

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 515 OF 2017

Tata Capital Financial Services Ltd. ... Petitioner

Versus

SAN Associates ... Respondent

Mr. Nikhil Mehta instructed by KMC Legal Venture for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 15th DECEMBER, 2017

P.C.:

1. The Petition is filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondent. The Petition is served on the Respondent and an Affidavit proving service has been placed on record. The Petition is today taken up for final hearing. However, none appears for the Respondent.
2. It is submitted on behalf of the Petitioner that by a Loan Agreement dated 03.12.2015 bearing account no. 5623805 ("said Agreement") executed between the Petitioner as the Lender and the Respondent as the Borrower the Petitioner granted a loan of Rs.25,00,000/- (Rupees Twenty Five Lacs Only) to the Respondent for expansion of business.
3. It is submitted that as per the said Agreement, the aforesaid Loan amount was repayable by the Respondent to the Petitioner with interest @ 18.5% p.a.

4. It is further submitted that the Respondent has defaulted in repayment of the said loan and thus the Petitioner through its Advocates issued a Notice dated 16.01.2017 and recalled the entire loan as per the terms of the said Agreement.

5. It is also submitted that as on 23.05.2017 a sum of Rs.11,55,534/- (Rupees Eleven Lacs Fifty Five Thousand Five Hundred and Thirty Four Only) is outstanding and payable by the Respondent to the Petitioner with further interest @ of 18.5% p.a. till payment and/or realization as per the Particulars of Claim annexed and marked as "Exhibit E" to the Petition.

6. In the present Petition, the Petitioner is interalia seeking an injunction against the Respondent from creating any third party rights in respect of the property described in Exhibit C to the Petition, directions to the Respondent to disclose on oath the details of their personal moveable and immoveable unencumbered and encumbered assets/ properties and to furnish solvent security to this Court.

7. The Respondent has not filed their Affidavit in Reply and is also not present before the Court. In absence of any defense or contest by the Respondent, the averments contained in the Petition have remained uncontroverted. I see no reason why the submissions made on behalf of the Petitioner in the Petition should not be accepted.

8. Clause 5 of the Loan Agreement provides for the events of default; Clause 6 for the rights and remedies available to the Petitioner. Clause 11 provides for Arbitration. The events of default having taken place in terms of the said Agreement, the

Petitioner became entitled to recall and thus by Notice dated 16.01.2017, recalled the entire loan. There is no reply to the Notice dated 16.01.2017. The Petitioner has yet not invoked the arbitration proceedings and is desirous of doing so and in the meantime has approached this Hon'ble Court for interim relief.

9. As the Respondent has defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner. The claim of the Petitioner is over Rs.11 Lakhs and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants grant of reliefs.

10. Hence, I pass the following order;

(i) Pending the hearing and final disposal of the arbitration proceedings the Respondent, their agent/s, and/or any person/s claiming through or under them are restrained by an order of injunction from in any manner selling, transferring, disposing of, and/or alienating, encumbering or parting with possession or creating any third party rights in respect of the property described in "Exhibit C".

(ii) The Respondent to file an Affidavit of Disclosure of Assets before this Court within a period of two weeks from the date of the receipt of this order.

(iii) A copy of this order shall be forthwith served on the Respondent by hand delivery and also by Speed Post A.D.

(iv) The Arbitration Petition is accordingly disposed off.

(S.J.KATHAWALLA, J.)