

THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 397 OF 2016

L & T Finance Limited

... Petitioner

V/s.

M/s. Gautam Mining & Minerals & Ors.

... Respondents

Mr. Girish Thakur for the Petitioner.

None for the Respondents.

CORAM: S.J.KATHAWALLA, J.

DATED: 21ST 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 Nos. 1 & 2 and an affidavit proving service is on record. However, no reliefs are sought against Respondent No. 3 (Partner of Respondent No. 1) at this stage and liberty is sought to take out a fresh Petition seeking reliefs against Respondent No. 3, which is granted. The petition is today taken up for final hearing. However, none appear for the Respondent Nos. 1 & 2.
2. The Respondent No. 1 is the Partnership Firm and borrower of the loan, Respondent No. 2 is a Partner & Guarantor of Respondent No. 1 and Respondent No. 3 is

Partner of Respondent No. 1 and jointly and severally liable to pay the loan amount taken by Respondent No. 1.

3. By a Loan cum Hypothecation Agreement dated 12.09.2012, the Petitioner provided a loan of Rs. 12,80,000/- (Rupees Twelve Lac Eighty Thousand Only) to the Respondent No. 1 for Purchase of a Vehicle/Equipment viz. 320 KVA DG SET (2012) bearing Serial No. CJS12104116 ("said Vehicle/Equipment") more particularly described in Exhibit "F" to the Petition and on the terms described in the Loan-Cum-Hypothecation Agreement dated 12.09.2012. 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.

4. The loan amount of Rs. 12,80,000/- (Rupees Twelve Lac Eighty Thousand Only) was repayable by the Respondent No. 1 to the Petitioner with interest @7.45% p.a. totaling to Rs. 16,61,440/- repayable in 45 monthly installments as set out in the said Agreement commencing from 15/10/2012 and ending on 15/06/2016.

5. The Respondent No. 2 has guaranteed the due repayment of the loan. Clause 12 of the Loan 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 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. 9,41,243/- as on 20/3/2015. The events of default having taken place in terms of the

Loan Agreement, the Petitioner became entitled to recall and have recalled the entire loan. There was no reply to the Loan Recall Notice dated 23/03/2015. The Petitioner therefore invoked the arbitration Clause in the Loan-Cum-Hypothecation Agreement dated 12.09.2012.

6. 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 Nos. 1 & 2 have not filed their Affidavit in Reply and is also not present before the court. In absence of any defense or contest by the Respondent Nos. 1 & 2, 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. As the Respondent Nos. 1 & 2 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 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 clause (d) also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner is over Rs. 9,41,243/- and unless adequately protected, the Petitioner may

suffer irreparable harm and injury. Balance of convenience also warrants the grant of relief. 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 physical possession of the said Vehicle/Equipment with police assistance, if required, and without any prior notice to the Respondent Nos. 1 & 2;
- (ii) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondent Nos. 1 & 2, in writing to act as an agent of the Receiver in respect of the said Vehicle/Equipment. The Respondent Nos. 1 & 2 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 Nos. 1 & 2 being desirous of acting as agents of the Court Receiver, they shall be appointed as agent/s 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 Nos. 1 & 2 do not communicate their willingness to the Receiver to act as agent/s 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 Nos. 1 & 2 from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respects of the said Vehicle/Equipment described in Exhibit "F" to the Petition.

7. A copy of this order shall be forthwith served on the Respondents by hand delivery and also by Speed Post AD.

8. The Arbitration Petition is accordingly disposed off.

(S.J.KATHAWALLA, J.)