Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 1250 OF 2019

Shah Steel Impex Pvt Ltd ...Petitioner
Versus
Zenith Steel Tubes & Industries Ltd & Ors ...Respondents

WITH

COMM ARBITRATION PETITION NO. 796 OF 2019

Anmol Steel Processors Pvt Ltd ...Petitioner
Versus
Balaji Iron & Steel Industries Pvt Ltd & Ors ...Respondents

Mr KK Kharawala, *i/b Lex Juris, for the Petitioner in both matters.*
Mr Siddesh Bhole, *with Abdulla Cutlariwala, for the Respondents in both matters.*

CORAM: G.S. PATEL, J.
DATED: 24th February 2020

PC:-

COMM ARBITRATION PETITON (L) NO. 1250 OF 2019:

1. The Petition is under Section 9 of the Arbitration and Conciliation Act 1996. The 1st Respondent is also a company. It manufactures sells and trades in pipe and tube products. According to the Petitioner, there is an amount of Rs. 7,46,55,271/- due to it as the price of goods sold and delivered.

2. In May 2016 Respondents Nos. 2 to 4, individuals connected with Respondent No. 1, approached the directors of the Petitioner proposing a purchase of raw materials from the Petitioner. There was then an Agreement for Supply on Trade Credit dated 9th May 2016. A copy of this agreement is at Exhibit "A" from page 36. The Agreement is between the Petitioner and the 1st Respondent. This has an arbitration clause 23 at page 47, which reads thus:

> "**23.** The parties herein shall resolve all disputes in connection with this agreement amicably by mutual negotiation, failing which, the parties shall refer the dispute for Arbitration in accordance with the Arbitration and Conciliation Act, 1996 with its statutory modifications, enactments or re-enactments thereto, before restoring to litigation in which case the Courts in Mumbai only will have the Jurisdiction. In case of litigation, all legal charges like advocates fees, costs of drafting, court fee stamps etc. incurred by the Vendor shall be reimbursed to them."

3. Two other clauses are also important. These are clauses 20 and 21. They read as follows:

> "**20.** For the supply under this agreement on credit up to a limit of Rs. 21,00,00,000/- (Rupees Twenty One Crore Only) along with the outstanding Interest, the following persons shall provide a Personal guarantee covering all supplies and such guarantee shall remain valid till all the dues under this agreement are cleared by ZSTIL. As per the terms and conditions of the Agreement and undertaking which is given by ZSTIL:

(a) If any terms and conditions breach by ZSTIL and any loss arises due to the mistake by ZSTIL, then the Guarantors are giving guarantee to the SSIPL i.e. Shah Steel Impex Pvt Ltd the guarantees are personally liable to the act, and shall in due course execute personal guarantees in this regard.

(b) The name of the guarantors are as :-

1) Shri Ghanshyamdas Singhi, Director

2) Shri Aditya Vikram Singi

3) Shri Bhupendra S Mody

4) Shirish G Mehta

In case of the third party Mortgage, the validity of personal guarantee of Mr Aditya Vikram Singi, Bhupendra S Mody and Shirish G Mehta shall not be valid against such third party but will continue to remain valid as against the Vendor i.e. SSIPL despite such third party mortgage to the tune of Rs.21,00,000/- (Twenty One Crores)

PART B

AGREEMENT TO EXECUTE A MORTGAGE DEED:

21. In addition to the personal guarantee as stated in the preceding Para, ZSTIL undertakes to execute a Deed of Mortgage in favour of SSIPL on their property at Village-Madap, Tal-Khalapur, District-Raigad, State-Maharashtra.

Account No.	Survey No.	Area in Hectares
287	66/6/B	0.20.00
288	66/1/K	0.52.50
10	66/1/B	0.52.50

287	66/1/A	0.52.70
289	66/5	0.14.00
10	66/3	0.17.50
	Total Area	2.09.2 Hectares=5.25 Acres

As described in Exhibit C, D, E, F, G, H is the original copy of 7/12 Extract along with the Property Papers."

4. According to the Petitioner, the Respondents placed orders on the Petitioners between 25th May 2016 and 31st January 2017. The Petitioner raised invoices. The Respondents had a credit period of 90 days. The invoice amounts carried interest at the rate of 15% per annum. According to the Petitioner, the aggregate of these invoices is Rs. 5,90,19,693/-. Some material was returned. The balance was Rs.5,36,20,205/-.

