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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 41/2016, IA 2166/2016**
RELIANCE CAPITAL LIMITED

..... Petitioner

Through: Mr. Rajat Katyal, Adv.

versus

GITANJALI MFG. AND TRADING CO. & ANR.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **15.02.2016**

IA 2166/2016

Exemption allowed subject to all just exceptions.

Application stands disposed of.

O.M.P.(I) (COMM.) 41/2016

1. This petition has been filed by the petitioner under Section 9 of the Arbitration & Conciliation Act, 1996 seeking appointment of Mr. Javed Khan, Collections Manager of the petitioner company as receiver to take possession of the equipment make SANTOSH CRUSHER PLANT/SR. NO. 330, which was financed by the petitioner under a Loan Agreement dated February 28, 2015.

2. The averments made in the application are supported by an affidavit and statement of truth. The loan was for Rs.3,17,79,458/- given to the respondent for purchase of the aforesaid equipment. It is the case of the petitioner that the respondent has failed to comply with the terms and conditions of the loan facility and as on January 21, 2016, the total amount due towards the loan account was Rs.3,47,24,306/-. The loan agreement was terminated vide notice dated December 5, 2015 and the petitioner had called upon the respondent to pay foreclosure amount. Clause 23 (XVI) of the agreement provides that all claims and disputes arising out of or in connection with this Agreement or its performance shall be settled by arbitration by a single arbitrator to be appointed by the Petitioner. It is averred in the application that petitioner has decided to invoke the arbitration clause.

3. Learned counsel for the petitioner expresses apprehension that the respondent may misappropriate the equipment, which is the only security to the petitioner. He states, that the respondent has undertaken in the agreement that in the event of default, the petitioner is entitled to repossess the equipment and its documents any time.

4. Having heard the learned counsel for the petitioner, it is noticed that in

view of the respondent's default in payment of the loan amount, the petitioner has issued notice to the respondent recalling the loan which has been granted to the respondents. In view of the above, it is clear that the aforementioned equipment/vehicle was hypothecated with the petitioner and under the provisions of the agreement, the petitioner has a right to re-possess the same.

5. In these circumstances, this Court appoints Mr.Javed Khan, Collection Manager of the petitioner as a Receiver to re-possess the aforementioned vehicle/ equipment of make "SANTOSH CRUSHER PLANT/SR. NO. 330".

6. In the event the respondents make the payment of the entire outstanding loan amount, the Receiver shall release the aforesaid equipment/vehicle to the respondents on Superdari. The respondents are restrained from parting with the possession of, or selling or creating any third party interest in such equipment/vehicle released to them on superdari.

7. The SHO/In-charge of the police station concerned is directed to render necessary aid and assistance to the Receiver. After taking over possession, the Receiver shall preserve and maintain the equipment till further orders of this Court or any other Court of competent jurisdiction or of

the Arbitrator.

8. This order shall remain in force till 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.

9. The Arbitrator is free to decide the disputes referred for arbitration uninfluenced by this order. The respondents are also at liberty to apply to the Court for modification of this order.

10. The petition is disposed of in the above terms. Order be given dasti.

V. KAMESWAR RAO, J

FEBRUARY 15, 2016/ak