

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION (L) NO. 141 OF 2020**

Citicorp Finance (India) Ltd	...Petitioner
<i>Versus</i>	
Kashyap Infratech Pvt Ltd (Borrower) & Anr	...Respondents

Mr Vivek Patil, with Aditi Rajput, for the Petitioner.

**CORAM: G.S. PATEL, J.
DATED: 12th February 2020**

PC:-

1. The Respondents have been served including by a notice that the matter will be listed today. Their names are called out. None present.

2. The 1st Respondent is the borrower. The 2nd Respondent is the guarantor. They took two vehicle loans from the petitioner in the aggregate amount of Rs. 2.5 crores. The two vehicles are Volvo Hydraulic Excavators Model EC 480DL. One has Engine No. 398506 Chassis No. 272115, and the second has Engine No. 398517 Chassis No. 272104. The disbursements were covered under two loan agreements dated 26th June 2013. The disbursement was as a single pay-out. The loan was repayable in 35 equal instalments. Both

vehicles were hypothecated to the Petitioner. Clauses 16 and 17 of loan agreements have the provisions for arbitration and jurisdiction, which read thus:

“16. Arbitration:

All disputes, differences and/or claims arising out of these presents or as to the construction, meaning or effect hereof or as to the rights and liabilities of the parties hereunder 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 nominated/appointed by CFIL. In the event of death, refusal, neglect, inability or incapability of the persons so appointed to act as an arbitrator, CFIL may appoint a new arbitrator. The award including the interim award/s of the arbitrator shall be final and binding on all parties concerned. The Arbitrator may lay down from time to time procedure to be followed by him in conducting arbitration proceedings and shall conduct arbitration proceedings in such manner as he considers appropriate. Any proceedings to be initiated in any court of law in pursuance of this arbitration shall be instituted and held in the court at Mumbai only.

17. JURISDICTION:

It has been agreed between the parties hereto that Mumbai courts alone shall have exclusive jurisdiction in respect of any matter, claim or dispute arising out of or in any way relating to these presents or to anything to be done pursuant to these presents or in regard to interpretation of these presents or of any clause or provision thereof.”

3. The Respondents' account is delinquent and irregular. The Petitioners have recalled both loans by separate letters dated 5th June 2014 and 25th June 2014. Then there followed statutory recall notices of 5th September 2014. The Petitioner invoked arbitration and filed Arbitration Petitions Nos. 935 of 2016 and 936 of 2016 under Section 9. A sole Arbitrator was appointed. The Respondents then approached the Petitioners for a settlement. It is in these circumstances that the Petitioner withdrew the pending arbitration claims. The Respondents stayed away from the arbitration despite notice. There is, today, an amount of Rs. 1,46,78,804.64 due and payable. Hence, this Petition.

4. I am satisfied that there is an ample prima facie case. The balance of convenience is with the Petitioner to whom grave harm and prejudice will be caused if the reliefs are not granted. There is no reason given for the Respondents to stay away. I would not ordinarily, at this stage, have made an order of receivership under prayer (a) but I will do so because the Respondents, as we have seen, had previously been taken to arbitration, had there falsely assured the Petitioners of a settlement and had then simply stayed away from the arbitration. A lender cannot constantly be stymied by borrowers like this.

5. I will, therefore, make an immediate order in terms of prayer clauses (f) and (g), which read thus:

“f) Pending the execution / enforcement of said Arbitral Award November 27, 2019 in accordance with Section 36 of the Arbitration and Conciliation Act 1996, this Hon'ble Court be pleased to direct the Respondents to disclose by

filing an Affidavit stating particulars of their properties and the Court Receiver, High Court, Bombay be appointed as a Receiver Court Receiver on the said disclosed properties under Order XL Rule 1 of C.P.C. of 1980 with all the powers including to sell by private treaty or public auction of the moveable and immoveable properties and also enable the Court Receiver to take forcible possession of the said moveable and immoveable properties of the Respondents;

g) Pending the execution / enforcement of said Arbitral Award November 27, 2019 in accordance with Section 36 of the Arbitration and Conciliation Act 1996, Respondents and their respective servants and agents be restrained by an order of injunction of this Hon'ble Court in any manner dealing with and/or parting with possession and/or creating third party rights and/or alienating and/or encumbering moveable and immoveable properties disclosed by the Respondents and the order of injunction be registered with the concerned Sub-Registrar Office under Section 52 of the Transfer of Property;”

6. The Petitioners are aware of the location of the vehicles. They will inform the Court Receiver immediately.

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

(G. S. PATEL, J)