

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM.ARBITRATION PETITION NO. 43 OF 2018

M/s.National Laminate Corporation & Ors. Petitioners

VERSUS

**The Cosmos Co-operative Bank
Limited & Ors. Respondents**

Mr.Rohan Cama, a/w. Mr.T.N.Tripathi, Ms.Sapna Rachure, i/b.
Mr.Alok Mishra for the Petitioners.

Mr.Rishabh Shah, a/w. Ms.Fatima B., i/b. Raval Shah & Co. for the
Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 19th JANUARY, 2018

P.C.

Heard learned counsel for the parties.

2. By this petition filed under section 37 of the Arbitration and Conciliation Act, 1996, the petitioners have impugned the *ex-parte* order dated 13th December, 2017 thereby attaching the hypothecated goods, book debts, raw materials and other moveables lying in the godown described in paragraph (1) on page 78 of the order and also directing the petitioners to furnish security in the form of bank guarantee to the extent of Rs.2,48,50,056.34.

3. Mr.Cama, learned counsel appearing for the petitioners on instruction states that the petitioners were never served with the copy of the statement of claim or given notice before passing of the ad-

interim order by the learned arbitrator. On instruction, learned counsel submits that his clients are ready and willing to maintain the stock of Rs.3 crores which are lying in the go-down described in paragraph (1) at page 78 of the order on rolling basis till further orders are passed by the learned arbitrator without prejudice to the rights and contentions of his clients. Statement is accepted.

4. In view of the statement made by the learned counsel for the petitioners, impugned order passed by the learned arbitrator is set aside. The respondents would be at liberty to apply for interim reliefs under section 17 against the petitioners after effecting service of the statement of claim and application under section 17 of the Arbitration and Conciliation Act, 1996 which shall be served by the respondents. The petitioners are at liberty to oppose the said application by filing appropriate reply before the learned arbitrator and also for modification of the statement made before this court. The learned arbitrator shall decide the application under section 17 without being influenced by the observations made in the impugned order dated 13th December, 2017 and the conclusion drawn therein and in accordance with law.

5. The statements made by the learned counsel for the petitioners to continue before the learned arbitrator till further order is passed by the learned arbitrator in the said application or earlier if the application made by the respondents is rejected by the learned arbitrator.

6. The petitioners shall produce the requisite proof if any, in support of the valuation of Rs.3 crores of the material to the

respondents if they demand such proof from the petitioners. The learned arbitrator shall decide the application for interim measures expeditiously.

7. Arbitration petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]