IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

<u>CHAMBER SUMMONS NO. 64 OF 2016</u>

<u>IN</u>

<u>ARBITRATION PETITION NO. 707 OF 2012</u>

Tata Capital Financial Services Limited .. Applicant

<u>In the matter between</u>

Tata Capital Financial Services Limited .. Petitioner

vs

Ramsarup Industries Limited & Others .. Respondents

Dr. B.B. Saraf, along with Ms. Nelly Mehta, instructed by M/s. MDP & Partners, for the Applicant/Petitioner.

Mr. Dipesh Siroya for the Respondents.

CORAM: S.J. KATHAWALLA, J.

DATED : 9th June, 2016

<u>P.C.</u>

1. The above Chamber Summons has been filed by the Petitioner seeking the following reliefs:

> "*a) that the Arbitration Petition No. 707 of 2012 be revived.*
>
> *b) that the Respondent Nos. 3 to 5 be directed to execute a Deed of Conveyance jointly in respect of the*

properties and attend the office of the Sub-Registrar for registration thereof, which stand sold to the Applicant/Petitioner by virtue of Order dated 19th December 2013 and further confirmed by the Order dated 17th February 2014 in Appeal No. 41 of 2014 in respect of the Order on the Report of the Private Receiver/Commissioner, dated 21st August 2013 and further confirmed by the Order dated 2nd May 2014 in SLP No. 9997 of 2014, the said properties being more particularly described at ***EXHIBIT "A"*** *hereto, and also described in the Schedule at Exhibit "U" to the Arbitration Petition No. 707 of 2012, and do all such acts, deeds and things necessary in that regard in a time bound manner as this Hon'ble Court may deem fit;*

c) that it be declared that the Respondent Nos. 3 to 5 are liable to pay their respective income-tax liabilities including all statutory dues and taxes etc. as may be applicable under the law arising out of the execution of the Deed of Conveyance and sale of the said properties being more particularly described at Exhibit "A" hereto;"

2. The facts leading to present application are hereunder:

3. The Petitioner had advanced financial facilities to Respondent No.1. One of the Directors of Respondent No.1 had furnished his personal guarantee for repayment of the outstanding dues of the

Petitioner. Respondent Nos. 3, 4 and 5 executed Corporate Guarantees in favour of the Petitioner and also executed a mortgage of their properties in favour of the Petitioner.

4. The Petitioner thereafter came across a circular issued by Respondent No.1 for its shareholders thereby proposing to pass a resolution for approval of sale and transfer of the company's windmill located in Dhule, Maharashtra and some of its other assets. The Petitioner filed Arbitration Petition No. 707 of 2012 under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act")inter alia praying for appointment of court receiver, injunction and deposit of Rs. 25,30,32,482.69 in this court.

5. On 19th June 2012, Arbitration Petition No. 707 of 2012 was disposed of on the basis of consent minutes duly signed by the Advocates for the parties. The disputes and differences were referred to arbitration. By consent of parties, a private receiver was appointed in respect of properties described at Exhibit U to the said Petition which properties were owned by Respondent Nos. 3 to 5. Both the parties agreed that the receiver shall sell the property by public auction or private treaty. The Respondents agreed not to create third party rights or part with possession of the mortgaged properties till such time as they

were sold and to render all cooperation and assistance to the private receiver for expeditious sale of the properties. The sale consideration was to be deposited by the private receiver in court and was subject to further orders of the arbitrator.

6. Without prior notice to the Petitioner, the 1st Respondent filed a reference before the BIFR which was registered on 21st November 2012.

7. Thereafter the Respondents filed a Chamber Summons being Chamber Summons No. 60 of 2013 in Arbitration Petition No. 707 of 2012 contending that in light of the pending reference filed by Respondent No.1 before the BIFR, the properties belonging to Respondent Nos. 3 to 5 which were furnished as security for repayment of the outstanding dues of Respondent No.1, could not be sold. The Respondents pleaded that the properties of Respondent Nos.3 to 5 should not be sold during the pendency of the reference before the BIFR. It was contended that since guarantees were given by Respondent Nos.3 to 5 guaranteeing repayment of loan of 1st Respondent in favour of the Petitioner, no steps could be taken by the Petitioner even in respect of the personal properties of the guarantors which were mortgaged.

