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

COMMERCIAL ARBITRATION PETITION NO.248 OF 2019

Tata Capital Financial Services Ltd. ..Petitioner
Vs.
GI International Pvt.Ltd. & Ors. ..Respondents

Mr.Rohaam Cama with Ms.Benedicta Lobo and Ms.Nimisha Ghetla i/b.
M/s.Katariya & Associates for Petitioner.
None for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 8th JULY, 2019

P.C.:

Heard Mr.Cama, learned Counsel for the petitioner.

2. The office report indicates that the respondents are served. It is to be noted that by an order dated 17 June, 2019, permission was granted to the petitioner to serve respondent Nos.1, 2 and 3 by substituted service / publication.

3. On 3 June, 2019, the Court had passed the following ad-interim order:-

- “1. Issue notice to the respondents returnable on 17 June 2019.
2. In addition to the Court notice, learned Advocate for the petitioner is permitted to serve the respondents by

private service and shall file affidavit of service before the returnable date.

3. In the meantime the respondents shall not create any third party rights in respect of the subject assets.

4. Stand over to 17 June 2019.”

4. Despite service, the respondents are not appearing. The averments as made in the petition would thus be required to be taken as uncontroverted.

5. It is the petitioner's case that the petitioner had advanced an amount of about Rs.14 Crores to respondent No.1 under the Working Capital Demand Loan Agreement dated 28 April 2017. Respondent Nos.2, 3 and 4 are personal guarantors to the said loan. Respondent No.5 is corporate guarantor who had guaranteed the loan amount. The respondents have defaulted in repayment of the said loan. As on 11 December 2018 the total amount due and payable was Rs.15,11,10,375.70.

6. Mr.Cama, learned Counsel for the petitioner has also drawn my attention to the letter dated 23 May 2018 whereby the respondent has acknowledged the liability towards re-payment of the said loan amount to the extent of Rs.14 Crores (Exhibit-U, page 399 of the paper-book).

7. It is the case of the petitioner that admittedly neither respondent No.1 nor the present guarantors are coming forward to discharge their

liability and obligations under the letter of guarantee and loan agreement to repay the said amount. It is submitted that looking at the conduct of the respondents, there is a likelihood that the respondents would deal with the mortgaged properties and the hypothecated assets as set out in Exhibit-CC and Exhibit-J.

8. The petitioner has thus prayed for interim reliefs pending the arbitral proceedings, interalia of an injunction restraining the respondents from selling, transferring, disposing of the mortgaged property, current assets and hypothecated assets and other assets and for appointment of receiver.

9. Having heard Mr.Cama, learned Counsel for the petitioner and having perused the averments as made in the petition, prima facie there is much substance in the contention as urged on behalf of the petitioner to support the interim prayers. The respondent No.1 has not repaid the loan amount to the petitioner, even personal guarantors and corporate guarantor are not inclined to discharge their obligations. The amounts are substantial.

10. In the circumstances, it is in the interest of justice that pending the arbitral proceedings, the petitioner be protected by granting interim

relief qua the mortgaged properties, current and hypothecated assets, immovable properties as set out in Exhibit-CC and Exhibit-DD. The respondents admittedly are not interested to contest this petition.

11. Certainly the balance of convenience is also in favour of the petitioner. If the interim reliefs as prayed for are not granted, a serious prejudice would be caused to the petitioner as seen from the facts on record.

12. Hence, pending the arbitral proceedings, there shall be an order in terms of prayer clause (c) and in terms of prayer clause (d) (as modified) as under:-

“(c) that pending the hearing and disposal of Arbitration proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, the Respondents, by themselves, their employees, servants and/or agents or otherwise howsoever be restrained by an order and injunction from in any manner selling, transferring, disposing of, or alienating or encumbering or pledging or mortgaging or hypothecating or charging or parting with possession of or transferring or inducting anyone else into or creating any right, title or interest or license in favour of anyone else in respect of

(i) the mortgaged properties as described in the Schedule at Exhibit “CC” hereto;

(ii) the current assets and hypothecated assets described in the Schedule to the Deed of Hypothecation dated 26th February 2016 described at Exhibit “J”;

(iv) the immovable properties as described in Schedule at Exhibit “DD” hereto.

(d) that pending the hearing and disposal of Arbitration proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, the Court receiver, High

Court, Bombay, or some other fit and proper person be appointed Receiver of

(ii) the current assets and hypothecated assets described in the Schedule to the Deed of Hypothecation dated 26th February 2016 described at Exhibit “J”;

(iv) the immovable properties as described in Schedule at Exhibit “DD” hereto.”

13. The Court Receiver is directed to take symbolic possession of the said property at Exhibit “DD” and appoint respondents as its agents in respect of the property at Exhibit “DD” on usual terms 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 agreement. In the event the respondents failing to accept or refuse to accept the agency within two weeks from the date of such offer as may be made by the Court Receiver, then it would be open to the petitioner to apply to the Court for further orders.

14. Ordered accordingly.

15. If the petitioner intends to pray for any other reliefs before the arbitral tribunal, the petitioner is at liberty to do so. All contentions in that regard are expressly kept open.

16. The petition is disposed of in the above terms.

[G.S. KULKARNI, J.]