IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.176 OF 2016

Tata Capital Financial Services Ltd. ... Petitioner

Versus

Zoheb Shaikh ... Respondent

Mr. Manish Gala i/b. Law Square for the Petitioner.

None for Respondent.

CORAM : S.J. KATHAWALLA, J.

DATED : 21st April, 2016

P.C.:

1. The Petition is filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondent. The Petition is served on the Respondent and an Affidavit proving service has been placed on record. However, none appear for the Respondent. The Petition is today taken up for final hearing.

2. It is submitted on behalf of the Petitioner that by a Loan–cum-Hypothecation-cum-Guarantee Agreement dated 23.9.2015 bearing account no. 7000251560 ("said Agreement") executed between the Petitioner as the Lender and the Respondent as the Borrower, the Petitioner granted a loan of Rs.1,67,000/- (Rupees One Lakh Sixty Seven Thousand Only) to the Respondent for purchase of

vehicle being SKODA FABIA TDI AMB 1.4 with reg no. MH14BK3297 and chassis no. 1MBBED5JX3A502796 more particularly described in "Exhibit E" to the Petition.

3. It is submitted that as per the said Agreement, the aforesaid Loan amount was repayable by the Respondent to the Petitioner with interest @ 19.3% p.a., repayable in 30 equated monthly installments of Rs.7,062/- commencing from 23.9.2014 and ending on 15.3.2017.

4. It is further submitted that the Respondent has defaulted in repayment of the said loan and thus the Petitioner through its Advocates issued a Notice dated 17.11.2015, recalled the entire loan as per the terms of the said Agreement. Also, it is submitted that vide the Notice dated 17.11.2015, the Petitioner invoked the arbitration clause in the said Agreement.

5. It is also submitted that as on 19.10.2015 a sum of Rs.1,74,016/- (Rupees One Lakh Seventy Four Thousand Sixteen Only) is outstanding and payable by the Respondent to the Petitioner with further interest @ of 36% p.a. till payment and/or realization as per the Particulars of Claim annexed and marked as "Exhibit D" to the Petition.

6. In the present Petition, the Petitioner is interalia seeking an injunction against the Respondent from creating any third party rights in respect of the said asset and directions to the Respondent to disclose on oath the details of their personal moveable and immoveable un-encumbered and encumbered assets/ properties and appointment of the Court Receiver, High Court Bombay as the Receiver of the said

asset.

7. The Respondent has not filed his Affidavit in Reply and is also not present before the Court. In absence of any defense or contest by the Respondent, the averments contained in the Petition have remained uncontroverted. I see no reasons why the submissions made on behalf of the Petitioner in the Petition should not be accepted.

8. Clause 17 of the said Agreement provides for the events of default; Clause 18 provides for consequences of events of default and Clause 23 provides for Arbitration. The events of default having taken place in terms of the said Agreement, the Petitioner became entitled to recall and thus by Notice dated 17.11.2015, recalled the entire loan and also invoked the arbitration clause in the said Agreement. There is no reply to the Notice dated 17.11.2015.

9. As the Respondent has defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner. The claim of the Petitioner is over Rs.1.74 Lakhs and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants grant of reliefs.

10. Hence, I pass the following order;

(i) The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the said asset in "Exhibit E" to the Petition, with direction to take symbolic possession of the said asset and appoint the Respondent as their agent in respect of the said asset on usual terms, conditions and on payment of royalty as may be fixed by the Court Receiver and on furnishing security having regard to the terms and conditions of the Loan Agreement (Exhibit A to the Petition).

(ii) In the event of the Respondent fails to accept or refuses to accept the agency within two weeks from the date of such offer by the Court Receiver, the Court Receiver shall take physical possession of the said asset with the help of police assistance if required and without any further notice to the Respondent. Thereafter, it would be open to the Petitioner to apply to the court for further orders including sale of the said asset by private treaty.

(iii) Until the Court Receiver, High Court, Bombay takes the possession of the asset, the Respondent, his agent/s, and/or any person/s claiming through or under him are restrained by an order of injunction from in any manner selling, transferring, disposing of, and/or alienating, encumbering or parting with possession or creating any third party rights in respect of the said asset described in "Exhibit E".

(iv) The Respondent shall disclose on oath the exact location of the said asset.(v) A copy of this order shall be forthwith served on the Respondents by hand delivery and also by Speed Post A.D.

(vi) The Arbitration Petition is disposed off accordingly.

(S.J. KATHAWALLA, J.)