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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ARB. A. (COMM.) 20/2016**

OCIMUM BIOSOLUTIONS (INDIA) LTD & ORS ..... Petitioner
Through: Mr. Pramod B. Agarwala, Mr. Aayush Agarwala, Mr. Anuj Agarwala, Advocates.

versus

TECHNOLOGY DEVELOPMENT BOARD ..... Respondent
Through: Mr. Vikas Gautam, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

% **04.10.2016**

1. This appeal under Section 37(2) (b) of the Arbitration & Conciliation Act, 1996 ('Act') is directed against an order dated 27th May 2016 passed by the learned Arbitrator, dismissing the application filed by the Appellant under Section 17(1) (ii) (a) of the Act, requesting that the Appellant herein be permitted to sell the hypothecated articles/goods or even the Respondent's claim herein to dispose of the goods so as to realize some part of the amount claimed by the Respondent in the arbitral proceedings.

2. The facts in brief are that a loan was availed by the Appellant from the Respondent Technology Development Board in the sum of Rs. 3.4 crores for the manufacture of 'Human 40K and Decase/Pathway based Microarrays'. The loan was to be repaid in instalments. Admittedly, there has been a default.

3. In terms of the loan agreement dated 12th June 2007, the Respondent had the dispute referred to arbitration. A sole Arbitrator has been appointed to adjudicate upon the dispute.

4. Admittedly, the goods in question have been hypothecated by the Appellant to the Respondent, which is the lender and the request made by the Appellant before the Arbitrator in the aforementioned application being rational, there should not have been any impediment by the learned Arbitrator in permitting sale of the goods, subject to them being properly valued by an approved valuer. Instead, in the impugned order, the Arbitrator has taken a view that the subject matter of the arbitration is the loan amount and not the goods that have been hypothecated. This is plainly erroneous.

5. The loan agreement itself talks of the hypothecation of the goods in favour of the Respondent-lender as security for the loan advanced by it to the Appellant. By bringing the hypothecated goods to sale by public auction to recover at least part of the amount is one of the essential steps that was required to be taken to enable the Respondent to recover some part of the loan amount. This Court fails to understand why this is not part of the subject matter of the claim before the learned Arbitrator.

6. In that view of the matter, the impugned order dated 27th May 2016 is set aside. The application filed by the Appellant before the Arbitrator is restored to the file of the Arbitrator. The learned Arbitrator will proceed with the matter by requiring the Appellant to place before him a report of valuation by an approved valuer of the hypothecated goods and to further decide

whether some part or all of the above of the goods can be put to auction sale by fixing the reserve price.

7. The appeal is disposed of in the above terms.

S.MURALIDHAR, J

OCTOBER 04, 2016/mg