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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 31/2011

M/S KOTAK MAHINDRA PRIME LTD Petitioner
Through: Mr. Ujjwal K. Jha with Mr. Rohit
Mehra, Advocates.

versus

HALLEX APPLIED POWER PRIVATE LTD
& ANR Respondents
Through: Mr. Sanjay Sood with Mr. Shekhar
Kumar, Advocates.

AND

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O.M.P. 425/2011

M/S KOTAK MAHINDRA PRIME LTD Petitioner
Through: Mr. Ujjwal K. Jha with Mr. Rohit
Mehra, Advocates.

versus

ASIAN POWER CONTROLS LTD & ANR Respondents
Through: Mr. Sanjay Sood with Mr. Shekhar
Kumar, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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25.11.2011

1. Despite several opportunities given to the Respondents in these matters

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they have been unable to comply with the assurances given to this Court about making payments to the Petitioner. Consequently, this Court is not inclined to grant any further indulgence to the Respondents.

2. As far as O.M.P. No. 31 of 2011 is concerned, an order was passed by this Court on 12th January 2011 whereby Mr. Deepak Dhiman, Manager of the Petitioner was appointed as a Court Receiver to take possession of the vehicle bearing No. DL-3CBM-7740 from the Respondents or any other person holding the vehicle on behalf of the Respondents and deliver its possession to the Petitioner. It was stated that the order would not be implemented in case the Respondents made payment of an amount of Rs. 25,00,000/- to the Petitioner and also undertook to pay the future instalments punctually without any further default.

3. The above order has not been fully complied with till date. On 29th April 2011, 12th July 2011, 26th July 2011, 8th August 2011, 17th August 2011, 6th September 2011 and 31st October 2011, this Court adjourned the matter at the instance of the Respondents. On 8th August 2011, two cheques totalling Rs. 10,00,000/- were handed over to the Petitioner. On the last date, i.e., 31st

October 2011, learned counsel for the Respondents had on instructions stated that they were prepared to pay Rs. 8,00,000/- to the Petitioner within the next 72 hours. They had also stated that by the next date they will place on record a schedule of the payments they proposed to make. But the said assurances have not been adhered to by the Respondents. Learned counsel for the Petitioner points out that as on date, the sum owed to the Petitioner is over Rs. 56,00,000/-. He adds that an *ex parte* Award has been passed against the Respondents on 8th September 2011.

4. As far as O.M.P. No. 425 of 2011 is concerned, an interim order was passed on 27th May 2011 appointing Mr. Deepak Dhiman, Manager of the Petitioner as Court Receiver to take possession of the vehicle bearing No. CH-03-N-3636 from the Respondents. The said order was not to be executed in the event that the Respondents made a payment of Rs. 20,00,000/- to the Petitioner. The case was adjourned on 6th September 2011 to enable the parties to go in for mediation. That was however not successful. According to learned counsel for the Petitioner, the Respondents owes the Petitioner over Rs. 30,00,000/- as of date. He adds that an *ex parte* Award has been passed against the Respondents on 31st August 2011.

5. Learned counsel for the Respondents in both matters repeatedly urged one more opportunity should be given to them to make payment. He stated that the Respondents were expecting certain payments from their debtors.

6. It is not possible for this Court to keep adjourning these cases particularly since the Respondents have not been able to make payments as assured to this Court on various previous dates.

7. Consequently, O.M.P. No. 31 of 2011 is disposed of with the direction that the Court Receiver Mr. Deepak Dhiman, Manager of the Petitioner will take possession of the vehicle bearing No. DL-3CBM-7740 from the Respondents or any other person holding the vehicle on behalf of the Respondents and deliver its possession to the Petitioner. He is also permitted to take the assistance of the local police. The SHO of the local police station is directed to render necessary assistance to the Court Receiver in this regard. However, in the event that the Respondents make payment of Rs. 30,00,000/- to the Petitioner and also undertake to pay the balance amount in future instalments punctually without any further default, the

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Petitioner will return the vehicle in question to the Respondents. This order will continue till such time any further orders are passed in the execution proceedings that may arise from the Award passed in the matter.

8. O.M.P. No. 425 of 2011 is disposed of with the direction that the Court Receiver, Mr. Deepak Dhiman, Manager of the Petitioner will take possession of the vehicle bearing No. CH-03-N-3636 from the Respondents or any other person holding the vehicle on behalf of the Respondents and deliver its possession to the Petitioner. He is also permitted to take the assistance of the local police. The SHO of the local police station is directed to render necessary assistance to the Court Receiver in this regard. However, in the event that the Respondents make payment of Rs. 15,00,000/- to the Petitioner and also agree to make payment of the balance sum in instalments punctually without any further default, the Petitioner will return the vehicle in question to the Respondents. This order will continue till such time any further orders are passed in the execution proceedings that may arise from the *ex parte* Award passed in the matter.

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9. The petitions are disposed of in the above terms.

10. Order be given dasti to learned counsel for the parties.



S. MURALIDHAR, J

NOVEMBER 25, 2011

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-From FA 19031/11 for direction CP-9 Part-II A)