Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 1173 OF 2019

Jain Sons Finlease Ltd (JSFL) ...Petitioners
Versus
Zemer Electric Co & Anr ...Respondents

Ms Juhi Bhogale, *i/b GNP Legal, for the Petitioner.*

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

PC:-

1. Heard Ms Bhogale for the Petitioners. The Petitioners have served the Respondent twice including by publication pursuant to an order of this Court. An Affidavit of Service dated 10th February 2020 proving publication is filed. The Respondents are absent despite service.

2. Between the parties there was a Facility Agreement dated 15th June 2017. Clause 31 has the provision for arbitration, which reads thus:

> “**31. Dispute Resolution**
>
> **A- By Mutual Consent**

B- By Mediation

C- Jurisdiction of Indian Courts.

a. Parties agree that all disputes arising out the Finance Documents shall be settled by the parties by mutual negotiations and agreements. If, for any reason, such dispute cannot be resolved amicably by the parties, the same shall then referred to and settled by way of arbitration proceedings in accordance with the Arbitration and Conciliation Act 1996 or any subsequent enactment or amendment thereto ("Arbitration Act"). A sole Arbitrator shall be appointed and such Arbitrator shall be appointed by the Lender. The Arbitration award shall be final and binding upon the parties. The venue of the arbitration proceedings shall be Mumbai and language of arbitration proceedings and award shall be in English.

b. Each of the Parties agree and acknowledge that damages would be inadequate to compensate for the breach of this Agreement by either Party, and each Party shall be entitled to specific enforcement of this Agreement by means of, including but limited to equitable relief by way of injunction r any other manner of specific performance."

3. Under the facility, the Respondent No. 1 was the borrower. The 2nd and 3rd Respondents were guarantors. The total financial assistance provided by the Petitioner was Rs. 1.5 crores repayable in 36 months with interest at 17.5% per annum. The Petitioners state that the Respondents were irregular in repayment. The Petitioners issued a demand-cum-termination notice/ loan recall notice on 30th

July 2019. The Petitioner demanded payment of Rs. 2,36,94,245/-. There was neither a response nor compliance with this demand. Hence, this Petition.

4. In the last recall notice the Petitioner has invoked arbitration. The Petitioner is at liberty to file a separate application under Section 11, if the Respondents do not consent to the appointment of an arbitral tribunal.

5. On Section 9 Petition, in my view, there is a sufficient prima facie case made out. The balance of convenience is with the Petitioner and to whom irreparable prejudice will be caused, if the reliefs are not granted. Exhibit-D to the Petition has list of the properties and assets of the Respondents that were earlier disclosed. Consequently, there will, therefore, be an interim order on this Petition in terms of prayer clauses (b) and (c).

6. I am leaving it open to the arbitral tribunal to make an order of receivership in respect of the assets at prayer clause (d) as also to make an order of deposit of security.

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

8. The disclosure required by this order is to be filed before the learned sole Arbitrator.

(G. S. PATEL, J)