IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1739 OF 2015

L & T Finance Limited **... Petitioner**

V/s.

Rio Lobo & Anr. **...Respondents**

Ms. Shalaka More i/b Mr. Girish Thakur for the Petitioner

None for the Respondent No. 1

CORAM: S.J.KATHAWALLA, J.

DATED: 1st April, 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 only on the Respondent No. 1 and an affidavit proving service is on record. The petition is today taken up for final hearing. However, none appear for the Respondent No. 1.

2. By a Loan cum Hypothecation Agreement dated 22.10.2010, the Petitioner provided a loan of Rs. 30,20,000/- (Rupees Thirty Lac Twenty Thousand Only) (Rs. 15,10,000/-

per Vehicle) to the First Respondent for Purchase of 1 no. Vehicle/Equipment viz. AL 4019 bearing Chassis No. MB1TLDJB2ARLD0185 and Engine No. LAH655145 & Registration No. MH-04-ET473 ("said Vehicle/Equipment") more particularly described in Exhibit "F" to the Petition and on the terms described in the Loan-Cum-Hypothecation Agreement dated 22.10.2010. Under the said Agreement, the said Vehicle/Equipment was hypothecated with the Petitioner by the Respondent No.1, as security for repayment of the Loan amount.

3. The loan amount of Rs. 30,20,000/-(Rupees Thirty Lac Twenty Thousand Only) (Rs. 15,10,000/- per Vehicle) was repayable by the Respondent No. 1 to the Petitioner with interest @6.15% p.a. totaling to Rs. 37,62,920/- in 46 monthly installments i.e. Rs.72,920/- X 1 & Rs.80,000/- X 45 each commencing from 15/11/2010 and ending on 15/09/2014. However, the account with regard to Schedule bearing No. 0CV017066R1000291596, dated 22nd October, 2010 has been foreclosed.

4. The Respondent No. 2 has guaranteed the due repayment of the loan. Clause 12 of the Loan-Cum-Hypothecation Agreement provides for the events of default; Clause 13 for the consequences of default; Clause 14 provides for the right of the Petitioner on default including repossession of the assets. Clause 17 provides for the arbitration. There has been a default on the part of the

Respondent No. 1 and the Respondent No. 1 failed to pay to the Petitioner a sum of Rs. 9,93,792/- as on 17/03/2015. The events of default having taken place in terms of the Loan-Cum-Hypothecation Agreement, the Petitioner became entitled to recall and have recalled the entire loan. There was no reply to the Loan Recall Notice dated 10/06/2015. The Petitioner therefore invoked the arbitration Clause in the Loan-Cum-Hypothecation Agreement dated 22.10.2010.

5. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated Vehicle/Equipment, more particularly described in Exhibit “F” to the petition. The Respondent No. 1 has not filed his Affidavit in Reply and is also not present before the court. In absence of any defense or contest by the Respondent No. 1, 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. As the Respondent No. 1 has 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 Vehicle/Equipment. The appointment of the receiver is necessary in order to ensure that the hypothecated Vehicle/Equipment is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction in terms of the prayer (d) also

needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs. 9,93,792/- and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of relief. Section 9 empowers the court to pass interim measures of protection. Hence the following order is passed:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver is appointed as Receiver in respect of the Hypothecated Vehicle/Equipment, more particularly described in Exhibit "F" to the Petition, with direction to take forcible physical possession of the said Vehicle/Equipment with police assistance, if required, and without any prior notice to the Respondent No. 1;

(ii) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondent No. 1, in writing to act as an agent of the Receiver in respect of the said Vehicle/Equipment. The Respondent No. 1 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 No. 1 being desirous of acting as agent of the Court Receiver, he shall be appointed as agent 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 Cum Hypothecation Agreement (Exhibit “A” to the Petition);

(iii) In the event that the Respondent No. 1 do not communicate his willingness to the Receiver to act as agent within a period of two weeks from the date of receipt of the communication from the Court Receiver, it would be open to the Petitioner to apply to the court for further orders including sale of the Vehicle/Equipment by private treaty;

(iv) There shall also be an interim injunction restraining the Respondent No. 1 from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the said Vehicle/Equipment described in Exhibit “F” to the Petition.

6. The Arbitration Petition is accordingly disposed of.

(S.J.KATHAWALLA,J)