

\$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P.(I) (COMM.) 42/2016

RELIANCE CAPITAL LIMITED Petitioner
Through Mr.Rajat Katyal, Adv.

versus

NEW MAMAN GRIT UDYOG & ORS. Respondents
Through None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

O R D E R

% **15.02.2016**

I.A. No.2167/2016 (exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

O.M.P.(I) (Comm.) 42/2016

1. The petitioner is seeking ex parte appointment of receiver under Section 9 of the Arbitration and Conciliation Act, 1996 to take possession of the equipment make SANTOSH CRUSHER PLANT/SR. NO. 330 TPH (hereinafter referred to as 'Equipment') from the respondents.

2. Vide Loan Agreement No. RLUEDEL000302009, dated 14th February, 2014 (hereinafter referred as "the Agreement"), the amount of Rs.2,79,83,115/- was financed to be repaid along with interest @ 15.01% per annum.

3. The respondents committed default after the payment of EMI in respect of Equipment whereupon vide notice dated 5th December, 2015, the petitioner recalled the loan and called upon the respondents to pay the total outstanding amount. The respondents have not

complied with the aforesaid notice. The amount payable by the respondents as on 21st January, 2016 is Rs.3,03,84,397/-.

4. This Court is satisfied that the petitioner has made out a case for *ex-parte* appointment of the receiver. The petition is, accordingly, allowed and Mr.Javed Khan, the representative of the petitioner is appointed as receiver to take the possession of equipment make SANTOSH CRUSHER PLANT/SR. NO. 330 TPH.

5. The receiver shall be at liberty to take the assistance of the local police, if required, for taking over possession of the equipment. The concerned SHO shall provide assistance to the receiver as and when requested.

6. The receiver shall also ensure that the possession of the equipment does not result in any breach of peace. In the event of any breach of peace, the receiver shall not proceed without assistance of police.

7. At the time of taking the custody of the equipment, the receiver shall deliver a copy of this order to the person from whom the possession is taken.

8. At the time of taking the custody of the equipment, the receiver shall take the photographs of the equipment from different angles along with the photographs of the place of taking over the possession.

9. After taking the equipment in possession, the receiver shall keep the equipment in safe custody.

10. If the respondents make payment of the outstanding instalments as on date of possession, the receiver shall release the equipment in question to the respondents on *superdari* subject to an undertaking by the respondents to the receiver for regular repayment of future monthly instalments till the expiry of the tenure and a declaration not

to part with the equipment or create third party interest in the equipment until the entire amount is paid.

11. If the respondents are not in a position to clear the entire outstanding instalments, the receiver shall give them another opportunity to pay the outstanding instalments within 30 days of taking over the possession of the equipment and in case the respondents make the payment of the outstanding instalments within the said period, the receiver shall release the equipment to the respondents subject to an undertaking as aforementioned.

12. The receiver shall submit his report before this Court within 10 days of taking the custody of the equipment along with the photographs and inventory mentioned above.

13. Learned counsel for the petitioner submits that the petitioner is in the process of initiating the arbitration proceedings is in progress. The receiver shall submit a copy of his report before the Arbitrator.

14. If the respondents do not make the payment of the outstanding amount to the petitioner within 60 days, the receiver, with the prior permission of the Arbitrator, would be authorised to sell the equipment in question in a public auction with prior written notice (to be sent by Speed Post AD) of the date of auction to the respondents at the address(es) mentioned in the loan agreement or the address from where the equipment is taken into possession so that the respondents may also be able to participate in the auction to enable the petitioner to fetch maximum amount from the sale of the equipment. The receiver shall carry out video recording of the auction proceedings and shall submit the same before the Arbitrator along with his final report.

15. The parties are at liberty to apply to the learned Arbitrator for modification of this order.

16. This order shall remain in force till either the respondents make the payment of the loan amount or till it is modified by the learned Arbitrator during arbitration proceedings or till the termination of the arbitration proceedings.

17. The petition is disposed of in the above terms. Order to be given *dasti*.

MANMOHAN SINGH, J.

FEBRUARY 15, 2016/vp