
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.418 OF 2024

Tata Capital Financial Services Limited ...Petitioner
Versus
SMR Pliable Industries India Pvt. Ltd. & Ors. ...Respondents

**WITH
COMMERCIAL ARBITRATION APPLICATION (L) NO.4171 OF 2025**

Tata Capital Financial Services Limited ...Applicant
Versus
SMR Pliable Industries India Pvt. Ltd. ...Respondents

Appearance not received.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 11, 2025

PC :

1. The captioned Petition (Commercial Arbitration Petition No. 418 of 2024) has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (*"the Act"*), seeking interlocutory protective reliefs in connection with disputes and differences that are said to have arisen between the parties under a Loan-cum-Hypothecation-cum-Guarantee Agreement dated August 4, 2021.

2. The arbitration agreement is contained in Clause 13 (found at Page 66 of the Application). In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

3. By an Order dated January 10, 2025, I had granted interlocutory reliefs in terms of prayer clauses (b) & (g), essentially directing a disclosure of the assets and restraining the Respondent from alienating any of the properties listed in Exhibit 'AA' of the Petition and such other properties as may be disclosed in terms of the affidavit of disclosure referred to in the earlier order.

4. Since no reply has been filed in the Section 9 Petition and no disclosure of assets as directed have been made, it would be appropriate to grant interlocutory reliefs in terms of prayer clause (a), which is at Pages 32 and 33 of the Petition, which reads thus:-

“(a) that pending hearing and final disposal of the Petition and arbitral proceedings, passing of the Arbitral Award and until final execution of the Award this Hon'ble Court be pleased to order and direct the Respondents jointly and/or severally to deposit the amount of Rs.1,28,97,900.15 (Rupees One Crore Twenty Eight Lakhs, Ninety Seven Thousand Nine Hundred and Paise Fifteen Only) due as on 12th September 2023 as more particularly set out in Particulars of Claim Exhibit "A-7" hereto in terms of the said Agreement, with further interest thereon @ 11.5% per annum and additional interest @ 6% per annum from 13th September 2023, or furnish Bank Guarantee of the Nationalized Bank of the said amount in favour of the Prothonoary & Senior Master, High Court, Bombay for an initial period of one year and to be renewed thereafter for such additional period as this Hon'ble Court deem fits;”

5. Being satisfied that an arbitration agreement exists and the arbitration was validly invoked by notice dated September 15, 2023, to which there is no reply, the Section 11 Application deserves to be ***finally disposed of*** in the following terms:-

6. In these circumstances, the arbitrator stands appointed on the following terms:-

A] Mr. V. Nallasenapathy, a learned advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in

connection with the Agreement referred to above. The details of the Learned Arbitrator are set out below:-

Office Address : Flat-101 Anx., Greenfield Chs.,
Hukmil Lane, Delisle Road,
N.M. Joshi Marg,
Lower Parel,
Mumbai – 400 013.

Email : nspathy1963@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date on which this order is uploaded on the website of this Court. The Petition shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Petitioner so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Petitioner and a copy of the same shall be furnished by the Advocates for the Petitioner to the Advocates for the Respondents;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses

shall constitute valid service of correspondence in connection with the arbitration;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

7. With the protection granted in the Section 9 Petition as stated earlier, the Petitioner shall now move the Arbitral Tribunal appointed hereby, which shall take over the Section 9 Petition and treat it as an application under Section 17 of the Act.

8. With the aforesaid directions, both the Section 9 Petition as well as Section 11 Application are ***finally disposed of.***

9. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]