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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 24.10.2013

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O.M.P. 1097/2012

GE CAPITAL SERVICES INDIA

..... Petitioner

Through: Ms Deepika V. Marwah & Ms P.s.
Themthingla, Advs.

versus

DECCAN CHRONICLES HOLDING PVT LTD Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J (ORAL)

OMP 1097/2012 & IA No. 13395/2013 [u/s 9(ii)(d) of the Arbitration & Conciliation Act, 1996]

1. In so far as the main petition filed under Section 9 of the Arbitration & Conciliation Act, 1996 (in short the Act) is concerned, notice was issued on 26.11.2012. Since the respondent was represented on that date, time was granted to it to file a reply within two weeks. The respondent was also directed to indicate in its reply the status of the three (3) machines in issue, which the petitioner had given on hire to the respondent. Furthermore, the respondent was directed to maintain status quo in relation to the said three (3) machines and not to create any charge or handover possession of the said machines to a third party.

2. Since then, the respondent has filed a reply followed by two

additional affidavits, pursuant to orders passed by this court on 13.02.2013 and 15.03.2013.

3. The court heard the matter on 17.07.2013, when after hearing counsels for parties, the respondent was directed to file orders passed by the Andhra Pradesh High Court on its application for demerger along with copies of the application of demerger scheme. The purpose of such a direction was to ascertain as to whether the respondent under the scheme of demerger, filed apparently before the Andhra Pradesh High Court, had shown the three (3) machines, which are subject matter of the present proceedings, as its own assets. In fact, counsel for the respondent appearing on that date, had stated, if on examination of papers and documents filed with the Andhra Pradesh High Court, it got revealed that the said machines were shown as the property of the respondent, appropriate application will be moved for correcting the error. The main petition was, consequently, listed for hearing today.

3.1 In so far as the captioned application being: IA No. 13395/2013 is concerned, notice was issued on 26.08.2013.

3.2 It is in this background that today, the main petition as well as the captioned application, is listed for hearing.

4. Curiously, today there is no representation on behalf of the respondent. Ms Marwah, learned counsel for the petitioner, informs me that, in the arbitration proceedings the respondent has not been represented, at least, on previous two dates. She further informs me that the proceedings, before the arbitrator, are fixed now on 08.11.2013, for the purposes of presenting final arguments in the matter.

5. It is in these circumstances that the learned counsel seeks relief for

appointment of a receiver in respect of at least one of the three machines qua which the hire purchase agreement obtains between the parties herein.

6. Ms Marwah does not dispute the fact that, approximately, a sum of Rs. 5 crores is due and payable by the respondent. She says that the value of the three machines would be much higher. As a matter of fact, Ms Marwah has placed on record the valuation report in respect of two machines carried out by M/s R. Srinivas & Associates dated 12.04.2013. One of the machines is located in Kompally in Hyderabad, while the other is located in the industrial unit of the respondent situate at Plot No. 177 & 178, Bommasandra Industrial Area, Jigani Link Road, Anekal Taluk, Bengaluru.

6.1 The detail of the machine located at Bengaluru is as follows: S. No. of Printer 740511, Name Plate details – Goss Systems Graphiques, No. UK 343, Year – 11072006, Dossier – 740511.

7. Ms Marwah also states, that only if the machine located at Bengaluru is insufficient to liquidate the outstanding debt owed by the respondent, would she press for reliefs in respect of the remaining two machines either by way of an application under Section 17 of the Act before the learned arbitrator or, approach this court at the appropriate time, in accordance with law.

8. Briefly, the claim of the petitioner arises in the background of the following broad facts:

8.1 It appears that parties had entered into a hire purchase agreement dated 14.12.2006 whereby three (3) machines, which are broadly described as: Goss Uniliners S Newspaper Web Offset Press, Cut off – 546mm, Web Width-1400mm, were financed by the petitioner.