8. By a detailed order dated 13th February 2013, this court after considering the law as placed by both the parties held that proceedings

under section 9 of the Arbitration Act cannot be equated with a suit under section 22 of the SICA. This court further held that since consent terms were arrived at and an order was passed by this court in terms of consent terms, the amendment to Section 22 (1) of the SICA does not bar enforcement of an order passed by a court in terms of the consent terms. It was further held that implementation of consent orders cannot be stayed under Section 22 of SICA. The court also held in para 38 that while a Sick industrial company has a wider protection against any proceedings for winding up, execution, distress or like against any of the properties of the industrial company or for appointment of a receiver in respect thereof, only a limited protection is granted in case of guarantors in respect of suit for recovery of money or for enforcement of any security against industrial company or any guarantee in respect of any loan or advance granted to the industrial company. The sale of a property pursuant to an interim consent order under Section 9 of the Arbitration Act does not in any manner fall within the protection granted to guarantors under Section 22 of the SICA.

9. Thereafter, the Respondents moved another application by way of Chamber Summons (Lodging) No. 754 of 2013 seeking stay of the sale of the property by the private receiver. The Respondents contended that the mortgaged properties were not valued correctly.

10. By an order dated 1st April 2013, the court allowed the sale of the property by private treaty. The court made it clear that both parties would be permitted to offer their bids or to submit bids of any third parties for the purpose of effecting sale by private treaty.

11. By an order dated 24th July 2013, this court rejected the application under Chamber Summons (L) No. 754 of 2013 leaving all objections open to be raised at the time of confirmation of sale.

12. Before the private commissioner, only one bid from the petitioner was received. The Respondents failed to make any bid or get a higher bidder. By an order dated 27th November 2013, the court granted to the Respondents an opportunity to bring an offer higher than Rs. 4 crores which was offered by the Petitioner failing which the offer made by the Petitioner would be confirmed.

13. By an order dated 19th December 2013, this court after considering various objections of the Respondents accepted the offer of Rs. 4 crores made by the Petitioner. The Respondents filed an appeal from the order dated 19th December 2013.

14. By an order dated 17th February 2014, the Division Bench confirmed the sale. This court however gave an opportunity to the Respondents to get a higher bid on or before 15th April 2014 failing which

the sale in favour of the Petitioner was to stand confirmed on 15th April 2014. The Petitioner was directed to furnish a bank guarantee in the sum in which the sale was confirmed which was to remain valid pending the arbitration proceedings.

15. The Respondents filed a Special Leave Petition against the order dated 17th February 2014 which was dismissed on 2nd May 2014. Thus, the sale in favour of the Petitioner stood confirmed. The Petitioner has furnished a bank guarantee in accordance with the order dated 17th February 2014. Only the ministerial act of executing the conveyance in favour of the Petitioner has remained.

16. The Respondents are now objecting to the execution of the sale deed. At a meeting held on 5th July 2015 before the private receiver, Respondent Nos.3 to 5 raised a contention that they are not willing to execute one single deed of conveyance and are not willing to bear and pay the capital gains liability that may arise as a result of the sale of the said property. Respondent Nos.3 to 5 contend that they would execute three separate sale deeds for each of the Respondent Nos.3 to 5. It is the contention of the Petitioner that the properties were sold as a single lot. The said properties were also mortgaged to the Petitioner by way of a single mortgage deed. The consideration of Rs. 4 crores is a consolidated

consideration for the entire properties described in Schedule A to the mortgage deed and the same cannot be bifurcated. The Respondents never raised this objection prior to the sale or prior to the confirmation of the sale. This objection is being raised now as an afterthought.

