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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 240/2019 & IAs14411/2019, 17848/2019,
17900/2019
TATA CAPITAL FINANCIAL SERVICES LTD. Petitioner

Through Ms.Ekta Bhasin, Adv.

versus

BALDEO METALS PVT. LTD. & ORS. Respondent
Through Mr.Rahul Malhotra, Adv for R-2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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12.03.2020

1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996(Act) seeking the following reliefs:-

“a) that pending the Arbitral proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, the Respondents jointly and/ or severally be ordered and directed to either furnish the security and/ or bank guarantee in favour of the Petitioner towards a sum of Rs.4,00,78,839.63(Rupees Four Crores Seventy Eight Lakhs and Eight Hundred and Thirty Nine and Paise Sixty Three Only due as on 27.06.2019 together applicable and additional interest from 28.06.2019, till payment and/or realization and other expenses, costs, charges etc. due and payable to the Petitioner in terms of the said Facility, as per the Summary of dues set out in Document - 17;

b) that pending the hearing and final disposal of the arbitration proceedings and till the Award which may be passed is enforced in accordance with Section 36 of the Arbitration and Conciliation Act, 1996, the Respondents be directed to file an affidavit disclosing the details of all their movable and immovable assets along with encumbrances, if any;

c) that pending the Arbitral proceedings, making of the Arbitral

Award and until final execution of the Arbitral Award, the Respondents, their agents/s, servant/s, and any third person/ s claiming through them be restrained by an order of injunction of this Hon 'ble Court from in any manner selling, transferring, disposing of, and/or alienating or encumbering or mortgaging or charging or parting with possession of or transferring, or inducting anyone else into or creating any right, title or interest or license in favour of anyone else in respect of properties and all the moveable and immoveable assets disclosed by the Respondents pursuant to the direction of this Hon'ble Court and Delhi and Ghaziabad properties owned by Respondent No. 3 and all the moveable and immoveable assets disclosed by the Respondents pursuant to the direction of this Hon'ble Court in addition to and inter-alia including the properties stated above which are:

- *M-15A, New Mandoli Industrial Area, Saboli, Shahdara, Delhi*
- *159, Saini Enclave, Karkardooma, Delhi-110092*
- *N-11/ K No. 15/4, New Mandoli Industrial Area, Saboli, Shahdara, Delhi*
- *65, Kiran Vihar, Karkardooma, Delhi -110092*
- *House No. G-4, Ground Floor, Sector-12, Residential Colony, Ramprastha, Ghaziabad -201010*

d) That pending the Arbitral proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, Court Receiver, of this Hon'ble High Court, or any other fit and proper person as Receiver under Order XL Rule 1 of Code of Civil Procedure 1908 be appointed with a specific direction to the Court Receiver to take forcible physical possession of the properties and all the moveable and immoveable assets disclosed by the Respondents pursuant to the direction of this Hon'ble Court with police assistance, if necessary and also with the power to sell the said property by public auction or private treaty and appropriate the sale proceeds towards the outstanding loan of the Respondents.

e) That pending the Arbitral proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, the Respondent Nos. 2 and 3 be restrained from leaving the country without the permission of this Hon 'ble Court and/ or be directed to deposit their passports in this Hon 'ble Court;

f) ad-interim and interim reliefs in terms of prayer (a) to (e) above;

g) for costs of this Petition; and

h) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

2. While issuing notice in the present petition, this Court vide its order dated 17.10.2019 had directed the respondent nos.2 & 3 as also the other Directors of the respondent no.1 to file their affidavits of assets in Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure 1908. The respondents were also directed to file additional affidavits of assets and income in the format referred in para 3 of the said order. Vide the same order the respondents were also restrained from alienating, encumbering either directly or indirectly or parting with the possession of any assets, including five properties mentioned in paras 18 and 19 of the petition, to the tune of petitioner's claim except in the ordinary course of business, which interim order is continuing as on date.

3. During the pendency of the present petition, the arbitration proceedings have been initiated between the parties. The Learned counsel for the parties therefore jointly submit that, the petition may be disposed of by continuing the interim order dated 17.10.2019, till, the Arbitrator takes up an application, which the petitioner proposes to file before the Learned Arbitrator for the same relief. Learned counsel for the respondent hands over copies of the affidavit of assets and additional affidavit to the learned counsel for the petitioner in Court.

6. In view of the aforesaid stand taken by the parties, the petition along with pending applications is disposed of by granting liberty to the petitioner to approach the learned Arbitrator by way of an application under Section 17 of the Act seeking interim relief. In case such an application is filed within a period of three weeks, the interim order dated 17.10.2019 will continue till the learned Arbitrator passes an order on the application.
7. It is made clear that this Court has not expressed any opinion on the merits of the claims of the parties and it will be open for the Arbitrator to take an independent view in respect of the interim relief prayed for by the petitioner.
8. The petition is disposed of in the aforesaid terms.

REKHA PALLI, J

MARCH 12, 2020/sr