IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.531 OF 2017

Tata Capital Financial Services Limited … Petitioner

Versus

Anil Kumar Jain & Ors. … Respondents

Mr. Nilesh Gala i/b. Law Square for the Petitioner.

None for Respondents.

CORAM : S.J. KATHAWALLA, J.

DATED : 15th December, 2017

P.C.:

1. The above Petition is filed by the Petitioner under section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents. The Petition is served on the Respondents and an Affidavit proving service has been placed on record. However, none appear for the Respondents nor reply has been filed. The Petition is today taken up for final hearing.

2. It is submitted on behalf of the Petitioner that by virtue of Sanction Letters dated 29.2.2016, the Petitioner had sanctioned a loan of Rs.1,05,00,000/- (Rupees One Crore Five Lakhs Only) under two loan agreements i.e. Rs.90,00,000/- under loan account no.5797055 and Rs.15,00,000/- under loan account no.5889719 in favour of the Respondents against mortgage of the property being Plot No.KA-70, First Floor, Kaushambi, Ghaziabad-201001 more particularly described in

"Exhibit D" to the Petition ("said mortgaged property"). The said Loan amount was repayable by the Respondents to the Petitioner with interest and in monthly instalments.

3. Loan Agreements dated 29.2.2016 and 30.3.2016 for Rs.90,00,000/- under loan account no.5797055 and Rs.15,00,000/- under loan account nos.5889719 respectively, totalling to Rs. 1,05,00,000/- (Rupees One Crore Five Lakhs Only) ("said Agreements"), were executed between the Petitioner as the Lender and the Respondents as the Borrowers. Clause 11.2 of the said Agreements provide for the events of default; Clause 11.3 provides for notice on happening of events of defaults and Clause 12.18 provides for Arbitration. The Respondents have also created a mortgage of the property described in "Exhibit D" to the Petition in favour of the Petitioner by depositing the title deeds and executing a Memorandum Recording creation of Mortgage by Deposit of Title Deeds dated 15.4.2016 in favour of the Petitioner.

4. It is submitted on behalf of the Petitioner that the Respondents defaulted in the timely repayment of the said loan. It is also submitted that as on 6.9.2017 a sum of Rs.1,01,92,946/- (Rupees One Crore One Lakh Ninety Two Thousand Nine Hundred Fourty Six Only) is outstanding and payable by the Respondents to the Petitioner alongwith interest thereon @ 11.5% under loan account no.5797055 and @ 14% under loan account no.5889719 (variable) per annum and additional interest @ 2% per month on the overdue amount for the defaulted period till payment/ realisation as well as other expenses, costs, fees, charges, etc as per the

Particulars of Claim annexed and marked "Exhibit F" to the Petition. Thus the Petitioner through its Advocates' Notices dated 10.6.2017 and 13.7.2017 recalled the entire loan as per the terms of the said Agreements. Also, it is submitted that vide the said Notices, the Petitioner invoked the arbitration clause in the said Agreements. There is no reply to the Notices dated 10.6.2017 and 13.7.2017.

5. In the present Petition, the Petitioner is interalia seeking an injunction against the Respondents from creating any third party rights in respect of the mortgaged property and directions to the Respondents to disclose on oath the details of their personal moveable and immoveable un-encumbered and encumbered assets/ properties and appointment of the Court Receiver, High Court Bombay as the Receiver of the mortgaged property.

6. The Respondents have neither filed their Reply nor are they present before the Court. In absence of any defense or contest by the Respondents, the averments contained in the Petition have remained uncontroverted. I see no reason why the statements/submissions made on behalf of the Petitioner in the Petition should not be accepted. Section 9 empowers the court to pass interim measures of protection.

7. As the Respondents have defaulted in repayment of the outstanding dues, it is just and necessary to safeguard the interests of the Petitioner. The claim of the Petitioner is over Rs.1 Crores and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of reliefs. Hence, the following

order is passed.

i. The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the said mortgaged property described in “Exhibit D” to the Petition, with direction to take symbolic possession of the said mortgaged property and appoint the Respondents as their agents in respect of the said mortgaged property on usual terms, conditions and payment of royalty as may be fixed by the Court Receiver and on furnishing security having regard to the terms and conditions of the Loan Agreements (Exhibit B-1 and B-2 to the Petition).

ii. In the event of the Respondents failing to accept or refusing to accept the agency within two weeks from the date of such offer by the Court Receiver, the Court Receiver shall take forcible possession of the said mortgaged property with the help of the police assistance if required and without any further notice to the Respondents. Thereafter, it would be open to the Petitioner to apply to the court for further orders including sale of the said mortgaged property by private treaty.

iii. The Respondents shall disclose on oath the details of their moveable and immoveable (un-encumbered and encumbered) assets/ properties.

iv. Until the Court Receiver, High Court, Bombay takes possession of the said mortgaged property, the Respondents, 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 of, or creating any rights in respect of the said mortgaged property described in “Exhibit D”.

1. The Petitioner shall forthwith serve a copy of this order on the Respondents by hand delivery and also by Registered Post A. D.

2. The Arbitration Petition is accordingly, disposed off.

(S.J. KATHAWALLA, J.)