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

ARBITRATION PETITION NO.841 OF 2018

Epimoney Private Limited	..Petitioner
Vs.	
Onus Enterprises Pvt. Ltd. & Ors.	..Respondents

Ms.Juhi Bhogale and Mr.Ranjan Solanki i/b. M/s.O. M. Gujar Law
Chambers for Petitioner.
None for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 12th DECEMBER, 2018

P.C.:

Heard learned Counsel for the petitioner.

2. An affidavit of service is placed on record stating that the respondents are served. Despite service, the respondents have not appeared. Accordingly, the petition is taken up for hearing.

3. The petitioner is a non-banking financial company registered with Reserve Bank of India and engaged in the business of providing financial assistance to various individuals. The respondents had approached the

petitioner for financial assistance by a loan application in the nature of a business loan facility.

4. On 6 March 2018 a written loan agreement was executed between the petitioner and the respondents under the loan account No.2328. As also a deed of personal guarantee was executed. Accordingly, an amount of Rs.60,00,000/- was disbursed in favour of the respondents. The respondents have defaulted in making payment of the installments despite repeated requests of the petitioner for payment of the installments.

5. By a communication dated 29 June 2018 the petitioner has terminated the loan agreement and recalled the loan. Case of the petitioner is that a total amount of Rs.62,25,859/- is due and payable by the respondents.

6. In paragraph 9 of the petition, the petitioner has stated that the respondents while executing a loan agreement have disclosed and confirmed that the properties mentioned/described in Schedule at Exhibit D to the petition are owned by the respondents. It is stated that the petitioner apprehends that the respondents may try to create third party rights on the properties with a malafide intention to defeat and/or

frustrate the Award/Decree.

7. The petitioner in the above circumstances has approached this Court to seek following interim reliefs pending the arbitral proceedings:-

“a) That, pending the hearing and final disposal of the arbitration proceedings or at any time after making of the Arbitral Award but before it is enforced in accordance with Section 36 of the Arbitration and Conciliation Act 1996, Court Receiver, High Court, Bombay be appointed as a Receiver under Order XL Rule 1 of C.P.C., in respect of Properties more particularly described in schedule of property at Exhibit “D” to the Petition hereto, and Petitioner be allowed to sale the same by private treaty or Public Auction;

b) That, pending the hearing and final disposal of the arbitration proceedings or at any time after making of the Arbitral Award but before it is enforced in accordance with Section 36 of the Arbitration and Conciliation Act 1996, the Respondent Nos. 1 to 3 and their agents, servants be restrained by an order of an injunction of this Hon'ble Court in any manner parting with possession, creating third party rights, alienating and/or encumbering with Properties described in schedule of property at Exhibit “D” to the Petition;

c) That, pending the hearing and final disposal of the arbitration proceedings or at any time after making of the Arbitral Award but before it is enforced in accordance with Section 36 of the Arbitration and Conciliation Act 1996, the Respondent Nos.1 to 3 be directed to disclose their un-encumbered properties and upon disclosure thereof the court Receiver may be appointed on the said property under Order XL Rule 1 of C.P.C. of 1908;

d) That, pending the hearing and final disposal of the arbitration proceedings or at any time after making of the Arbitral Award but before it is enforced in accordance with Section 36 of the Arbitration and Conciliation Act 1996, the Respondent Nos.1 to 3 be directed to deposit a sum Rs.62,25,859/- (Rupees Sixty Two Lakhs Twenty Five Thousand Eight Hundred Fifty Nine only) inclusive of principle over due, interest due and penal charges due as on 28.06.2018 with further applicable interest @ 1.75 % p.m. from 29.06.2018 till payment and/or realization with the Petitioner or in this Hon'ble Court to secure the Petitioner's claim;

e) That, the Respondent Nos.1 to 3 be ordered and directed to deposit with this Hon'ble Court and/or to furnish solvent security by way of bank guarantee to the tune of Rs.62,25,859/- (Rupees Sixty Two Lakhs Twenty Five Thousand Eight Hundred Fifty Nine only) to secure the claim of the Petitioner under the present petition.”

8. The learned Counsel for the petitioner states that at this stage, the petitioner is pressing prayers (b) and (c) above.

9. The respondents have chosen not to appear despite service. The averments in the petition would be required to be taken as uncontroverted.

10. Having heard learned Counsel for the petitioner and having perused the documents placed on record, in my opinion, it is in the interest of justice that interim protection is granted to the petitioner. The petition is accordingly disposed of in view of the following order:-

ORDER

- i. Pending the arbitration proceedings, there shall be interim reliefs in terms of the prayer clauses (b) and (c) of the petition;
- ii. The petitioner shall take appropriate steps for appointment of an Arbitrator within a period of two weeks from today;
- iii. In regard to the other reliefs, the petitioner is at liberty to move an application under Section 17 of the Arbitration and Conciliation Act, 1996 before the arbitral tribunal.
- iv. The respondents are at liberty to apply for vacating of the reliefs as granted by this Court by making necessary application before the arbitral tribunal or for such other reliefs;

- v. All contentions of the parties on merits of the matter are expressly kept open.
- v. The petition is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]