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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1445 OF 2016
IN
ARBITRATION PETITION NO. 594 OF 2015**

L&T Finance Ltd	...Petitioner
<i>Versus</i>	
Roadways Solution India Pvt Ltd (Borrower) & Ors	...Respondents

Mr Karl Tamboly, *with SI Joshi & Nikita Pawar, & Jalpa Pithadia,
i/b SI Joshi & Co, for the Petitioner.*

Mr Chirag Mody, *with Nirav Shah, Munaf Virjee & Nausher Kohli,
i/b DSK Legal for Respondents Nos. 1 & 2.*

Mr Rahul S Kadam, *for Respondent No. 3.*

Mrs Kavita Ambekar, *Ist Assistant to the Court Receiver, is present.*

CORAM: G.S. PATEL, J
DATED: 29th March 2017

PC:-

1. I have heard Mr Kadam rather extensively. Mr Kadam appears in this Chamber Summons for Respondent No. 3, the sole proprietor of Yash Stone Crusher. Respondent No. 3, Deepak B Jadhav was the principal borrower from the Petitioner, L&T Finance Ltd. The amount due was Rs. 2.30 crores. The loan was secured by hypothecation of the stone crusher in question.

2. It appears that Roadways Solution India Pvt Ltd (“**Roadways Solution**”) took over Jadhav’s liability. The principal reason for this is Jadhav’s own statement in a written communication dated 28th January 2014 to L&T Finance that it could not pay the instalments and which instalments were due from 1st January 2012. The second paragraph of this letter reads thus:

“As I/We are not in position to settle the account, I/We request you to allow me to sell the asset on “as is where is” condition to Roadways Solution India Pvt Ltd or any other party, which you may deem fit for a sum of **Rs. 2,30,000/- (Rupees Two Crore and Thirty Lakhs only)** strictly subject to the condition that the sale proceeds of Rs. 2,30,00,000/- will be credited directly to the account of L&T Finance Limited. L&T Finance Limited is hereby authorized to appropriate the same against my outstanding under the above Agreement. In case there is any deficit, after appropriating sale proceeds against my/our outstanding, I/We will pay the same to L&T Finance Limited.”

3. Mr Kadam today disputes this letter. He says it is a forgery. It is his case that L&T Finance and Roadways Solution have together conspired and connived and colluded and together engaged in all manner of other nefarious acts, deeds and things to deprive Jadhav of his stone crusher. The peculiar thing about all this is that Mr Kadam relies on a No Dues Certificate at page 33 to say that the asset has been released from security because in this document L&T Finance claims to have received all instalments. Evidently this means that Roadways Solution has paid off Jadhav’s debt. This certificate is dated 29th April 2014. Read together, these documents

can only mean that between January 2014 and April 2014, the entire debt was repaid.

4. Mr Mody for Roadways Solution says that the stone crusher continues to remain with Jadhav. In other words, Roadways Solution has cleared the debt out of some misplaced sense of charity, for it has received no consideration at all for having taken over Jadhav's liability to L&T Finance.

5. Mr Kadam refers to an Agreement at page 75 to suggest that the consideration for Roadways Solution taking over the liability was the goods and materials that Jadhav was supplying to Roadways Solution. *Prima facie* it is not possible to accept this. In fact what Mr Kadam refers to is an amendment to a lease deed. The lease deed itself is at page 70 and these two documents make it clear that the stone crusher was, as Mr Mody says, though the property of Deepak Jadhav, on lease to Roadways Solution and at site. The amendment was necessary because Jadhav had ceased working on the machine and the stone crushing unit was required for Roadways Solution's highway building project. The second sentence of Clause (1) of the amendment, at page 77, makes this abundantly clear.

6. Mr Kadam says he is not a party to the contract. This is clearly incorrect and even if it is correct it is of little consequence. The secured asset cannot possibly continue to remain with Yash Stone Crusher/Jadhav. It must be in possession of Roadways Solution at the very least.

7. Roadways Solution did not in fact clear the entire debt of L&T Finance because it did not receive the machine from Jadhav at all. It is in these circumstances, L&T Finance now seeks that the Receiver be put in actual physical possession of the Court Receiver and which has been obstructed by Jadhav.

8. The Court Receiver was previously appointed by an order dated 8th July 2015 (Exhibit "E" at page 22).

9. Mr Kadam fairly states that the machine is on site and in possession of Jadhav. The Court Receiver will, acting on an authenticated copy of this order proceed to take actual physical possession of the stone crusher.

10. The Chamber Summons is made absolute in terms of prayer clauses (a), (b), (c) and (d), which read as follows:

“(a) The Respondent No. 3 be ordered and directed to hand over peaceful possession of the suit asset/equipment as more particularly described in the Exhibit "G" to the Petition to the Court Receiver;

(b) In the failure of Respondent No. 3 to hand over the peaceful possession of the Asset/Equipment as prayed in clause (a) as above, the Court Receiver may be allowed to take possession of the suit assets/equipments in terms of orders dated 08.07.2015, 02.12.2015 and 16.02.2016;

(c) That the Superintendent of Police (Rural) Pune be ordered and directed to assist the Court Receiver in implementation of the orders passed by this Hon'ble Court;

(d) The Court Receiver be discharged on dismantling of suit Asset/equipment and handing over the same to the Petitioner without passing any accounts and on payment of cost, charges and expenses of the Court Receiver by the Petitioner;”

11. The Kone Crusher that is placed or affixed to the Yash Stone Crusher’s item will be removed by the Court Receiver and possession will be delivered to the owner thereof.

12. For the present, at Mr Kadam’s request the machine is not to be sold by the Court Receiver. The 3rd Respondent, Jadhav is at liberty to enter into an Agency Agreement with the Court Receiver on the usual terms and conditions. The 3rd Respondent will enter into an Agency Agreement within two weeks of the Court Receiver taking actual possession. If not, the Receiver will retain actual physical possession with himself and then advertise the machine for being given on Agency to a third party.

13. Mr Kadam requests for a stay of the operation of this order. Having regard to the circumstances of the case and to the conduct of the 3rd Respondent, the application for stay is rejected.

(G. S. PATEL, J.)