

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

ARBITRATION PETITION (L) NO.1412 of 2018

Tata Capital Financial Services Ltd .. Petitioner
vs
Nectar Prints Pvt. Ltd & ors .. Respondents

Mr.Shavez Mukri and Ms.Shilpa Upadhyay
I/b India Law LLP for Petitioner
Mr.Namdeo Gore for Respondents

Coram : **G.S.KULKARNI, J**
Date : **31st JANUARY, 2019**

P.C

Heard learned counsel for the petitioner and learned counsel
for the respondents.

2. This is a petition under section 9 of the Arbitration and
Conciliation Act, 1996. (for short ' the **ACA**') The petitioner/claimant has
prayed for the following reliefs :

“(a) that pending the Arbitral proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, the Respondents jointly and/or severally be ordered and directed to either furnish the security and/or bank guarantee in favour of the Petitioner to deposit a sum of Rs.48,94,735/- (Rupees Forty eight Lakhs Ninety Four Thousand Seven hundred Thirty Five only) due as on 28th March 2018 with further applicable interest on defaulted principal with legal charges failing which Petitioner still payment and/or realization and other expenses, costs, charges etc till payment and/or realization as per the Particulars of Claim at Exhibit 'R' hereto.

(b) that pending the hearing and final disposal of the arbitration proceedings and till the Award which may be passed is enforced in

accordance with section 36 of the Arbitration and Conciliation Act, 1996, the Respondents be directed to file an affidavit disclosing the details of all the movable and immovable properties belonging to them with the encumbrances if any;

(c) that pending the Arbitral proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, the Respondents, their agents/s servant/s, and any third person/s claiming through them be restrained by an order of injunction of this Hon'ble Court from in any manner selling, transferring, disposing of, and/or alienating or encumbering or mortgaging or charging or parting with possession of or transferring, or inducting anyone else into or creating any right title or interest or licence in favour of anyone else in respect of.

(i) all the movable and immovable assets disclosed by the Respondents pursuant to the direction of this Hon'ble Court.

(d) that pending the Arbitral proceedings making of the Arbitral Award and until final execution of the Arbitral Award, Court Receiver, High Court, Bombay or any other fit and proper person as Receiver under Order XL, Rule I of Code of Civil Procedure 1908 be appointed with a specific direction to the Court Receiver to take forcible physical possession of the said properties with police assistance, if necessary and also with the power to sell the said property by public auction or private treaty and appropriate the sale proceeds towards the outstanding loan of the Respondents in respect of,

(i) Hypothecated assets described in Schedule of Hypothecated Assets in (Exhibit 'F' hereto);

(ii) all the movable and immovable assets disclosed by the Respondents pursuant to the direction of this Hon'ble Court;

e) that pending the Arbitral proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, the Respondent nos.2 and 3 be restrained from leaving the country without the permission of this Hon'ble Court and/or be directed to deposit their passports in this Hon'ble Court ;

(f) ad-interim and interim reliefs in terms of prayer (a) to (e) above;

(g) for costs of this Petition; and

(h) for such further and other reliefs as the nature and circumstances of the case may require.”

3. It is not in dispute that by an order dated 14.6.2018 this Court has already appointed a sole Arbitrator. It is also not in dispute that the parties are before the arbitral tribunal. There is also an order passed by the learned arbitrator on an application moved under section 17 of the ACA. Learned counsel for the respondent submits that in fact, arguments are over and the award would soon be published.

4. In the above circumstances, it would be necessary to note the provisions of section 9 sub-section 3 of the ACA. Section 9 sub-section 3 reads thus :

“9. Interim measures, etc by Court :

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1) unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”

5. Thus once an arbitral tribunal is constituted, an application under section 9 of the ACA cannot be entertained in the normal circumstances. The petitioner has not made out any case that circumstances exist which has rendered the remedy provided under

section 17 ineffectual. The petitioner admittedly has come at the far end of the arbitral proceedings and when the arbitral tribunal has reserved the award to be published.

6. It also appears that the petitioner had earlier moved this Court in a petition under section 9 of the ACA. This Court on 4.5.2018 had passed an ad interim order pending arbitral proceedings. By a further order dated 14.6.2018 this Court constituted an arbitral tribunal and also recorded and accepted the statement of the advocate appearing on behalf of the respondent nos.1 and 2 that symbolic possession of the equipment described in Exhibit F of the petition shall be handed over to the Court Receiver. Thereafter, the arbitral tribunal also considered an application of the petitioner filed under section 17 of the ACA and passed a detailed interim order dated 27.7.2018 granting further reliefs. The petitioner thus not only availed an earlier opportunity of approaching this Court under section 9 of the ACA but, also moved a section 17 application before the arbitral tribunal. If the petitioner was not satisfied with the orders that were passed had a remedy of an appeal under section 37 of the Act. Further, considering some of the prayers, a petition under section 9 for enforcement or execution of the interim orders passed by the

Arbitrator is surely, not maintainable considering the clear provisions of sub-section 3 of section 17 of the ACA.

7. It is not in dispute that hearing before the learned Arbitrator stands concluded and the award shall soon be published. In these circumstances, in my considered opinion this petition under section 9 need not be entertained.

8. The petition is accordingly disposed of keeping open all contentions of the petitioners and the respondents to agitate the issues after the award is published or pursue such other remedies.

(G.S.KULKARNI, J)