IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

CHAMBER SUMMONS NO.145 OF 2017
WITH
CHAMBER SUMMONS NO.814 OF 2017
IN
COMM. ARBITRATION PETITION NO.18 OF 2016

Tata Capital Financial Services Ltd. & Anr.)….Applicants/Petitioners
V/s.
Gupta Corporation Private Limited & Ors.)....Respondents

Mr.Cyrus Ardeshir i/by MDP & Partners for petitioners/applicants.
None for respondents.

CORAM : K.R.SHRIRAM,J
DATE : 16.11.2017

P.C.:-

1 The applicants/petitioners had filed this commercial arbitration petition for various reliefs, inter alia, for recovery of an amount of Rs.62,40,16,833/- due as on 14.6.2016, for injunction, for appointment of receiver etc.

2 By a common order dated 13.12.2016, both the above petitions were disposed. This court vide its order dated 27.4.2016 passed in Arbitration Petition No.1305 of 2015 had directed respondent no.2 to deposit license fees paid by respondent no.3 to them under the leave and license agreement with the Prothonotary &

Senior Master and further vide its order dated 3.5.2016 passed in Arbitration Petition No.1305 of 2015 and a common order dated 13.12.2016, directed respondent no.3 to deposit further amounts payable under the leave and license agreement with the Prothonotary & Senior Master. It appears, as on 19.7.2017 an amount aggregating to Rs.31,72,852/- has been deposited by respondent no.2 and respondent no.3 with the Prothonotary & Senior Master. The applicants therefore, have moved this application for leave to withdraw the amount of Rs.31,72,852/- together with accumulated interest.

3 Only respondent no.2 has filed a reply to this Chamber summons. The stand of respondent no.2 is that this court in its order dated 13.12.2016, while disposing of the 2 arbitration petitions has restricted the reliefs to only appointment of court receiver and directed the amounts deposited to be converted to fixed deposit with nationalized bank and to be renewed until further orders.

4 It is the case of respondent no.2 that since the prayer clause in the arbitration petition included liberty to petitioner no.1 to withdraw the amount deposited and as the court had restricted the reliefs to only depositing the amount with Prothonotary & Senior

Master, no observation as regards entitlement of petitioner to the amount has been made. The prayer as sought in the chamber summons should not be granted.

5 In the common order dated 13.12.2016 the court has in paragraph-3 noted *"by these two petitions, what the petitioner is seeking is basically to secure amounts due and payable by respondent no.1....."*

In paragraph no.7 it is also noted that *"it is not disputed by either respondent no.1 or Gupta Infrastructures or the Guarantors that there are substantial amounts payable by respondent no.1 and the Guarantors to the petitioner".*

In paragraph-18 it is also noted *"as regards the premises occupied by Reliance, Shri Kamdar submitted that since Reliance is paying the license fees, they are not insisting for the Court Receiver to take physical possession of the same but only symbolic possession.*

Paragraph-24 reads *"In view of the above, I am satisfied that to secure the ends of justice and to preserve the sanctity of the arbitral process, the interest of the petitioner has to be protected and it is just and convenient to do so. Protective orders are necessary."*

6 Since the immediate aim was to secure the claim of petitioner no.1, the court directed that the license fees be deposited with the Prothonotary & Senior Master. The main intention was to secure the license fees which would have otherwise been difficult to recover. Regarding withdrawal of the amount deposited by the licensees with the Prothonotary & Senior Master, it was to be decided later. Moreover, if petitioner no.1 is permitted to withdraw this amount, the liability of respondents will only get reduced.

7 Mr.Ardeshir for applicants/petitioners states that if and when the court directs petitioner no.1 to bring back the money, petitioner no.1 shall bring back the money into the court together with interest on that amount at the same rate, which these amounts are earning today in the fixed deposit made by Prothonotary and Senior Master.

8 In view of what is stated above and in view of undertaking given by Mr.Ardeshir, Chamber summons allowed in terms of prayer clauses-(a) and (b) and it read as under :-

> *"(a) that this Hon'ble Court be pleased to allow the Applicant/Petitioner No.1 to withdraw the license fees deposited by the Respondent Nos.2 and 3 with the Learned Prothonotary and Senior Master in compliance*

of the Orders dated 27th April, 2016 and 3rd May, 2016 passed in Arbitration Petition No.1305 of 2015 and Common Order dated 13th December, 2016 passed by the Hon'ble Bombay High Court, amounting to Rs.31,72,852/- (Rupees Thirty One Lakhs Seventy Two Thousand Eight Hundred and Fifty Two only) alongwith applicable/accrued interest thereon ;

(b) that this Hon'ble Court be pleased to direct the Learned Prothonotary and Senior Master to break or/liquidate the Fixed Deposit/s prematurely, for purpose of payment to the Applicant/Petitioner No.1 as mentioned in prayer (a) above."

9 The undertaking as noted in paragraph-7 is accepted and so ordered.

10 Prothonotary & Senior Master may hand over the amount to petitioner no.1 under usual terms and conditions.

Chamber summons disposed.

(K.R.SHRIRAM,J)

KJ