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

% *Order delivered on: 15th March, 2016*

\+ **O.M.P. (I) No.546/2015**

INTEC CAPITAL LIMITED ..... Petitioner

Through Mr.Nitesh Jain, Adv. with Mr.Deboshree Saha, Adv.

versus

INDIA OFFSET PRINTERS PVT LTD & ORS ..... Respondents

Through None

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking appointment of Receiver to take possession of the assets/ equipments as detailed in para 7 of the petition, from the respondents.

2. At the request of the respondents, the petitioner granted Loan Facilities of Rs.88,00,000/- vide Loan Agreement No.O12/590 dated 28th Deceember, 2012 (hereinafter referred as "the Agreement"). The amount of Rs.1,14,04,800/- was financed to be repaid alongwith interest at the rate of 13.98% in 48 equated monthly installments, the details of which are given in para 5 of the petition.

3. As per the Agreement, the respondents issued post dated cheque(s)/ ECS for the payment of installments in favour of the petitioner and also made arrangement in that regard with their bankers and further agreed to maintain adequate amounts in the account for the realization of the abovementioned cheque(s) and promised to maintain sufficient funds in the account to honour the cheques and to make the payment of EMIs, in lieu of loan, on time.

4. However, the respondents failed to maintain the financial discipline and thereby committed default. Even, the post-dated cheques issued by them were received back dishonoured. Under those circumstances, the petitioner issued the notice dated 3rd February, 2015 calling upon the respondents to pay the total outstanding amount. The respondents have not complied with the aforesaid notice. Having no other option, the petitioner was constrained to terminate the Loan Agreement bearing No.012/590 vide dated 28th December, 2012 vide Termination-cum-Arbitration notice dated 7th March, 2015 and thereby called upon the respondents to pay complete outstanding amount of Rs.1,10,76,598/- is due/payable as on 13th February, 2015 within seven days of issuance of the aforesaid notice, failing which the matter be referred to Arbitration.

5. It is submitted that the respondents have deliberately and illegally withheld the amount payable by them towards repayment of loan under the loan agreement. It is further submitted that as on 13th February, 2015, the respondents are jointly and severally liable to pay an amount of Rs.1,11,12,998/-, the break-up of which is mentioned in para 18 of the petition.

6. In terms of clause 32 of the Agreement dated 28th December, 2012, the dispute between the petitioner and the respondents was referred for Arbitration to Sole Arbitrator Mr. Daleep Singh, Advocate. Thereafter, on 20th March, 2015, the Sole Arbitrator entered the reference and sent a notice to the parties for appearance and settlement of arbitration proceeding. On 10th July, 2015 the matter was listed for final argument before the Arbitrator who after hearing, passed the Award on 19th August, 2015.

7. Now, the petitioner from reliable source came to know that the respondents are trying to disposed off or create third party interest on the assets hypothecated to the petitioner, i.e.,

a. Used MM Gathening Line Machine
b. Book Binding Machine IMPL Machine Pvt Ltd.
c. AutoprintReckonenVdp
d. Used stahi Automatic Folding Machine
e. Used Stahi Automatic Folding Machine No.2
f. Used VabPolygraphicLapzing Machine.

8. The subject assets stands hypothecated in favour of the petitioner-Company and as such respondent is in possession of the said property as an agent of the petitioner-Company. It is submitted that if the respondents are able to dispose of or create third party interest on the hypothecated assets, the irreparable loss would be caused to the petitioner. It is further submitted that the balance of convenience is also in favour of the petitioner.

9. The petition was listed before Court for the first time on 22nd September, 2015 when the notice was issued to the respondents. The respondents were also directed to give the inspection of the hypothecated

equipments mentioned in para 7 of the petition to the petitioner and they were also restrained from transferring, alienating or creating any third party interest in respect of the hypothecated equipments. Besides, the respondents were also directed to remain present in Court through some competent Officer along with the statement of loan account on affidavit. The respondents appeared in the matter. The settlement talks between the parties have already been failed.

10. This Court is satisfied with the petitioner's counsel who has referred similar orders passed under the same situation and in the present case, I am inclined to take the same view by passing the same orders, as his client has made out a case for appointment of the receiver. The petition is accordingly allowed. As prayed, Mr.Mohan Verma, Authorized Representative of the petitioner-Company is appointed as receiver to take the possession of equipments, the details of which are given in para 7 of the petition.

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

12. The receiver shall also ensure that the possession of the equipments 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.

13. At the time of taking the custody of the equipments, the receiver shall deliver a copy of this order to the person(s) from whom the possession is taken.

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

15. After taking the possession, the receiver shall keep the equipments in safe custody.

16. If the respondents make payment of the outstanding installments as on the date of possession, the receiver shall release the equipments in question to the respondents on *superdari*, subject to an undertaking by the respondents to the receiver for regular repayment of future monthly installments till the expiry of the tenure and a declaration not to part with the equipments or create third party interest therein until the entire amount is paid.

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

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

19. 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 equipments 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 equipments are 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 equipments. The receiver shall carry out video recording of the auction proceedings and shall submit the same before the Arbitrator along with his final report.

20. This order shall remain in force till the respondents make the payment of the loan amount.

21. The petition is disposed of in the above terms.

22. Dasti.

(MANMOHAN SINGH)
JUDGE

MARCH 15, 2016