madhur Rai i/by. Sanjiv G. Punalekar, Advocate for the
petitioner.

Mr. Bhavik Manek a/w. Mr. Nikhil Mehta i/by. KMC Legal Venture,
Advocate for respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 24TH OCTOBER, 2016.

P.C. :-

1 This Notice of Motion is taken out for interim relief of stay of the Award dated 5th May, 2016 directing the petitioner to pay a sum of Rs.19,74,59,675/- together with interest at the rate of 18% p.a. from 13th March, 2014 till payment and/or realisation. The Award further directs that the respondent shall give credit for the amount paid by the petitioner, during the course of reference/arbitration proceedings, if any.

2 There is no dispute raised by the petitioner as regards the transaction of loan and its liability to repay the same. Apparently, the petitioner has not been able to honour the loan agreement because of financial constraints. There is also no dispute that during the pendency of arbitral proceedings, the petitioner has paid substantial amount to the respondent towards its liability. The petitioner had not filed written statement to the claim of the respondent. This was obviously because it was in the process of working out a settlement with the respondent, in the process of which certain amounts had been paid. The main challenge to the impugned Award is that, the respondent has failed to disclose the payments made by the petitioner during the arbitral proceedings, resulting into award for the entire amount as claimed. This has rendered the award perverse. Further the award as passed is inexecutable in view of the direction given. The direction will compel the executing court to decide the controversy as regards the quantum of amount paid, the date of payment, interest due on the amount to be paid etc., which controversy ought to have been decided by the arbitrator himself. It is also to be noted that after the present petition under Section 34 of the Arbitration Act was filed, the respondent by its letter dated 11th July, 2016 has called upon the petitioner to pay a sum of Rs.8,50,87,591/- towards the Loan Account so as to clear the outstanding dues. Mr. Manek, the learned Advocate appearing for the respondent submits that the outstanding dues are infact of Rs.10,48,95,367/- as stated in the

affidavit-in-reply to the Notice of Motion, and requests for deposit of that amount. In my opinion in the facts and circumstances of the case, reasonable condition to be imposed upon the petitioner for grant of interim relief of stay of the Award would be a direction to deposit a sum of Rs.8,50,87,591/- as per the demand made in the letter dtd. 11th July, 2016, in this Court within a period of 8 weeks from today. The Notice of Motion is hence allowed in terms of prayer clause (a) on condition that the petitioner deposits, in this court within a period of 8 weeks from today, a sum of Rs.8,50,87,591/-. Mr. Manek, learned Advocate appearing for the respondent, makes an oral application for withdrawal of the amount. Since the liability is undisputed, on the deposit being made, the respondent is at liberty, to withdraw the amount after filing an undertaking that the respondent will bring back the amount to the Court, in the event, the petitioner succeeds in the petition.

(SMT. R.P. SONDURBALDOTA, J)