17. It is further submitted that for the purpose of stamp duty on the deed of conveyance, the revenue authorities in West Bengal have valued the properties at Rs. 4,65,45,404/-. The Respondents are now contending that they may have to pay capital gains tax on the additional value adjudicated by the stamp authority of Rs.65,45,404/- and that the said additional liability should be borne by the Petitioner. It is the contention of the Petitioner that this stand of the Respondents is entirely unreasonable. There is no obligation on the Petitioner to bear any prospective Income Tax liability of the Respondents. The same was not a condition of sale. In any case, it is for Respondent Nos.3 to 5 to pay their respective income tax liabilities that may arise as a result of execution of the Deed of Conveyance and if they have any issues on the same, they ought to take up the matter appropriately with the tax authorities.

18. The Respondents filed an affidavit in reply contending that Respondent Nos.3 to 5 above named are owners of the properties but

same is held by them in different proportion and the different portion of land are held by different Respondents and have different values. It is contended that the property on front side bears higher value than the properties situated down the road. The execution of a single conveyance deed will create hurdles for the Respondents with the government authorities.

19. It is further contended by the Respondents that as per section 50C and 56 of the Income Tax Act, when a transaction for sale or purchase of property at a rate below the circle rate of the property is executed, capital gain tax or any other income tax has to be paid on the circle rate and not on the transaction value. The Respondents state that in the present case the circle rate has been determined at Rs.4,65,45,404/- and as such, the Respondents would have to bear the capital gain tax for Rs.65 lakhs. It is further their stand that since the land is owned in parts in individual capacity by the Respondents, each of the Respondents will be subjected to capital gains and it will be difficult to determine the accurate liability on each of the Respondents.

20. I have considered the rival submissions of the parties.

21. The properties which were directed to be sold were mortgaged to the Petitioner by way of a single mortgage deed. The properties have

been sold as a single parcel and the price offered is a consolidated price of Rs. 4 crores for all the properties. At no stage had the Respondents raised any contention as is now sought to be raised. When the lands have been sold as a single parcel for a consolidated price, there is no reason why the Respondents should now object to the execution of a single conveyance deed. It is now not possible to bifurcate the consideration of Rs. 4 crores for individual lands or the share and rights of each of the Respondents therein. Such an apportionment at this stage cannot be done.

22. As regards the income tax liability, there is no obligation on a purchaser of the property in a court auction to bear the income tax liability of the owners of the property which may arise as a result of the sale. There is no such term in the terms and conditions of sale. The Respondents did not raise this contention at any stage of the proceedings and never objected to the sale or the terms and conditions of sale on this ground. Even otherwise, the income tax liability of a vendor that may arise as a result of a sale of a property is always the obligation of the vendor and the purchaser of the property cannot be required to bear the income tax obligations of the vendor. In any case, since the property has been sold pursuant to a court auction, it is open to the Respondents to take up the case appropriately with the income tax authorities as regards

their tax obligations. The objections raised by the Respondents at this stage are untenable and is clearly an attempt to avoid the execution of the sale deed.

23. In these circumstances, the following order is passed:

(i) Respondent Nos.3 to 5 are directed to jointly execute a deed of conveyance in respect of the properties which stand sold to the Petitioner by virtue of the order dated 19th December 2013 and further confirmed by the order dated 17th February 2014 in Appeal No.41 of 2014, and to attend the office of the Sub Registrar for registration within four weeks from the date hereof. The Respondents are directed to do act all acts, deeds and things necessary for the completion of the sale in favour of the Petitioner within a period of 4 weeks from the date hereof.

(ii) If Respondent Nos.3 to 5 do not execute the sale deed within the time fixed, the Prothonotary and Senior Master, High Court, Bombay to depute and authorize an officer of the court to execute the conveyance on behalf of the Respondents and to complete the sale in favour of the Petitioner.

Chamber Summons is accordingly disposed off.

All authorities including the registration authorities to act on the basis of this order.

(S.J. KATHAWALLA, J.)