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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 71/2018
TATA CAPITAL FINANCIAL SERVICES LTD Petitioner
Through: Mr.Udbhav Kumar Jain, Adv.

versus

KABA INFRATECH PVT. LTD. (BORROWER) & ORS.
..... Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **07.02.2018**

IA No.1824/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 71/2018

Counsel for the petitioner had entered into a 'Loan cum Hypothecation cum Guarantee Agreement' dated 28th October, 2016 with the respondents whereunder a loan of Rs.4,18,42,000/- was granted to the respondent nos.1 and 2 against the hypothecation of 'Commercial Equipment Writgen Soil Stabliser vide Model name WIRTGEN WR240 bearing Engine No. 79859756 and Chasis No.07WR0150 in favour of the petitioner.

The respondents having defaulted in the payment of the instalments, the petitioner recalled the loan facility vide its notice dated 3rd November, 2017.

It is submitted that in spite of receipt of the above notice, the respondents have not cleared their outstanding amount and on the other

hand, it has come to the knowledge of the petitioner that the respondents, in order to thwart the recovery of the amount payable by them to the petitioner company, have malafidely commenced the process of disposing/eliminating the above mentioned commercial equipment. It is submitted that the petitioner is in the process of invoking the arbitration.

Counsel for the petitioner further places reliance on the order dated 8th August, 2008 passed by this Court in FAO(OS) No.335/2008 titled *Citicorp Finance India Ltd. vs. Varendra Swaroop*; order dated 12th April, 2017 passed in CM(M) No.385/2017 titled *ICICI Bank Ltd. vs. Adesh Kumar*; order dated 10th December, 2014 in OMP 1572/2014 titled *L and T Finance Ltd. vs. Rati Ram Yadav* and order dated 4th August, 2017 passed in CM(M) No.825/2017 titled *ICICI Bank Ltd. vs. Kissan Petro Oil Pvt. Ltd. & Anr.* and other connected petitions to contend that if the Receiver is not appointed, the petitioner would suffer grave irreparable loss.

Keeping in view the submissions made above along with the averments made in the petition and the documents filed on record, I hereby appoint **Mr.Nitin Sharma, Collection Manager of petitioner company** as the Receiver for taking over the possession of the hypothecated equipment.

The Receiver, while taking possession of the subject equipment, will ensure that the due courtesies are extended to the respondent. The Receiver will also keep in mind the time and place when the equipment is taken possession of. If, at the time of taking possession, the respondents were to pay the sums, which are due and payable, then the Receiver will issue a receipt in that behalf to the respondent and release the equipment on superdari to it. In case the police assistance is required, the Receiver will approach the Station House Officer of the nearest Police Station, who, in

such eventuality, shall render assistance to enable compliance in the matter.

As noted above, counsel for the petitioner has submitted that the petitioner is in the process of invoking the arbitration. The present order would, therefore, remain in operation till either the respondent makes the payment of the loan amount or till this order is modified by the Arbitrator so appointed in terms of arbitration agreement. The petitioner would take steps for appointment of an arbitrator within a period of 90 days from the date of the present order.

The Arbitrator is free to take his own decision uninfluenced by the order of this Court.

In view of the above, the petition is disposed of.

Dasti.

NAVIN CHAWLA, J

FEBRUARY 07, 2018
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