IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1645 OF 2015

L & T Finance Ltd. .. Petitioner

V/s.

Roadway Solutions India
Pvt. Ltd.& Anr. .. 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.

DATED : 18th March, 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 12.08.2015 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan Agreement dated 27.02.2012, the Petitioner provided a loan of Rs.2,79,70,148/- to the first Respondent for purchase of ten assets more particularly

described in Exhibit “F” to the Petition and the said Assets is hypothecated with the Petitioner by the Respondent No.1 as per Deed of Hypothecation dated 27.02.2012.

3. The Loan amount of Rs.2,79,70,148/- was repayable by the Respondents to the Petitioner with interest @6.01% p.a as per Schedules more particularly set out in the loan agreement. All the assets are hypothecated by executing separate Deed of Hypothecation dated 27.02.2012. Therefore, the aggregate amount payable by the Respondents to the Petitioner under the Loan Agreement was Rs.3,26,00,448/-.

4. Respondent No.2 has guaranteed due repayment of the loan. Clause 12 of the Agreement provides for the events of default; Clause 13 for the consequences of default; Clause 14 provides for the rights of the Petitioner on default including repossession of the asset Clause 18 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 Rs.51,61,860/- (Rupees Fifty One Lakhs Sixty One Thousand Eight Hundred and Sixty Only) as on 21.05.2015. The Petitoner therefore invoked the arbitration clause in the Agreement dated 27.02.2012.

5. The Respondent Nos.3 and 4 are joint as a debtors of Respondent No.1 for whom Respondent No.1 is working and using equipments financed by Petitioner. Petitioner financed total ten equipments Agreement being Exhibit “A” is expired by afflux of time on 10.09.2015. In view thereof, Respondent Nos.3 and 4 are directed to disclose on

affidavit dues due and payable by them to the Respondent No.1 and also restrained and also the Respondent Nos.3 and 4 directed not to make any payment to the Respondent No.1. Without prior permission of this court.

6. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated Assets, more particularly described in Exhibit "G" 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 hypothecated Assets. The appointment of the Receiver is necessary in order to ensure that the hypothecated Assets 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 Assets, more particularly described in Exhibit "G" to the Petition, with a direction to take forcible physical possession of the said Assets 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 Assets. 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 Loan 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 Assets 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 Assets as described in Exhibit "G" to the Petition.

7. The order passed by this Court directing Respondent No.3 and 4 not to make any payments due to Respondent No.1 shall continue until further orders.

8. A copy of this order shall be forthwith served on the Respondents by hand delivery as well as Registered Post A.D.

7. The Arbitration Petition is accordingly disposed off.

(S.J. KATHAWALLA, J.)