

(2018) 02 CAL CK 0005
In the Calcutta High Court
Case No : 928 of 2017

TATA CAPITAL FINANCIAL SERVICES LTD. APPELLANT
Vs
NADU GOPAL JANA & ANR. RESPONDENT

Date of Decision : 05-02-2018

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 9](#) - Interim measures, etc., by Court

Citation : (2018) 02 CAL CK 0005

Hon'ble Judges : Ashis Kumar Chakraborty

Bench : Single Bench

Advocate : S.Chakraborty

Judgement

1. The Court : This is an application under Section 9 of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016.
2. From the affidavit filed on behalf of the petitioner, it appears that in terms of the order dated January 9, 2018, the notice of this application has been published in the Bengali newspaper namely, "Aajkal". Let the said affidavit filed on behalf of the petitioner be kept on record. However, none appears on behalf of any of the respondents to oppose this application.
3. The petitioner claims that in terms of an agreement dated January 31, 2017 (hereinafter referred to as "the said agreement") between the parties, the respondent No. 1 obtained a loan of Rs. 31,20,000/- for purchasing the asset mentioned in paragraph 3 of the application. The said asset stands hypothecated with the petitioner. The respondent No. 2 as the guarantor is a party to the said agreement, which also contains an arbitration agreement.
4. Although under the said agreement the respondent No. 1 was obliged to repay the dues of the petitioner, together with the agreed rate of interest and other charges by way of 46 monthly instalments of Rs. 84512/- but, after paying the first 3 instalments and part of the 4th instalment the respondent no.1 has

defaulted in making payment of the balance instalments.

5. According to the petitioner, as on the date of filing of this application, Rs. 32,56,577/- remains due and owing by the respondents and in spite of being called upon, the respondents refused to repay their dues and make over possession of the hypothecated asset to the petitioner. Therefore, the petitioner has terminated the said agreement and filed this application for enforcing its right against the hypothecated asset, which is presently lying at Purshaghat, East Midnapore, West Bengal. The petitioner has prayed for an order for appointment of Receiver to take possession of the hypothecated asset.

6. Having considered the materials on record, I find the petitioner has made out a prima facie case and the balance convenience wholly lies in favour of the petitioner for obtaining an ad-interim order for appointment of Receiver as prayed for.

7. Accordingly, Mr. Mihir Kundu, Advocate, Bar Association Room No. 4, High Court, Calcutta is appointed as the Receiver to take the actual possession of the asset. After taking possession of the hypothecated asset, the petitioner shall keep the same, in his custody, at a safe place to be provided by the petitioner.

8. The respondent no. 1 is also directed to render all assistance to the Receiver to implement this order.

9. The petitioner shall pay an initial remuneration of 1400 GMs. to the Receiver. The petitioner shall bear all travelling expenses of the Receiver and provide him with a befitting accommodation, if necessary.

10. Needless to mention that a competent officer of the petitioner shall all along accompany the Receiver in the State of East Midnapore, West Bengal.

11. The Superintendent of Police in East Midnapore, West Bengal is directed to render all police assistance to the Receiver in order to enable him to carry out this order, upon payment of requisite fees by the petitioner.

12. Let this application appear under the same heading 3 weeks hence, when the Receiver shall file his report.

13. Urgent certified photostat copies of this order, if applied for, be supplied to the petitioner upon compliance with all requisite formalities.

14. The Receiver and all concerned parties, including the Police Authorities shall act on certified photostat copies of this order.