IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO. 681 OF 2018

MAHINDRA & MAHINDRA FINANCIAL SERVICES
LIMITED) ... PETITIONER

VERSUS

DSC MOTOR PRIVATE LTD. & Ors.) ... RESPONDENTS

Subir Kumar, Mr. Sagar Shetty i/b. Mr. Subir Kumar for the Petitioner.
None for Respondents.

CORAM: S.J. KATHAWALLA, J.

DATED: 5TH JULY 2018

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 upon all the Respondents and an Affidavit proving service dated 4th July, 2018 has been placed on record. However, none appear for the Respondents nor has any reply been filed. The Petition is taken up for final hearing. The Affidavit of Service is dated 4th July, 2018.
2. It is submitted on behalf of the Petitioner that by virtue of various Sanction Letters dated 10.05.2017, 22.06.2017, 14.08.2017 & 11.10.2017, the Petitioner had sanctioned various loan facilities aggregating to Rs. 14,00,00,000 /- (Rupees Fourteen Crores Only) in favour of the Respondents against mortgage

of the property bearing Old Door No.399, New Door No.824, 1st Main Road, CIT Nagar, 399, Anna Salai, Nandanam, Chennai, Tamil Nadu – 600035 more particularly described in "Exhibit G" to the Petition ("said mortgaged property") and the stock of vehicles more particularly described in "Exhibit A" at pages 41 and 42 of the Petition. The said loan amounts were repayable by the Respondents to the Petitioner with interest varying from 11.25% to 12.50%.

3. An Inventory Funding Agreement along with five Master Facility Agreements were executed between the Petitioner as the Lender and the Respondents as the Borrowers. The Inventory Funding Agreement was executed on 11th May 2017. Three Master Facility Agreements were executed on 28th August 2017, whereas the other two Master Facility Agreements were executed on 27th June 2017 and 12th October 2017 respectively.

4. The Respondent Nos. 2 and 3 gave four personal guarantees in respect of the various loans advanced whereas, the Respondent No.4 additionally gave three personal guarantees in respect of the loans. The value of the personal guarantees given by Respondent Nos. 2 to 4 aggregates to Rs. 8 crores. Furthermore, the Respondent Nos. 2, 3 and 4 also executed Demand Promissory Notes whereby they jointly and severally promised to pay the Petitioner various amounts mentioned therein aggregating to Rs. 14 crores together with interest.

5. It is submitted on behalf of the Petitioner that the basis for the loan agreements was a valid and subsisting dealership of the Respondent No.1 with Hyundai Motor India Ltd ("Hyundai"). The Loan was obtained so as to enable the Respondents to purchase motor vehicles to start a car dealership business.

6. It is submitted on behalf of the Petitioner that on 4th June 2018, Hyundai informed the Petitioner that it had terminated the dealership of the Respondent and hence the Respondent no longer continues to be the dealer for Hyundai. Thus the Petitioner through its notice dated 7th June 2018 terminated the Inventory Funding Agreement and all the Master Facility Agreements and recalled the loan amount of Rs.12,75,62,117/- (Rupees Twelve Crores Seventy Five Lakhs Sixty Two Thousand One Hundred and Seventeen) as per the terms of these agreements. There is no reply to the notice dated 7th June 2018.

7. Under Clause 7 of the Inventory Funding Agreement the transaction was secured by way of hypothecation/charge on an inventory of vehicles held in stock by the Respondents. Clause 26 provides for events of default and sub clause (f) thereof provides that if the dealership of the Respondent No.1 is terminated/suspended at any time post the availment of the facility granted, it would constitute an event of default. Clause 27(ii) providers for the Petitioners right upon an event of default. In such an event, the Petitioner was entitled to call upon the Respondent No. 1 to forthwith pay the outstanding balance. Clause 33 provides for Arbitration.

8. In so far as the Master Facility Agreements were concerned, the Petitioner had the first and exclusive charge on the inventory to be financed by the Petitioner. Under Clause 13.3.1, the Respondent no. 1 was to ensure creation of a security in respect of the motor vehicles by way of hypothecation, pledge or lien over the vehicles in favour of the petitioner. Clause 23 provides for event of default. Sub clause 23.1.7 thereof provides for cross defaults and cross accelerations. If the Respondent No. 1 committed any default under any agreement with the Petitioner under which the Respondent No. 1 was enjoying credit facilities, it constituted an event of default, the consequences of which are provided under Clause 23.3.3 which entitled the Petitioner to terminate the agreements and recall the loan amount. Clause 24.11 provides for arbitration.

9. In the present Petition, the Petitioner is interalia seeking an injunction against the Respondents from creating any third-party rights in respect of the motor vehicles more particularly described in "Exhibit A" at pages 41 and 42 of the Petition as well as 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 and the motor vehicles.

10. The Respondents have neither filed their Reply nor are present before the Court. In absence of any defence 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.

11. 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 Rs. 12,75,62,117/- (Rupees Twelve Crores Seventy-Five Lacs Sixty-Two Thousand One Hundred and Seventeen Only) and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Hence, the following order is passed :

i. The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the motor vehicles more particularly described in "Exhibit A" at pages 41 and 42 of the Petition as well as the said mortgaged property described in 'Exhibit G' of the Petition, with a direction to take symbolic possession of the motor vehicles and the said mortgaged property and appoint the Respondents as the agents in respect of the motor vehicles and 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 Inventory Funding Agreement and the Master Facility Agreements (Exhibits C1, C2, C3 and C4 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 and the motor

vehicles with the help of 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 and motor vehicles 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 motor vehicles more particularly described in "Exhibit A" at pages 41 and 42 of the Petition and the said mortgaged property described in 'Exhibit G' of the Petition

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

vi. The Arbitration Petition is accordingly, disposed off.

(S.J.KATHWALLA, J.)