Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 106 OF 2018
IN
ARBITRATION PETITION NO. 1599 OF 2014

Tata Capital Financial Services Ltd ...Petitioner
Versus
Metal Closures Pvt Ltd & Ors ...Respondents

Mr Rohaan Cama, *with Mr Lalit Katariya, Ms Benedicta Lobo, Ms Nimisha Ghetla, i/b Katariya & Associates, for the Petitioner.*
Mr Kevic Setalvad, *for the Respondents.*

CORAM: G.S. PATEL, J.
DATED: 21st January 2020

PC:-

1. I heard Mr Cama for the Contempt Petitioners and Mr Setalvad for the answering Respondents yesterday. Before proceeding further, I note that the 1st Respondent is facing insolvency proceedings before the NCLT, Mumbai.

2. For the reasons that follow, I have found no merit in the Contempt Petition and I have dismissed it.

3. The contempt alleged is the failure of Respondents Nos. 1 to 3 to adhere to two clauses of the Consent Terms dated 27th November 2014 filed in Arbitration Petition No. 1599 of 2014. A copy of those Consent Terms is at Exhibit "A" to the Petition from pages 20 to 29. There are two annexures to these Consent Terms. They provide a list of equipment or machinery. Two clauses of the Consent Terms are immediately important for our present purposes. These are clauses 5 and 9 and they read as follows:

> "5. Agreed and Ordered that Respondent No. 1 will be entitled to sell the equipment listed in **Annexure "2"** forthwith but not later than 30th April 2015, by way of public auction or private treaty after obtaining written confirmation on proposed sale price and terms of sale of such equipments from the Petitioner (whose confirmation shall not be unreasonably withheld or delayed beyond 7 days from the date of the request). Respondent No. 1 shall be entitled to take police protection, if needed to give effect to the sale. On such sale until the Balance Payment is completely made, the entire sale proceeds from sale of equipments in Annexure 2 will be paid directly to the Petitioner by way of a Demand Draft (DD) payable to TCFSL towards payment of the Balance Amount and the Balance Amount will accordingly stand reduced pursuant to the said payment made by Respondent No. 1.
>
> 9. Agreed that in the event Respondent No. 1 fails to make the payment of the Balance Amount as mentioned herein-
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> (i) In order to recover any portion of the Balance Amount that may then be outstanding, the Petitioner shall have the absolute right to transfer/sell the equipments listed under Annexure 2 to any person

or to deal with the same as the absolute owners in the manner they deem appropriate on "as is where is basis" and at a price it deems fit and the Respondent No. 1 will be liable to make good for all statutory liabilities / taxes / claims on such equipments and the Petitioner will also be entitled to take a recourse available to him under law for recovery of the Balance Amount. The Respondents shall provide co-operation to the Petitioner to effect to the sale. The Petitioner can take police protection, if needed to give effect to the sale. The Petitioner shall exercise good faith to ensure that the best possible price is obtained for these equipments and shall take all possible steps to ensure the sale of the assets on or before 30th June 2014.

(ii) In the event any portion of the Settlement Amount remains outstanding after sale of the equipment, the Petitioner will be entitled to withdraw the surplus amount deposited with the Prothonotary and Senior Master, High Court Bombay pursuant to clause 8 hereinabove to the extent necessary to make up the balance of the Settlement Amount and that the Respondent Nos. 1 to 3 shall waive the right to object/obstruct the same. The Petitioner shall intimate the Respondents of the shortfall and its intention to withdraw the same ten days prior to the intended withdrawal."

4. Clause 5 says that the 1st Respondent company was entitled to sell the Annexure 2 equipment by public auction or private treaty but this was subject to certain conditions. Any such sale had to be before 30th April 2015. It had to receive a written confirmation of the anticipated sale price and the terms of sale from the Petitioner.

The Petitioner agreed not to unreasonably withhold or delay that permission.

5. Correspondence annexed to the Petition is relied on to allege that the Respondents deliberately violated the provisions of these Consent Terms. Specifically, reliance is placed on a letter dated 20th October 2016, a copy of which is at Exhibit "D" at pages 48 to 49. Mr Setalvad for the Respondents points out that this is only a part of the correspondence. There is additional correspondence annexed to the Affidavit in Reply. It ought to have been annexed to the Petition, but was not. Specifically, on 9th July 2015 the 1st Respondent wrote to the Petitioner surrendering the equipment described in Schedule A to that letter. These are seven machines. The Petitioner took possession of all seven. It sold two and up to the date of Petition and the Reply the fate of the remaining five was unknown. It is in the Rejoinder that we find a statement that the other five items were also sold. There is another letter at pages 87 and 88 from the 1st Respondent to the Petitioner also listing these seven items of equipment. The letter at Exhibit "D" to the Petition, of 20th October 2016, comes almost a year later. What this letter says in paragraph 4 is that the Respondents paid an amount of Rs. 1.95 crores towards the outstanding amount. It acknowledges that the seven machines in question were in fact surrendered. It says that two of these items were sold and an amount of about Rs. 23.5 lakhs recovered. It then goes on to say that other items remain unsold and in the custody of the Petitioner. Obviously this means that the balance five items were sold by the Petitioner thereafter. In paragraph 5 there is an allegation that the Respondents violated the Consent Terms and, finally, in paragraph 6 a demand for compliance and surrender of all the balance items or machinery on or before 27th October 2016 at the Bangalore office premises. Now there is no provision in the Consent Terms requiring the Respondents to deliver the machines which are at another location in Bangalore to any location that the Petitioner chose to specify. The machinery itself is at Bangalore but at another location.

6. Mr Setalvad on instructions states that if the Petitioners wish to lift the machinery from its present location, they are always free to do so and have always been free to do so. The fact that the Respondents did not agree to incur the additional expense of transporting this machinery from one location to another in Bangalore does not constitute contempt.

7. I agree.

8. Mr Setalvad also raises a question of limitation. He points out that the demand had a compliance date of 27th October 2016. If there was a violation or default, it occurred the next day, on 28th October 2016. The Petition itself is filed on 30th October 2017 and is, therefore, out of time.

9. I am not addressing this question of limitation, since I believe it is entirely unnecessary, given that I find no merit in the Petition. I note Mr Setalvad's statement, reproduced above.

10. In my view, there is no act of the Respondents that can be considered as wilful or deliberate disobedience of orders of this Court or conduct that can be said to be contumacious.

11. The Petitioners are free to proceed in accordance with the Consent Terms, subject, however, to any legal restriction placed by a Court or Tribunal of competent jurisdiction under the law presently in force.

12. The Petition is dismissed. There will be no order as to costs.

(G. S. PATEL, J)