
(2019) 01 CAL CK 0047
In the Calcutta High Court
Case No : Arbitration Petition No. 884 Of 2018

Tata Capital Financial Services Limited	APPELLANT
Vs	
Abed Ali & Anr	RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9

Citation : (2019) 01 CAL CK 0047

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : Arnab Basu Mullick

Judgement

This is an application under Section 9 of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016 (in short, "the Act of 1996").

From the affidavit-of-service filed on behalf of the petitioner, it appears that copies of this application have been served upon the respondents. However, none appears on behalf of any of the respondents to oppose this application. Accordingly, this application is taken up for hearing in the absence of the respondents.

Let, the said affidavit filed by the petitioner be kept on record.

It is the case of the petitioner that in terms of the agreement dated November 29, 2016 entered into between the parties (hereinafter referred to as 'the said agreement'), the respondent No. 1 obtained financial assistance of Rs.18,50,000/- from the petitioner for acquiring the asset, described in paragraph 4 of the application. The said asset remains hypothecated in favour of the petitioner. The respondent No. 2, as the guarantor, is a party to the said agreement, which also contains an arbitration agreement.

Under the said agreement the respondent no.1 is obliged to repay the loan amount, together with agreed rate of interest and other charges by way of 45

equal monthly instalments of Rs.53,083/- each. However, after paying the first 20 instalments and part of the 21st instalment, the respondent No. 1 has failed to pay the balance instalments.

According to the petitioner, as on the date of filing of this application, Rs.12,26,064/- remains due and owing by the respondents to the petitioner but in spite of repeated requests they have refused to pay the said amount. Therefore, the petitioner has terminated the said agreement and filed this application to enforce its right to take possession of the hypothecated asset through appointment of a Receiver.

Having considered the materials on record, I find that the petitioner has made out a prima facie case for obtaining an ad interim ex parte order for appointment of Receiver to take possession of the hypothecated asset, described in paragraph 4 of the application, presently lying at Mangaldoi, District-Darrang, in the State of Assam.

Accordingly, Mr. Mihir Kundu, Advocate, Bar Association Room No.4, is appointed the Receiver to take actual physical possession of the hypothecated asset, described in paragraph 4 of the application from the concerned respondent at Mangaldoi, District-Darrang, in the State of Assam. After taking possession of the hypothecated asset, the Receiver shall keep the same, in his custody, at a safe place to be provided by the petitioner.

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 fare and shall provide him a befitting accommodation at the relevant places in the State of Assam. Needless to mention that a competent officer of the petitioner shall all along accompany the Receiver in the State of Assam.

If necessary, the Receiver shall approach the Superintendent of Police of the concerned District for obtaining police assistance to implement this order. If the petitioner deposits the requisite fees with the concerned authorities, the Superintendent of Police of the concerned District 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 six weeks from date.

The Receiver shall file his report on the next date of hearing.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

All parties, including the Receiver and the concerned police authorities shall act on the copy of the certified website copy of this order.