8.2 The respondent had, as a matter of fact, furnished a bank guarantee to

secure a part of the finance advanced by the petitioner. I am informed that initially the bank guarantee furnished by the respondent was Rs. 30 crores, which was progressively reduced to Rs. 20 crores. In addition to the above, the respondent also furnished a security deposit in the sum of Rs. 3,26,19,944/-.

8.3 Since, the respondent defaulted in re-payment of the hire charges as per the terms of the agreement, a demand notice was issued by the petitioner, on 27.08.2012. The said demand notice was followed by a notice of termination dated 13.09.2012. By the said communication, the respondent was put to notice that, in case, the account is not settled, it would initiate proceedings by way of arbitration.

8.4 The aforementioned communication was followed by yet another communication dated 18.10.2012 by the petitioner. By this communication the respondent was directed to hand over possession of the machines in issue.

8.5 As a matter of fact, on 29.10.2012 a representative of the petitioner visited the respondent's premises at Secundarabad for taking possession of the machine, which was resisted by the respondent. Intimation with regard to the visit was furnished by the representative of the petitioner, to the nearest police station, located at Gopalpuram.

9. It is in this background that the petitioner approached this court. A perusal of the reply dated 12.02.2013 of the respondent would show that the respondent does not dispute the fact that a hire purchase agreement was executed between the parties. The respondent, as a matter of fact, avers that it does not intend to transfer possession of the machines in issue to any third party. It appears to be the stand of the respondent is that a substantial

amount has been paid, and therefore, the present action is instituted to only hurt its business interest.

10. As indicated right at the outset, two affidavits were filed by the respondent. The first one is dated 05.03.2013 followed by an affidavit dated 29.03.2013. The description of the three (3) machines in issue have been provided by the respondent in paragraph 2 of the affidavit dated 05.03.2013. In the said affidavit, once again, it is reiterated that the respondent does not intend creating third party interest in respect of the machines in issue. In the other affidavit dated 29.03.2013, more or less, the same aspect has been asserted. A reading of paragraphs 3 and 4 of the affidavit dated 29.03.2013 seems to indicate that the respondent is in possession of machines apart from those in respect of which a hire purchase agreement has been executed between the parties herein. There is also a reference to a demerger scheme filed by the respondent, evidently, in the Andhra Pradesh High Court.

11. As noted above, the respondent claims that a substantial amount of money, i.e., Rs. 87 crores has been paid to the petitioner, and that, according to the respondent, only Rs. 4 crores, is payable to the petitioner. Ms Marwah, at the outset had indicated that, according to the petitioner, a sum of Rs. 5 crores (approximately), is presently payable to the petitioner.

12. Having heard Ms Marwah and perused the reply, as well as the valuation report placed on record, I am of the view that there is no dispute raised by the respondent with respect to the following:

- (i) that there is a hire purchase agreement obtaining between the parties;
- (ii) that the machines in issue are in possession of the respondents;
- (iii) even according to the respondent a sum of Rs. 4 crores is payable;

13. Having regard to the aforesaid facts and given the approach of the

respondent in not appearing in court today; and if the counsel for the petitioner is to be believed the respondent has not been represented before the learned arbitrator at least on the last two dates, I am constrained to pass an order of appointment of a receiver qua at least one (1) machine. Accordingly, Mr Gaurav Tyagi, Sr. Manager of the petitioner company, is appointed as a receiver. He will take possession of the machine located at Bengaluru; the description with respect to which is provided hereinabove. In case the respondent pays the outstanding amounts, the receiver shall release the machine to the respondent on superdari. If found necessary, the receiver is authorized to seek aid of the station in-charge of nearest police station.

14. In view of the above, both the captioned petition and the application are disposed of, in terms indicated above, with liberty to the petitioner to approach the learned arbitrator or this court in the eventuality of any outstanding grievance.

15. Dasti.

RAJIV SHAKDHER, J

OCTOBER 24, 2013

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