

(2018) 06 CAL CK 0003
In the Calcutta High Court
Case No : AP 129 of 2018

Srei Equipment Finance Ltd.

APPELLANT

Vs

Sujana Towers Ltd.

RESPONDENT

Date of Decision : 14-06-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2018) 06 CAL CK 0003

Hon'ble Judges : ASHIS KUMAR CHAKRABORTY, J

Bench : Single Bench

Advocate : Swatarup Banerjee, Shyamal Chakraborty, Gourav Kumar

Final Decision : Allowed

Judgement

The Court : This is an application under section 9 of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016. The respondent company has been served with a copy of the application and it is represented by Mr. Shyamal Chakraborty.

It is the case of the petitioner that in terms of the agreement dated May 3, 2016 (hereinafter referred to as "the said agreement") the sole

respondent obtained a loan of Rs.32,31,00,000/- for acquiring 13 assets mentioned in paragraph 2 of the application. The said assets were

hypothecated in favour of the petitioner. The said agreement also contains an arbitration clause.

Under the said agreement, the sole respondent was obliged to repay the amount financed by the petitioner, together with the agreed rate of interest

and other charges by way of 55 monthly instalments of variable amounts, but after paying the first 15 instalments and part of the 16th instalment, it

failed to pay the balance instalments.

Since the sole respondent did not pay its dues in terms of the said agreement, the petitioner took possession of 2 of the hypothecated assets and sold

the same with the knowledge of the respondent. After termination of the said agreement and filed this application to enforce its rights against the

hypothecated assets, presently lying, at Nagarjuna Hills at Hyderabad.

According to the petitioner, as on the date of filing of this application, there remains an amount of Rs.42,79,00,729.33 due and outstanding by the sole

respondent to the petitioner. Mr. Chakraborty appearing for the respondent did not dispute that after making payment of the first 15 instalments and

part of the 16th instalment, the respondent has not paid any of the monthly instalments. He, however, submitted that the respondent is willing to pay its

dues, including the outstanding instalments, to the petitioner and, as such, this Court should not appoint the Receiver to take possession of the 11 assets

as claimed by the petitioner.

Considering the facts of the case, it appears that the said agreement is not disputed by the respondent and from the month of January, 2018 till June

2018, more than Rs.3 crore remains outstanding from the side of the respondent. Accordingly, I find that the petitioner has made out a prima case for

appointment of a Receiver. Accordingly, Mr. Abhijit Basu, Advocate, Bar Association, Room No.2, is appointed as the Receiver to take the actual

possession of the assets, mentioned in paragraph 2 of the application. After taking possession of the hypothecated assets, the Receiver shall keep the

same at a safe place to be provided by the petitioner.

It is made clear that if, the respondent pays its outstanding amount of Rs.3 crore to the petitioner within a week from date, the Receiver shall stay his

hands. Needless to mention that payment and receipt of the said amount of Rs.3 crore shall be without prejudice to the rights and contentions of the

respective parties. The Receiver shall be paid an initial remuneration of 2000 GMs by the petitioner. The petitioner shall also bear the travelling

expenses of the Receiver, including air fair and shall provide him a befitting accommodation at the relevant places in the State of Andhra Pradesh.

Needless to mention that a competent officer of the petitioner shall all along accompany the Receiver in the state of Andhra Pradesh.

If necessary, the Receiver shall approach the Superintendent of Police of the concerned District/the concerned Deputy Commissioner of Police for

obtaining police assistance to implement this order. If the petitioner deposits the requisite fees with the concerned authorities, the Superintendent of

Police/the concerned Deputy Commissioner of Police shall render necessary police assistance to the Receiver to take actual physical possession of

the hypothecated asset from the concerned respondent.

Let this application appear after five weeks, when the Receiver shall file his report. Urgent certified website copies of this order, if applied for, be

supplied to the petitioner upon compliance with all requisite formalities. The Receiver and all concerned parties, including the Police Authorities shall

act on certified website copies of this order.