

India Factoring Finance Solutions Pvt. Ltd.	...	Petitioner
Versus		
Lancer Pharmaceuticals Private Limited & Ors.	...	Respondents

None for Respondents.

DATED : 28th July, 2016

1. The Petition is filed by the Petitioner under section 9 of Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Arbitration Petition is served on the Respondents and an affidavit proving service is on record. The Petition is accordingly heard today finally at the stage of admission. None appear for Respondents.

3. On 28th September 2011 the Petitioner sanctioned a loan of Rs. 3,50,00,000/- in favour of Respondent No.1. The said facility was enhanced to Rs. 5,00,00,000/- vide sanction letter dated 10th January 2014. The Respondents executed various loan documents to secure the facility availed from the Petitioner

including Factoring Agreements dated 07th January 2011, 09th November 2012 and 14th January 2014 (Exhibit-C, I-1 and J-1 to the Petition).

4. Respondent No. 1 by Notice of Assignment dated 28th September 2011 and 16th November 2011 assigned the receivables due and payable to them by Respondent Nos. 4 to 7 in favour of the Petitioner towards the said factoring facilities availed by Respondent No.1.

5. Respondents failed and neglected to make payments as agreed under the said factoring agreements. In the light of the default of Respondents the petitioner issued Demand Notice dated 29th September 2014 and demanded the entire outstanding amount of Rs. 4,68,83,330.22/- due and payable as on 31st August 2014.

6. In spite of receipt of the notice dated 31st August 2014, Respondents failed and neglected to make the outstanding amount to the Petitioner.

7. Clause 18 of the agreement provides for the events of default and remedies and Clause 23 provides for arbitration. There has been a default on the part of the Respondents. In view thereof Respondents became liable to pay to the Petitioner a sum of Rs. 5,82,75,308.19/- as on 30th September 2015 along with further interest @25.75% p.a. from 1st October 2015 till realization thereof as per Particulars of Claim annexed and marked as "Exhibit-M" to the Petition. The Petitioner therefore invoked the arbitration clause in the Agreement dated 07th October 2011.

8. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as Receiver of the said properties more particularly described in Exhibit-N to the Petition. In absence of any defence or contest by the Respondents, the averments contained in the Petition have

remained uncontroverted. I see no reason why the statement/submissions made by the Petitioner in the Petition should not be accepted. Since Respondents have defaulted in repayment of the outstanding dues, it is necessary to safeguard the interest of the Petitioner by appointing the Court Receiver, High Court, Bombay as Receiver of the said properties. The balance of convenience is in favour of the petitioner. The properties as described in Exhibit-N are the only significant security to secure the claim of the Petitioner, which needs to be secured/protected in order to ensure that in the event of an Award being passed in favour of the Petitioner, the Award is not rendered merely a paper Award. Therefore, the appointment of the Receiver is necessary in order to ensure that the said properties are not transferred 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 properties more particularly described in Exhibit -N to the Petition with direction to take symbolic possession of the same 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 symbolic possession, give an option to the Respondents in writing to act as agents of the Receiver in respect of the said property described in Exhibit - N to the Petition. 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 option. In the event of the Respondents being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver, subject to security and royalty. The Receiver shall

determine the quantum of security and royalty having regard to the terms and conditions contained in the Factoring Agreements;

- (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 Petitioner to apply to the Court for further reliefs;

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

10. The Arbitration Petition is accordingly disposed of.

(S. J. KATHAWALLA J.)