

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

% *Order delivered on: 19th February, 2016*

+ **O.M.P. (I) No.580/2015**

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

versus

SHREE SHYAM ASSOCIATES & ANR 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 equipments/vehicles as detailed in para 7 of the petition, from the respondents.
2. At the request of the respondents, the petitioner granted 8 Loan Facilities vide separate Loan reference numbers, under a common Loan Agreement dated 30th April, 2014 (hereinafter referred as “the Agreement”). The amount of Rs.1,93,22,976/- was financed to be repaid alongwith interest at the rate of 14.01% in 35 equated monthly installments, the details of which are given in para 6 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 received back dishonoured. Under those circumstances, the petitioner issued the notice dated 18th June, 2015 calling 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 September, 2015 is Rs.1,52,11,496/-. As per the petitioner, as of 21st September, 2015, the respondents are in default of payment of EMIs and other charges amounting to Rs.33,15,032/-, i.e. equivalent to amount of more than 4 EMIs out of 16 installments which have become due.

5. The petition was listed before Court for the first time on 12th October, 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 within two weeks from the date of receipt of the notice 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. As per the report, the respondents

were duly served. However, no one appeared on their behalf when the matter was taken up.

6. 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 *ex-parte* appointment of the receiver. The petition is accordingly allowed. As prayed, Mr.Rajesh Jhahhariya, Collections Manager of the petitioner-Company is appointed as receiver to take the possession of equipments/ vehicles, the details of which are given in para 7 of the petition.

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

8. The receiver shall also ensure that the possession of the equipments/ vehicles 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.

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

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

11. After taking the possession, the receiver shall keep the equipments/ vehicles in safe custody.

12. If the respondents make payment of the outstanding installments as on the date of possession, the receiver shall release the equipments/vehicles 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/vehicles or create third party interest therein until the entire amount is paid.

13. 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/vehicles and in case the respondents make the payment of the outstanding installments within the said period, the receiver shall release the equipments/vehicles to the respondents subject to an undertaking as aforementioned.

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

15. Learned counsel for the petitioner submits that the petitioner has initiated the Arbitration proceedings at New Delhi by appointing Sh.M.S.Sabharwal, ADJ, Delhi, (Retd.), at 481, Basement, Civil Wing, Tis Hazari, Delhi-110054 as Sole Arbitrator, as per the terms of the agreement. The receiver shall submit a copy of his report before the Arbitrator.

16. 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/vehicles 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/vehicles 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/vehicles. The receiver shall carry out video recording of the auction proceedings and shall submit the same before the Arbitrator along with his final report.

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

18. 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.

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

20. Dasti.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 19, 2016