

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.384 OF 2016

L & T Finance Ltd.

... Petitioner

V/s.

Mr. Adesh Suresh Jachak
& Anr.

... Respondents

*Ms. Shakuntala Joshi a/w Ms. Nikita Pawar a/w Jalpa Pithadia i/b M/s. S.I. Joshi & Co.
for the Petitioner.*

None for the Respondents. Affidavit of service filed.

CORAM : S.J. KATHAWALLA, J.

DATED : 23rd June, 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. Service of copy of the Petition was sent to the Respondents through Speed Post and the packet containing the copy of the Petition sent to the Respondent No.1 is returned with the Postal remark "Refused-return to the sender" and the packet containing the copy of the Petition sent to the Respondent No.2 was returned with Postal remark "Left". Affidavit of service dated 17.12.2015 is on record. Petition is today taken up for final hearing. However, none appear for the Respondents.

2. By a Loan-cum-Hypothecation Agreement dated 28.08.2012, the Petitioner provided a loan of Rs.56,47,000/- to the first Respondent for purchase of assets/equipments more particularly described in Exhibit "F" to the Petition and the said assets/equipments are hypothecated with the Petitioner by the Respondent No.1.

3. The Loan amount of Rs.56,47,000/- was repayable by the Respondents to the Petitioner in installments as more particularly agreed in the Agreement dated 28.08.2012. The aggregate amount payable by the Respondents to the Petitioner under the Loan-cum-Hypothecation Agreement was Rs.70,29,000/-.

4. Respondent No.2 has guaranteed due repayment of the loan.

5. 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 17 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.47,21,763/- (Rupees Fourty Seven Lakhs Twenty One Thousand Seven Hundred Sixty Three Only) as on 15.09.2014. The Petitioner therefore invoked the arbitration clause in the Agreement dated 28.08.2012.

6. In the present Petition, the Petitioner has sought, inter-alia, appointment of the Court Receiver, High Court Bombay as the Receiver of the hypothecated assets/equipments, more particularly described in Exhibit "F" to the Petition, however, the assets/equipments are not available and same are stolen as alleged by the Respondents before the Arbitrator. 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 granting injunction on the properties of the Respondents and also furnishing of solvent security by way of bank guarantee. Hence, the following order:

(i) Pending the hearing and final disposal of the arbitration proceedings, there shall be an injunction restraining the Respondents from selling, alienating, encumbering, parting with possession and/or creating third party rights in respect of properties/assets as more particularly described in Exhibit "G" to the Petition;

(ii) Pending the hearing and final disposal of the arbitration proceedings, the Respondents be ordered and directed to deposit with this Hon'ble Court and/or to furnish solvent security by way of the bank guarantee to the tune of Rs.47,21,763/- (Rupees Forty Seven Lakhs Twenty One Thousand Seven Hundred and Sixty Three Only) to secure the claim of the Petitioner under the present Petition.

6. The Arbitration Petition is accordingly disposed of with liberty to the Petitioner to take out a fresh Petition seeking further reliefs.

All parties, to act on a copy of this order, duly authenticated by the learned Associate of this Court.

(S.J. KATHAWALLA, J.)