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

COMMERCIAL ARBITRATION PETITION NO.744 OF 2018

M/s.Rliance Commercial Finance Limited	..Petitioner
Vs.	
Shree Raj Mahal Jewellers Private Limited & Ors.	..Respondents

Mr.Kishore Shriyan for Petitioner.
Mr.Raghavan Sarathy with Mr.Tejas Luniya, i/b. Thodur Law Associates
for Respondents.
Mr.D.R. Shetty, Court Receiver.

CORAM : G.S. KULKARNI, J.

DATE : 21st JANUARY, 2019

P.C.:

Heard learned Counsel for the parties.

2. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996. This Court had passed an ad-interim order on 6 July 2018 in the following terms:-

“7. 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 over Rs.14.50 Crores (Approximately) and unless adequately protected, the Petitioner may suffer irreparable harm and injury. Balance of convenience also warrants the grant of reliefs. Hence, the following order is passed.

i. The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the said mortgaged property i.e. property bearing Plot No. 5, Block – 12, Karol Bagh, New Delhi, with direction to take symbolic

possession of the said mortgaged property and appoint the Respondents as their agents in respect of 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 Loan Agreement (Exhibit B 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 with the help of the 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 by private treaty.

iii. Further, if it is found that the said mortgaged property is in occupation of any third party, i.e. other than the Respondents, then the Court Receiver shall take symbolic possession of the said mortgaged property and make a report to this Court.

iv. The Respondents shall disclose on oath the details of their moveable and immovable (un-encumbered and encumbered) assets/ properties.

v. 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 property bearing Plot No. 5, Block – 12, Karol Bagh, New Delhi.

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

9. The Arbitration Petition is accordingly made returnable on 19.07.2018.”

3. The petition accordingly remained pending. It is informed that the mortgaged property is in possession of the Municipal Corporation in Delhi. Learned Counsel for the parties jointly submit that symbolic possession of the property as described in paragraph 7(i) of the above order could not be taken and there are proceedings pending before the

Supreme Court.

4. After this petition was heard for some time, learned Counsel for the parties agreeable for reference of disputes and differences between the parties by appointing an arbitral tribunal. It is agreed between the parties that Mr.R.S. Bhandurge, Advocate be appointed as an arbitrator to adjudicate the disputes between the parties. The petition is therefore required to be disposed of in the following terms:-

ORDER

- (i) Mr.R.S. Bhandurge is appointed as an Arbitrator to arbitrate the disputes and differences between the parties.
- (ii) The learned sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;
- (iii) Office to forward a copy of this order to the learned Arbitrator.
- (iv) Ad-interim order dated 6 July 2018 is continued to operate as an interim order till the disposal of the arbitration proceedings.
- (v) It is clarified that it would be open for the parties at any stage of the proceedings to move an application under Section 17 of the ACA for

such further and appropriate orders as the parties may feel necessary.

(vi) All contentions of the parties in that regard are expressly kept open.

(v) The petition is disposed of in terms of the order dated 6 July 2018.

[G.S. KULKARNI, J.]