5. In sub-paragraph 5(g) the Petitioner says that as many as 44 cheques issued by the 1st Respondent were all dishonoured for insufficiency of funds. The Petitioner has taken separate steps in that regard.

6. The Petition accepts that the original Title Deeds of the property in Taluka Khalapur, District Raigad (table above) are with the Petitioner. In paragraph 5(h) it is claimed that there is a valid, subsisting and binding mortgage of this property in favour of the Petitioner, but this is disputed for want of any documentation. It is also pointed out that some tax authorities have levied an attachment on this very property.

7. The Respondents in that Affidavit in Reply claimed that there is in fact no guarantee even though individuals may have signed the Agreement in question. The Agreement only has a promise to execute a guarantee and does not set out any of the terms and conditions of the guarantee itself. This is in addition to the claim that there is no mortgage.

8. As to the indebtedness the only reply is that this was an exclusive contract and the Respondents were wholly dependent on the supplies from the Petitioner. The Petitioner abruptly terminated supplies and this put the Respondent into financial difficulties.

9. At this prima facie state in Section 9 Petition, this last submission furnishes no meaningful defence at all. Consequently, while I accept that there will not be an occasion at this prima facie stage to make an order of disclosure against the individuals joined as Respondents Nos. 2 to 4 there must certainly be an order of disclosure against the 1st Respondent of all its assets both movable and immovable. The particularised disclosures required are set out below. The 1st Respondent is to disclose—

(a) **Immovable properties**: All immovable properties wherever situated, whether in India or overseas, with complete details sufficient to identify the properties. If any of these are in any way encumbered, full particulars of such encumbrance/s and the amounts yet due as secured by those properties will also be disclosed.

(b) Movable Assets

(i) ***Non-financial***: All non-financial movable assets of the acquisition or replacement value of more than Rs. 50,000/- including all particulars as described above.

(ii) ***Financial assets***: All investments and demat accounts with full particulars, including all holdings and encumbrances.

(iii) ***Bank accounts***: All bank accounts with account numbers, bank names, branches, account types and holding patterns. Bank statements for the last one year are required for all accounts.

(c) Tax and Financial Returns: Copies of all tax and financial returns for the last three years, including all supporting balance sheets, Profit & Loss accounts, income-expenditure statements and computations of income.

(d) Disclosures to be on Affidavit: All disclosures must be on properly sworn affidavits.

10. The other submission for the Petitioners is that there should be a Receiver appointed of the Khalapur property. I do not see why that is at all necessary. Even if the Receiver was appointed I could not at this stage make an order of sale. The exact liability of the 1st Respondent has yet to be ascertained. Moreover the Title Deeds of the Khalapur property are admittedly with the Petitioner and there can, therefore, be no imminent danger apprehended by the Petitioner. An injunction against the 1st Respondent from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the Khalapur property except leave of the Court obtained after at least two weeks' prior written notice to the Advocates for the Petitioners will suffice. Ordered accordingly.

11. The Affidavit of Disclosure will be filed within three weeks.

12. The Petitioners will file the necessary Application under Section 11. They have liberty to have that Section 11 Application circulated for an urgent listing after it is filed and served.

13. The Respondents state that they have posted security guards and that the statement by the Petitioners that the property has been abandoned is incorrect. Liberty to the Petitioners to inspect the property and if there is sufficient cause made out to file an Interim Application notwithstanding the disposal of the present Section 9 Petition.

14. The remaining prayers in the Section 9 petition may be pressed before the learned Sole Arbitrator in a Section 17 application. For that purpose, the present Section 9 petition and its affidavits will be treated as an application under Section 17.

15. The Commercial Arbitration Petition is disposed of in these terms.

COMM ARBITRATION PETITION NO. 796 OF 2019:

16. After some arguments and on taking instructions, Mr Kharawala, learned Advocate for the Petitioners states that the Petition will be presented as An application under Section 17 of the Arbitration and Conciliation Act 1996. Arbitration has already been invoked. Mr Bhole for the Respondents has no instructions to agree to the appointment of the Arbitrator.

17. The Petitioner is at liberty to file a substantive Section 11 Application and to have it circulated after it is filed and served.

18. The Commercial Arbitration Petition is disposed of in these terms. All contentions are left open.

(G. S. PATEL, J)