

IN THE COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 386 OF 2016

M/s. Enrech Enterprises Private Ltd.

... Petitioner

Versus

Viram Impex Proprietorship Firm & Ors.

... Respondents

Mr. Vivek Patil a/w Yogendra Shirwadkar, Sandesh Godse, Sharayu Pednekar i/b
Vivek Patil & Associates for the Petitioner.

None for Respondents.

CORAM : S. J. KATHAWALLA, J.

DATED : 28TH JULY, 2016

P.C.:

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. By an order dated 21st April, 2016, this Court passed an ad-interim order restraining Respondents from selling, alienating, encumbering, parting with possession and/or creating third party rights in respect of the said mortgaged property more particularly described in Exhibit-L to the Petition until further orders. The Petition is today taken up for final hearing. None appear for the Respondents.

2. Petitioner and the Respondent No.1 have entered into a Memorandum of Understanding dated 02nd October, 2010 which has been confirmed by Respondent No. 2 to 4.

3. As per terms and conditions of MOU dated 02nd October, 2010, Petitioner during the period of October 2010 to June 2011 has advanced an amount of Rs.2,25,78,403/- to the Respondent No. 1 for purchase of raw material for the manufacture of garments for Respondent No.1's business. In order to secure the repayment of Rs.2,25,78,403/- Respondent Nos. 2 to 4 vide their letter dated 26th October, 2010, have created equitable mortgage in favour of Petitioner with respect to the unencumbered commercial property owned by them being gala premises admeasuring 1850 sq.ft. at 23, J.K Industrial Estate, Mahakali Caves Road, Andheri (East), Mumbai – 400 093.

4. Out of the total amount of Rs.2,25,78,403/- the Petitioner has received an amount of Rs. 1,36,11,481/- from the Respondents. Respondents became liable to pay an amount of Rs. 1,62,75,742/- to the Petitioner as on 31st May 2015 with further interest @ 18% p.a. compounded from 01st June 2016 till full repayment.

5. On 04th November, 2014 the Petitioner issued notice to the Respondents invoking the Arbitration Agreement to which there is no response from the Respondents.

7. In the present Petition, the Petitioner has sought appointment of the Court Receiver, High Court Bombay as Receiver of the said mortgaged property more particularly described in Exhibit-L 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 statements / 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 property. The appointment of the Receiver is necessary in order to ensure that the said property is 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, High Court, Bombay is appointed as Receiver in respect of the said property i.e. gala premises admeasuring 1850 sq.ft. at 23, J.K Industrial Estate, Mahakali Caves Road, Andheri (East), Mumbai - 400 093 more particularly described in Exhibit - L 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 - L 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 MOU dated 02nd October, 2010. (Exhibit A to the Petition);

(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;

(iv) Ad-interim order dated 21st April, 2016, restraining the Respondents from alienating, encumbering, parting with possession or creating any third party rights in respect of the said property namely gala premises admeasuring 1850 sq. ft. at 23, J.K Industrial Estate, Mahakali Caves Road, Andheri (East), Mumbai – 400 093, more particularly described in Exhibit – F to the Petition shall also continue until the hearing and final disposal of the Arbitration proceedings and the enforcement of the arbitral Award passed therein.

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

9. The Arbitration Petition is accordingly disposed of.

(S. J. KATHAWALLA J.)