rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO.460 OF 2022

Tata Capital Financial Services Limited	]	..	Petitioner
vs			
Technical Trade Links & Ors.	]	..	Respondents

Mr.Gaurav Jangle a/w Sailee Dixit i/b I.V. Merchant & Co. for the Petitioner.

CORAM : BHARATI DANGRE, J

DATE : 20th June, 2023.

P.C.

1] Despite notice, the Respondents have failed to mark their appearance.

Hence, I deem it appropriate to proceed against them ex-parte and proceed to hear the learned counsel for the Petitioner, who seek certain interim measures in the wake of the pleadings in the application accompanied by the annexures, where certain liability is admitted by the Respondents.

2] The Petitioner is a non-banking financial company (NBFC), engaged in the business of lending finance, whereas, Respondent No.1 is a Micro and Small Medium Entity (MSME) and sole proprietorship concern of Respondent No.2.

Respondent No.1 borrowed Channel Finance Facility from the Petitioner and in pursuance thereof, Respondent Nos.2 and 3 personally granted due repayment of amounts due and payable by the Respondent No.1 to the Petitioner, in the event of default committed by Respondent No.1, in discharge of its obligations under the Channel Finance Facility.

The Petitioner vide sanction letter dated 28.05.2019 granted channel finance facility for an amount not exceeding Rs.2,00,00,000/- and disbursed the said facility upon execution of the Loan-cum-Guarantee Agreement for Channel Finance executed between the Petitioner and Respondent. Under the said Agreement, the amount disbursed by the Petitioner for the period of 12 months, was repayable alongwith normal interest at the rate of 11% p.a. and additional interest at the rate of 6% p.a.

The Loan-cum-Guarantee Agreement for Channel Finance executed on 31.12.2018 on the basis of terms and conditions as mentioned against the Master Terms and Conditions for Channel Finance, forms integral part of the Loan-cum-Guarantee Agreement.

The Deed of Hypothecation was executed by Respondent No.1, in order to submit the said facility, by creating charge by hypothecation of the assets. There was renewal of the Channel Finance Facility for further period of 12 months and renewal letter executed by the Respondent No.1 to 3 in favour of the Petitioner, acknowledged their liability to pay all outstanding amounts with interest, costs, charges and expenses and other monies due and payable by Respondent No.1.

3] Since there was default in payment of the amount which was finalised, the Petitioner issued a loan recall notice on 26.08.2022 and also invoked arbitration, recalling either facility granted to Respondent

No.1 and called upon Respondent Nos.1 to 3, jointly and or severally to repay the entire outstanding facility/loan amount.

4] A claim was, therefore, set out that the outstanding amount of Rs. 1,11,08.601.49 is due and payable as on 23.08.2022 alongwith additional interest over and above the normal interest rate on the outstanding principal amount, as well as other costs, charges, expenses, shall be paid.

The very said notice clearly stipulate that in case, there was failure to comply with the obligations, it shall be presumed that the differences and disputes which are arising in the said notice will be treated as notice under the provisions of Arbitration and Conciliation Act invoking arbitration and Clause 12 of the Loan cum Guarantee Agreement dated 18.03.2021. Admittedly, the Respondents failed to respond to the said communication, nor did it take any steps to repay the borrowed amount.

5] The learned counsel for the Petitioner has placed on record document in form of renewal letter, where the Respondents acknowledged that total outstanding amoutn due and payable by them to the tune of RS.1,19,11,358/- alongwith accrued interest and all other costs, charges, expenses and amounts outstanding under and in relation to the Facility Agreement and it undertook to make payment of the outstanding amount in the manner set out in the Facility Agreement. Even this document signed by Respondent No.2, proprietor of Respondent No.1 has not been adhered to. The said document dated 18.03.2021 admittedly reflect that the Respondents had agreed to pay the said amount.

6] Since the Respondents failed to make payment and pleadings in the Petition are not traversed and in the wake of the fact that Petition is accompanied with particulars of claim being placed at Exhibit M and total claim of the Petitioner, at the time of filing of the Petitioner estimated to Rs.1,11,08,601.49 and since the Respondents failed to appear and in the wake of specific admission in form of renewal letter,where the Respondents have admitted the amount due and payable to the Petitioner which it had borrowed through the chain finance facility and since the Petitioner is apprehending that they may dispose off the assets, I deem it appropriate to grant relief as prayed in prayer clause (a) which reads thus :

> "Pending hearing and final disposal of the Arbitration proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, Respondent Nos.1 to 3 jointly and/or severally, be ordered and directed by this Hon'ble Court to either furnish the security and/or bank guarantee in favour of the Petitioner and/or to deposit a sum of RS.1,11,08,601.49/- (Rupees One Crore Eleven Lakhs Eight Thousand Six Hundred and One and Paise Forty-Nine only) as on 23rd August, 2022, along with further interest and other expenses, costs, charges, etc. from 24th August, 2022, till payment and/or realization, thereof, as is more particularly stated in the Particulars of Claim at Exhibit M thereto.

The aforesaid amount shall be deposited with the Prothonotary and Senior Master within a period of 8 weeks from today, without prejudice to the rights and contentions of the Parties in the Arbitration proceedings.

The said relief shall continue to remain in operation for a period of 90 days, within which it is imperative for the Petitioner to invoke arbitration proceedings.

In the wake of above, Arbitration Petition is made absolute in terms of Prayer clause (a).

[BHARATI DANGRE, J]