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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 761 OF 2019**

Tata Capital Financial Services Limited	...Petitioner
<i>Versus</i>	
Pratibha Milk Industries And Ors	...Respondents

Mr HN Thakore, *with Mr Ganesh Ambekar, i/b Dua Associates, for the Petitioner.*

Mr Vishal Kanade, *i/b Mehul R Thakker, for Respondents Nos. 1 to 4..*

CORAM: G.S. PATEL, J.
DATED: 27th November 2019

PC:-

1. The petition is under Section 9 of the Arbitration and Conciliation Act 1996. There is a master lease agreement and a letter of guarantee dated 11th October 2017. The 1st respondent, a dairy, is the principal debtor of the petitioner, a non-banking financial company. The principal amount of the claim is just under Rs. 25 crores. Respondents Nos. 2 and 3 have executed unconditional, irrevocable and personal continuing guarantees to secure the repayment of these amount.

2. The claim arises for lease rentals since the machinery is the property of the petitioner and has been leased to the 1st respondent. The claim is that the 1st respondent has been delinquent in making regular payments of its dues towards these lease rentals.

3. There is an ad interim order of 24th May 2019 (Vacation Court) which reads thus:

“1. Heard counsel for the parties.

2. It is application under Section 9 of the Arbitration and Conciliation Act, 1996.

3. Learned counsel for the respondents No. 1, 2 and 3, on instructions makes a statement that the respondents no. 1, 2 and 3 shall not create any third party right / interest in the property described in Annexure 1 appended to the Master Lease Agreement dated 11.10.2017 executed between petitioner and respondents no. 1 and 4. Statement is accepted.

4. In addition thereto, pending the hearing and final disposal of Arbitration Petition, respondents no. 1, 2 and 3 are restrained from selling or alienating their business to any third party without the permission of this Court.

5. Counsel for the respondent prays time to file reply. Time is granted. Reply shall be filed within three weeks from today.

6. Listed it for admission on 28.06.2019.”

4. Mr Thakore on behalf of the petitioner submits that at the very least there must be an order of disclosure against respondents Nos. 1, 2 and 3. As regards the 4th respondent, he says that there is

no arbitration proposed against that respondent which is in any case facing proceedings under the Insolvency and Bankruptcy Code. The 4th respondent was a co-lessee under the agreement of some of these items or plants and machinery. This statement is noted.

5. Mr Thakore also states that under the relevant arbitration clause of the agreement which is at page 49, being clause 21.4 and which is reproduced below, the petitioner has appointed Ms Soma Singh, a learned advocate of this Court as a sole arbitrator.

6. Mr Kanade on instructions of respondents Nos. 1, 2 and 3 states that notice of invocation is not yet received but he has instructions to accept the nomination. This is also noted.

“21.4 Dispute Resolution

All disputes, differences and/or claims arising out of any Document or as to the construction, meaning or effect hereof or as to the rights and liabilities of the Parties thereunder shall be settled by arbitration to be held in Mumbai in accordance with the provisions of the Arbitration and Conciliation Act 1996 or any statutory amendments thereof or any statute enacted for replacement thereof and shall be referred to the sole arbitration of a person to be appointed by the Lessor, in the event of death, refusal, neglect, inability or incapability of the person so appointed to act as an arbitrator, the Lessor may appoint a new arbitrator. The award including interim award/s of the arbitrator shall be final and binding on all parties concerned. The parties agree to have their dispute resolved by fast track procedure specified in Section 298 of the Arbitration and Conciliation Act, 1996, subject to and in accordance with

which the arbitrator may lay down from time to time the procedure to be followed by him in conducting arbitration proceedings and shall conduct arbitration proceedings in such manner as he considers appropriate. The language of arbitration shall be English. However, if holding the arbitration at Mumbai would entail payment of differential stamp duty or registration fees or any taxes or levies, the Lessor may at its sole discretion decide to hold the arbitration proceedings at any other location and the Lessee agrees to be bound by such decision of the Lessor and shall not challenge the same.”

7. I believe Mr Thakore is correct in his submission that an order of disclosure of assets of respondents Nos. 1, 2 and 3 is undoubtedly necessary. It is also open to the petitioners to press the remaining prayers in the Section 9 petition before the learned sole arbitrator in the form of a Section 17 application including for possession of machinery and for relief in respect of disclosed assets.

8. Hence the following order:

PART I: DISCLOSURE

A complete disclosure in the following terms is required from Respondents Nos. 1 to 3 of their movable and immovable assets, including their personal assets:

- (a) **Immovable properties:** The disclosure will be of all immovable properties wherever situated, whether in India or overseas with complete details sufficient to identify the properties. If any of these are in any way

encumbered, full particulars of such encumbrance/s and the amounts yet due as secured by those properties will also be disclosed.

(b) Movable Assets

(i) ***Non-financial:*** They will also disclose all non-financial movable assets of the acquisition or replacement value of more than Rs. 50,000/- including all particulars as described above.

(ii) ***Financial assets:*** They will also disclose all investments and demat accounts with full particulars, including all holdings and encumbrances.

(iii) ***Bank accounts:*** All bank accounts with account numbers, bank names, branches, account types and holding patterns are to be disclosed. Bank statements for the last one year are required for all accounts.

(iv) ***Bank Lockers:*** contents of all safety deposit vaults and bank lockers will be disclosed.

(c) Tax and Financial Returns: Copies of all tax and financial returns for the last three years are to be disclosed.

(d) Disclosures to be on Affidavit:

- (i) All disclosures must be on properly sworn affidavits.
- (ii) Each deponent will make a separate affidavit.
- (iii) Every affidavit is to be affirmed before a court officer.
- (iv) Affidavits to be serially paginated.
- (v) Each affidavit to have its own detailed index identifying each disclosure.
- (vi) Affidavits to be filed in this Court within three weeks in this petition for completeness of record. Copies are to be presented to the learned sole arbitrator appointed as per the order below.

PART II: ARBITRATION

- (a) **Appointment of Arbitrator:** The nomination of Ms Soma Singh, as a Sole Arbitrator to decide the disputes and differences between the parties, is confirmed, and subject to her statement of disclosure.
- (b) **Communication to Arbitrator of this order:**
 - (i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from today of the order being uploaded.

- (ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Ms Soma Singh, Advocate

Address 407, Apeejay House,
130, Mumbai Samachar Marg,
Mumbai 400 001

Mobile 98200 03503

Email soma2@vsnl.net

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward her statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained by the Prothonotary & Senior Master on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as she nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

(e) Contact/communication information of the parties:

Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

(f) Interim Application/s:

- (i) Liberty to both sides parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
- (ii) The present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
- (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.

- (iv) The order dated 24th May 2019 will continue to operate until further orders of the learned sole arbitrator.
- (v) Liberty to the petitioner to apply to the learned sole arbitrator for leave to visit the premises.
- (vi) Liberty to the petitioner to apply to the learned Sole Arbitrator for further orders following the disclosure.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (i) **Time for arbitration.** The time for the arbitration will commence after Ms Singh enters upon the reference to arbitration pursuant to this order since this order confirms her appointment (subject to the statement of disclosure).
- (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.

(k) Venue and seat of arbitration: Parties agree that the venue and seat of the arbitration will be in Mumbai.

9. The petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)