

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO.213 OF 2024
ALONGWITH
INTERIM APPLICATION (L) NO.3909 OF 2024
WITH
INTERIM APPLICATION (L) NO.11885 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.213 OF 2024

Tata Capital Limited] .. Petitioner

vs.

IRAA Clothing Pvt. Ltd. & Anr.] .. Respondents

Mr.Rohan Savant a/w Kalyani Deshmukh i/b FZB & Associates for the Petitioner.

Mr.Gouresh Mogre a/w Vedastu Rane for Respondent No.2.

Ms.Mily Ghoshal a/w Chinmay Bhojane for Resolution Professional (RP)

CORAM : BHARATI DANGRE, J
DATE : 18th DECEMBER, 2025

P.C.

1 The Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, pending the arbitration proceedings between the Parties, the pronouncement of Award and until its execution, seek two-fold relief : firstly, the relief of offering security/ bank guarantee to the tune of Rs.1,67,47,096/- in its

favour and the second, of attachment of the goods/lease assets (particularly enlisted in Exh. 'E').

2 Heard Mr.Rohan Savant, representing the Petitioner and Ms. Mily Ghosal, representing the Resolution Professional, as Respondent No.1 is undergoing Corporate Insolvency Resolution Process (CIRP) under Insolvency & Bankruptcy Code before the National Company Law Tribunal, Mumbai.

The background facts reveal that the Petitioner-Tata Capital Limited a non-banking finance company sanctioned an operating lease facility in favour of Respondent No.1 to the tune of Rs.5,00,00,000/- on 23/11/2018.

In the year 2021, addendum sanction letter was issued adding additional suppliers.

It is the case of the Petitioner that from time to time the Petitioner had raised the valuation of the purchase order for goods/ lease assets and disbursed a total sum of Rs.4,19,23,623/-. However, when Respondent No.1 started defaulting in repayment of the facility and the account of Respondent No.1 was declared to be NPA on 01/03/2023 and it is the claim of the Petitioner that the sum of Rs.1,67,47,096/- including the amount of interest, penal charges as on 20/02/2023 is due and payable.

3 In the wake of an arbitration clause contained in the Master Lease Agreement executed between the Petitioner as Lessor and Respondent No.1 as Lessee, as the Lessee has requested the Lessor to lease the goods, and it was agreed to let the goods on lease to the lessee subject to terms and conditions of

the Master Lease Agreement and lease summary schedule, the disputes arisen, are set out to be resolved through arbitration process.

4 In the wake of the development that Respondent No.1 is subjected to IBC proceedings in the wake of an order passed on 25/08/2023 on the Section 9 Petition filed by M/s. Gajak Textiles, it is informed that even the Petitioner has raised this claim before the Tribunal to the tune of Rs.1,76,24,164/- and we are informed by the learned counsel for Resolution Professional that the Tribunal has reserved the orders on liquidation as on date as Respondent No.1 is subjected to CIRP proceedings.

5 Today, Mr. Savant would press for relief in terms of prayer clause (f) by relying upon the decision of this Court in the case of ***Incred Financial Services Limited vs. Future Supply Chain Solutions Ltd & Ors.*** dated 06/07/2023 in Commercial Arbitration Petition (L) No.32723/2022, with his specific case being put forth that since the goods leased out to Respondent No.1 cannot be counted as its assets, but shall continue to remain the property of the Lessor, in possession of the Lessee, the Corporate Debtor, who is now undergoing IBC proceedings.

Since this fact is not disputed even by the Resolution Professional, but the only objection raised by the learned counsel is that the Petitioner is already standing in queue before the Tribunal in the CIRP proceedings and if the goods are permitted to be returned, the assets of the Corporate Debtor will be diminished and the claims staked will not be able to satisfy.

6 It is not in dispute that the the ownership in the goods leased out in terms of the Master Lease agreement executed between the Parties and the goods being specifically described in Ex.E of the Petition, they cannot be counted towards the assets of a Corporate Debtor, as the Corporate Debtor was only in possession of the said goods/machinery and the ownership thereof continued with the petitioner.

The learned counsel for the Resolution Professional has also raised a particular objection about Section 14 moratorium being in force as the proceedings are ongoing, but the submission made deserve to be rejected as the assets of the Corporate Debtor are not being dealt by him, but what is set out in Exh.E is the machinery/goods belonging to the Petitioner, which were leased out and the the order is passed on the premise that the Corporate Debtor cannot be said to be in ownership of the said goods/assets.

7 In the wake of aforesaid, the Petitioner deserve relief in terms of prayer clause (f) as it is restricted to the goods/leased assets described in Exhibit E to be taken in possession by the Court Receiver, exercising the power under Order XL Rule 1 of the CPC 1908 and taking its possession from the place where they are lying and upon taking physical possession thereof, attempt to sell them by public auction and on private treaty and the net sale proceeds thereof shall be credited to the Petitioner.

It is made clear that as the assets belong to the Petitioner, they can not be counted towards his claim which is raised before the Tribunal on account of the amount due and payable alongwith

the outstanding rent and delayed payment of lease rentals as specifically raised in Exh.MM, a claim staked before the Tribunal in CIRP proceedings.

Needless to state that the Petitioner is at liberty to pursue its claim in the CIRP proceedings against the Corporate Debtor.

8 In the wake of above, Petition is made absolute in terms of prayer clause (f), which reads thus :-

“(f) that pending hearing and disposal of Arbitration proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, the Court Receiver, High Court, Bombay or some other fit and proper person be appointed as a Receiver in respect of all the immovable properties of the Respondents including but not limited to the Goods/ Leased Assets (more particularly described in Exhibit "E" hereto) with all powers under Order 40 Rule I of the Code of Civil Procedure, 1908 including inter alia, the power to visit the place where the said properties are lying/ situate and take possession thereof, and if required, to take forcible physical possession of the same from the Respondents and/or any person found in possession or occupation thereof and if necessary, with the help of the Police and to sell the same by public auction and/or private treaty and the net sale proceeds and/or net recoveries and/or net realisation thereof be paid over to the Petitioners.”

In the wake of above, Commercial Arbitration Petition stands disposed of. In view of disposal of Petition, Pending Interim Applications also stand disposed off.

[BHARATI DANGRE, J]