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

COMMERCIAL ARBITRATION PETITION NO.299 OF 2019

Tata Capital Financial services Ltd. … Petitioner
V/s.
Naveen Traders
Through it's partner and anr … Respondents

- Mr. Karl Tamboly a/w Ms. Shivani Khanna i/by FZB & Associates, for the Petitioner.
- Mr. Hemant J. Dube, a/w Mr. Vaibhav Kadam, for respondents

CORAM : G. S. KULKARNI, J.

DATE : 25th July 2019.

P.C. :

1] In this petition filed under section 9 of the Arbitration and Conciliation act, 1996 (for short, "the Act"), there are various orders passed by this Court as to valuation of the hypothecated stock of the goods:-

2] This Court on 26th April,2019 passed the following order:-

> "1. Learned counsel for the respondents fairly states that the stock of the material is still lying with the respondents and the value of the said stock is Rs.6.12 crores and a certificate of valuation to that effect was handed over by the learned counsel for the respondents to learned counsel for the petitioner. Learned counsel for the petitioner to take instructions on the statement which is made on behalf of the respondents.
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> 2. Considering the facts and circumstances of the case and if the position as stated by the learned counsel for the respondents is agreed that the valuation of the stock is about Rs.6.12 crores, then it is appropriate that

the parties amicably resolve the disputes.

3. Accordingly, awaiting the response of the parties on the above facts, stand over to 2 May,2019".

3] Thereafter considering the submission as made on behalf of the parties, this court on 2nd May, 2019, passed the following order:-

"1. To enable the petitioner to depute its representative/valuer to value the goods in question which are available with the respondents, stand over to 11th June, 2019.
2. Learned counsel for the respondents has agreed to extend all co-operation for valuation of the stocks so that ultimately an arrangement between the parties to sell the stock can be worked out.
3. learned counsel for the respondents states that in the meantime the respondents shall not in any manner deal with the stocks without the consent of the petitioner. Statement is accepted.
4. Stand over to 11 th June, 2019".

4] On 18th June, 2019, as the respondents requested for time to inform the petitioner as to whether better buyer would be available, matter was adjourned.

5] On 9th July, 2019, this Court passed the following order:-

"At the request of learned counsel for the respondents, as a last chance, stand over to 16th July, 2019.

2. On the adjourned date of hearing if the respondents are not in a position to make any offer or bring any buyer for the goods, then the parties would be heard and appropriate orders would be passed.

3. Ad-interim order passed earlier shall continue to operate till the adjourned date of hearing".

6] On 16th July, 2019, parties have agreed to work out a modality in regard to sale of the stock and place on record Consent Minutes of the Order so that the proceedings can be disposed of. The respondents, however, had received quotation of small stock of about 35 lacs for adopter rod.

7] On 19th July, 2019, this court passed the following order :-

> " The respondent would insist that the stock should be sold at an amount of Rs.19,800/- to Rs.22,000/- per drill rod.
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> 2. If by the adjourned date of hearing, the respondents are not in a position to get a buyer at the rate which is expected by the respondents, the court shall proceed to hear the petition and pass appropriate orders.
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> 3. It is also informed to the Court on behalf of the petitioner that the petitioner has received quotations at the rate of Rs.7,300/- per drill rod and the respondents have received a quotation from S.R. Engineering, who have shown interest to purchase only 35 rods at the rate of Rs.22,000/-. However, admittedly the respondents have no buyer who would take entire stock at the rate of Rs.22,000/- as fairly stated on behalf of the respondents.
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> 4. From the perusal of the earlier orders and what had transpired before the Court on the earlier occasions it can be observed that search for buyers on behalf of the respondents cannot be go on endlessly.
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> 5. Mr. Tamboly, learned counsel for the petitioner would state that an early hearing would be necessary as the buyers who have shown interest, information of which is already shared with the respondent, may also back out.
>
> 6. Accordingly, as a last chance to enable learned counsel for the respondents to find out a buyer, stand over to 25 July 2019 at 03.00 p.m".

8] In the above facts and circumstances, the matter has appeared today, learned counsel for respondents is not in a position to get a buyer at the rate which is expected by the respondents, therefore, he submits to the orders of the court.

9] I have heard learned counsel for the parties and having perused the record, it is not in dispute that the goods in question that is drill rods are hypothecated goods. There is default on the part of respondents.

10] In the above circumstances, the following order will meet the ends of justice at this stage of the proceeding inasmuch as respondents have agreed that the disputes and differences between the parties be referred for adjudication by an arbitral tribunal. Hence, the following order.

Order

i] Shri. Justice J.H. Bhatia, former Judge of this Court, is appointed as sole arbitrator to adjudicate the dispute between the parties;

ii] The respondents confirm that the hypothecated assets more particularly described in the Valuation Report dated 3rd June, 2019 (Exhibit 'B' to the Affidavit of the Petitioners dated 7th June 2019), lying at 193/38D/1, Sankari Road, Tiruchengode, Tamil Nadu are hypothecated in favour of the petitioners vide Deed of Hypothecation dated 30th May, 2017 as a security for the loans granted by the petitioners;

iii] The respondents agree and confirm that the hypothecated assets shall be sold to such purchaser as may be identified by the petitioners. The respondents agree, decree, confirm and consent to the entire sale proceeds being paid by the purchaser to the petitioners directly towards partial payment of the petitioner's claim;

iv] On the petitioners confirming to the respondents receipt of the entire sale proceeds by them, the respondents undertake to this Hon'ble Court to take all steps necessary to forthwith handover the hypothecated assets to the purchaser and transfer the title of such hypothecated assets to the purchaser. The respondents undertake that to facilitate such sale they shall issue in favour of the purchaser such invoices, challans, gate pass and other document as may be reasonably required by the purchaser. If the respondents fail to comply aforesaid the purchaser shall be at liberty to complete the sale proceedings.

v] The petitioners agree and undertake to appropriate the net sales proceeds received by them from the purchaser in or towards the part repayment of the outstanding dues of the petitioners;

vi] The parties agree that the net sales proceeds shall be paid to the petitioners on or before 31st July 2019 and all other formalities for the completion of the sale of the hypothecated assets shall be completed on or before 10th August 2019;

vii] 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 and Senior Master, to be placed on record of this Application with a copy to be forwarded to both the parties;

viii] At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today at a date and time as may be fixed by the prospective arbitrator;

ix] The learned prospective arbitrator shall endeavour to publish an award as expeditiously as possible and within the time limit as prescribed under Section 29-A of the Act;

x] The petitioner is at liberty to file Section 17 Application.

xi] The fees of the arbitral tribunal shall be governed in accordance with the fees prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018;

xii] All contentions of the parties on merits of the matter are expressly kept open;

xiii] The Arbitration petition is disposed of in the above terms. No costs.

11] Office to forward a copy of this order to the learned Arbitrator on the following address:-

Natwar Chamber,
104, 1st floor, 94, Nagindas Master Road,
Fort, Mumbai 400 001.

email: justicebhatia@gmail.com

phone No.022-22617436.
Mobile No.9969400001.

[G. S. KULKARNI, J]