

Tauseef

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

**ARBITRATION PETITION (L) NO.1124 OF 2019
WITH
NOTICE OF MOTION (L) NO.2265 OF 2019**

JML Marketings Pvt. Ltd.	...Petitioner
V/S.	
Neo Growth Credit Pvt. Ltd.	...Respondent

Mr.Sunny Shah a/w. Ms. Priyanka Sonawane I/b. Mr. Ashish Suryawanshi
for Petitioner.

Mr.Vivek Salunke a/w. Ms. Nikita Indoria & Mr.Vivek Punjabi for
Respondent.

CORAM : G.S. KULKARNI, J.
Date : 26th SEPTEMBER 2019.

P.C. :

1. Heard learned counsel for the petitioner and learned counsel
for the respondent.
2. The challenge in this petition filed under Section 37 of the
Arbitration and Conciliation Act, 1996 is to an order dated 08 August 2019
passed by the learned sole arbitrator on an application as filed under
Section 17 of the Act.
3. By the impugned Order, learned arbitrator has permitted the
respondent-claimants to take custody of the movable and immovable

property as specified in schedule I and for other incidental reliefs.

4. The grievance of the Petitioner is that the impugned order is an ex-parte order and no notice of the arbitral proceedings was issued to the respondent, much less of the application filed under Section 17 of the Act. It is his submission that the order is contrary to the provision of Section 24 of the Act, which would mandate a notice to be issued. Hence his submission is that the order be set aside.

5. On the other hand, the learned counsel for the respondent would submit that the petitioner-claimant has admitted its default in repayment of the financial facilities as availed by the petitioner from the respondent. It is the submission that the petitioner has also avoided the notices issued by the arbitral tribunal, and is now, before the court making a grievance when an order is passed under Section 17. It is a submission that only because the learned arbitrator passed an order under section 17 and as was to be enforced the petitioner has now woken up to approach this court.

6. On the earlier occasion, the learned counsel for the petitioner was asked to take instructions from his clients as to whether his client is willing to deposit any amount in this Court. Learned counsel for the petitioner has consistently avoided to make any statement in that regard

on the earlier occasion. Today a statement is made by the learned counsel for the petitioner that his clients are unable to deposit any amount as his clients are facing insolvency proceedings. This statement as made on behalf of the petitioner gives credence to the arguments as urged on behalf of the respondent, of the petitioner avoiding notices of the arbitral tribunal apart from the admitted defaults in repayment of the amount. It prima-facie appears that the petitioner being a defaulter is trying to avoid arbitral proceedings, however, when orders on the tribunal are sought to be executed the petitioner has thought it appropriate to approach this court.

7. Be as it may, now the learned counsel for the petitioner on instructions states that his client is ready to appear before the arbitral tribunal immediately. Thus in my opinion, it would be in the interest of justice that an opportunity be granted to the petitioner to contest the section 17 application filed by the respondent before the arbitral tribunal, as admittedly the impugned order is an ex-parte order.

8. Accordingly, the present proceedings are disposed off, keeping all contentions of the parties open.

9. The petitioner is directed to appear before the arbitral tribunal on 03 October 2019 at 11.00 am. On which day the arbitral tribunal shall consider the rival contentions of the parties and pass appropriate orders

afresh on the Section 17 application as moved on behalf of the respondent. In view of the above observations, the impugned order dated 08 August 2019 is required to be set aside. However, clarifying that if the petitioner does not appear before arbitral tribunal, as directed the learned arbitral tribunal is permitted to proceed ahead and pass appropriate orders as permissible in law. Also in that event the benefit of this order shall not be available to the petitioner. Disposed of in the above terms. No costs.

10. As petition itself is disposed of, pending Notice of Motion does not survive. It is accordingly disposed of.

(G.S. KULKARNI, J.)