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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION (L) NO. 1708 OF 2013**

National Spot Exchange Ltd. ... Petitioner

Versus

Spin-Cot Textiles Pvt. Ltd. ... Respondent

Mr. Birendra Saraf alongwith Mr. Chirag Kamdar i/by Naik Naik & Co. for petitioner.

Mr.Naveen Chomal for respondent.

**CORAM : R.D. DHANUKA,J.****DATED : NOVEMBER 22, 2013****P.C.**

**By this** petition filed under section 9 of the Arbitration and Conciliation Act, petitioner seeks mandatory order and injunction directing the respondent to deposit sum of Rs.38,25,86,449.92 in this court or to furnish bank guarantee of the like amount and for appointment of the Court Receiver in respect of the property described in Exh. Z to the petition.

2. By ad interim order passed by this court on 17<sup>th</sup> October, 2013, this court recorded a statement of learned counsel for the respondent that untill further orders the respondent shall not create any third party rights and/or part with the possession in respect of the assets described in Exh. Z to the petition and shall disclose their movable and immovable assets and properties including the bank accounts by filing affidavit. Pursuant to such ad interim order, respondents have filed

affidavit in this court.

3. The learned counsel appearing on behalf of respondents, on instructions, states that the respondent admits the liability of the petitioner to the extent of Rs.34.29 Crores. The learned counsel states that in so far as assets described at Sr. No. I to V and VIII of Exh. Z are concerned, the respondents have no objection if second charge in respect of these properties is created in favour of the petitioner. It is further stated that the respondents would deposit sum of RS. 50 lacs., in this court every month till the disposal of the arbitration proceedings, the first of such installment shall commence on 10<sup>th</sup> December, 2013 and the remaining installments shall be paid on or before 10<sup>th</sup> of each succeeding month.

4. The learned counsel appearing for the respondents on instructions undertakes to create second charge in respect of the properties described aforesaid in favour of the petitioner within two weeks from today.

5. With a view to give an opportunity to the respondents to clear admitted liability of the respondents to the petitioner and to show their bona fides, I have accepted the statements and undertaking rendered by the learned counsel appearing for the respondent.

6. The respondent has made proposal to the Forward Market Commission for settlement of dues of the petitioner and have proposed to make payment to the petitioners in certain installments which proposal is stated to be pending. It is made

clear that the proposal pending before Forward Market Commission shall be considered on its own merits without being influenced by the order passed by this court. It is also made clear that this order passed by this court is not passed by consent of the petitioners. Any other party including the bankers, who has to recover any other amount from the petitioner or respondent, also shall be uninfluenced by the order passed by this court. Ad interim order passed by this court on 17<sup>th</sup> October, 2013 to continue till disposal of the arbitration proceedings. In the event of respondents committing any three defaults in making payment of installment as stated, the Court Receiver, High Court, Bombay shall stand appointed in respect of the properties described at Sr. Nos. I to V and VIII of Exh. Z with a direction to appoint respondents as agent of the Court Receiver on usual terms and conditions and on furnishing security and on payment of royalty. In the event of respondent refusing to accept the terms and conditions of the Court Receiver, within two weeks from the date of such offer, the Court Receiver shall take forcible possession in respect of such properties and shall submit report to this court for further directions.

7. Parties are directed to take appropriate steps for appointment of arbitrator respectively.

8. It is made clear that this order would continue till disposal of the arbitration proceedings as and by way of interim order.

9. Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

**(R.D. DHANUKA,J.)**