

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

COMMERCIAL ARBITRATION PETITION NO.274 OF 2024

Tata Motors Finance Limited

... Petitioner

V/s.

Project Equipments & Construction Company
& Anr.

... Respondents

Mr. Gaurav Jangle a/w Akshita Jain i/by I. V. Merchant & Company for the
Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 12TH AUGUST 2024

P.C. :

1. The captioned Petition has been filed under Section 9 of the Arbitration & Conciliation Act, 1996 and arises on account of certain defaults stated to be committed by the Respondents under the Loan-cum-Hypothecation-cum-Guarantee Agreement, which is dated 14th May 2018.

2. Learned Counsel appearing on behalf of the Petitioner has taken me through the provisions of the said Agreement and pointed out that the same

contains arbitration clause. He submits that there are 15 other such identical Agreements entered into between the Petitioner and the Respondents, by which the Respondent is financed to purchase vehicles under each of these Agreements. He points out the arbitration clause under the said Agreement, which reads as follows :-

“21.3 Notwithstanding anything to the contrary contained hereinabove, in the event that the Lender, as a result of a change in applicable law or otherwise, becomes entitled to recover the dues owed to it or be treated as a 'financial institution' under the DRT Act or any amendment, replacement thereof, and to exercise rights/remedies thereunder, the Borrower hereby expressly agrees and consents that the Lender shall be entitled to exercise the rights and remedies available to the Lender under the DRT Act including to recover the Outstanding Balance from the Borrower and/or the Guarantors, if any, or any other persons, by filing proceedings with any of the debt recovery tribunals constituted thereunder. In addition, the Parties agree that in the event that the Lender is empowered to exercise rights and powers under the provisions of the DRT Act as aforesaid, the provisions of Clause 21.1 above, to arbitrate as between the Lender and the Borrower shall, at the option of the Lender, cease to have effect. Provided that the Lender shall at its discretion have the right to initiate/file/pursue common/combined proceedings/actions against the Borrower and/or any of the other Obligors and it is clarified that the Lender shall, at its discretion, be entitled to consolidate and combine any arbitral or other legal proceedings initiated or proposed to be initiated under this Agreement with any arbitral or other legal proceeding initiated or proposed to be initiated under one or more of the other related documents.”

He thus submits that under the Agreement, the Petitioner would have right to combine/consolidate all the said Agreements and seek recovery in terms thereof.

3. Learned Counsel then invites my attention to the Loan Recall Notice dated 20th June 2024, by which the Petitioner had issued recall of the loan availed to Respondents under the said Agreements entered into. He points out that the Petitioner has also invoked arbitration under the said Agreement. He points out that on the date of the said notice, there was a total outstanding of Rs.1,16,65,000/- due and payable by the Respondents to the Petitioner. He points out that this Loan Recall Notice was not responded and it is thus that the Petitioner has approached this Court seeking interim reliefs under Section 9 of the Arbitration & Conciliation Act, 1996. Learned Counsel today restricts his application to prayer clauses (a), (b), (c) and (d), which read thus :-

“a) pending the hearing and final disposal of the arbitration and until final execution of the Arbitral Award, the Hon'ble Court be pleased to pass an order of injunction, inter alia, restraining the Respondents by themselves or his servants, assigns, employees, agents, representatives, officers, or any other person/s claiming through or under them or under any instrument; whatsoever, from in any manner selling, alienating, transferring, parting with the possession of, encumbering, dealing with, disposing of or creating any third party rights or interest of whatsoever nature and in any manner whatsoever in respect of their hypothecated commercial vehicles (more particularly described at

Exhibit Dhereto) and also in respect of movable and/or immovable properties/assets, or any portion thereof, directly and/or indirectly, belonging to Respondents and also on the properties/assets disclosed and belonging to the Respondents from the date of disbursement of the facility till date.

- b) pending the hearing and final disposal of the arbitration and until final execution of the Arbitral Award, the Respondents be ordered and directed by this Hon'ble Court to forthwith file an Affidavit disclosing the details of all the moveable and immoveable properties, investments, shares, securities, fixed deposits belonging to him with encumbrances if any alongwith supporting documents, including all the Bank accounts maintained by Respondents individually and/or jointly and furnish periodical Bank statements of all the Bank Accounts disclosed and belonging to the Respondents and their income tax returns from the date of disbursement of the facility till date; this Hon'ble Court also be pleased to attach these said bank accounts of the Respondents and issue directions to the concerned Banks not to allow withdrawals to the extent of all the amounts claimed by the Petitioner.
- c) pending the hearing and final disposal of the arbitration and until final execution of the Arbitral Award, the Court Receiver, High Court, Bombay, be appointed as Receiver of the following properties:
 - (i) Hypothecated Vehicles as more particularly mentioned at Exhibit - D hereto;
 - (ii) other assets/properties owned by the Respondents that may be disclosed by the Respondents on Affidavit, with all powers under Order XL Rule 1 of the Code of Civil Procedure 1908 with a direction to visit the place where the assets of the Respondent is lying/situate and take forcible physical possession of the same by breaking open the seals and/or locks

of whatsoever nature or by whomsoever put on the premises where the said hypothecated vehicles are lying, with or without giving notice of their visit to the Respondents and for that purpose this Hon'ble Court be pleased to direct the concerned Police Station to render Police Assistance for the purpose of taking physical possession of the hypothecated assets from the Respondents or any third party found in possession of the same and handover it to the Petitioner from the Respondents, and with the power to sell the same by public auction or private treaty and/or recover and/or realise the same and to pay over the net sale proceeds and/or net recoveries and/or the net realization thereof to the Petitioner in or towards the satisfaction of its dues claimed hereunder.

- d) *pending the hearing and final disposal of the arbitration and until final execution of the Arbitral Award, this Hon'ble Court be pleased to direct the Respondents to disclose the current and exact detailed, location of the hypothecated vehicles on oath and to handover peaceful possession of the Hypothecated Vehicles to the Court Receiver, High Court, Bombay or any fit and proper person, at the predesignated place as may be fixed by this Hon'ble Court, with normal wear and tear at the cost and expenses of the Respondents as per the said Agreements;"*

4. After having heard Learned Counsel, perused the said Agreement as also the fact that the same contains an arbitration clause and today there appears to be a default committed by the Respondents under each of the Agreements, I find that the Petitioner has made out a case for the grant of interim reliefs in terms of the prayer clause (d) only. Additionally, I find that the Respondents, though served, have not entered appearance.

5. Therefore, there will be an order in terms of prayer clause (d), which is reproduced above.

6. Liberty to the parties to mention, should the need arise.

(ARIF S. DOCTOR, J.)