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

Decided on 7th April, 2015

+ W.P.(C) 2097/2015 & C.M.Nos.3770-72/2015, 5975/2015

M/S. AEC SSANGYONG LTD AND ORS. Petitioners

Through: Mr.Rajiv Mehra, Sr.Adv. with
Mr.Pushkar Sood, Advs.

versus

ABHISHEK KUMAR JAIN AND ANR. Respondents

Through: Mr.Pallav Saxena, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The present petition under Article 226 of the Constitution is directed against the order dated 24.02.2015 of the Debts Recovery Appellate Tribunal (DRAT). Those proceedings arose on account of an application (O.A.) filed by the Industrial Financial Corporation of India (IFCI) Ltd. for recovery of certain amounts. The O.A. was allowed on 07.03.2002 and the recovery certificate was issued. Consequent upon initiation of recovery proceedings the property – equitably mortgaged to IFCI was auctioned on 18.10.2010 for ₹1.57 crores. This sale was confirmed by the Recovery Officer (R.O.) on 18.05.2011. The petitioner appealed against that order; the Debt Recovery Tribunal (DRT), by the order dated 13.09.2012 affirmed the order and action of the R.O.

2. In the meanwhile, the petitioner had entered into a settlement and paid all the dues of IFCI in terms of a One Time Settlement (OTS) dated 15.03.2011. This appears to have been recorded in the proceedings before the R.O. and DRT. The petitioner's appeal against the order dated 13.09.2012, confirming the sale was rejected in these circumstances by the DRAT, in terms of the impugned order.

3. During the pendency of these proceedings, the parties – essentially the writ petitioner and the successful auction purchaser in whose favour the auction sale was confirmed – (impleaded in these proceedings as the first respondent), have agreed to resolve their dispute. The terms of the settlement have been set out in the application No. 5975/2015. The material portion of that application is extracted below:

2. On 13.03.2015, the petitioners and respondent no. 1 entered into an amicable settlement on the following terms and conditions:

(a) Petitioners and the Respondent No.1 agree that the challenges and objections made by the Petitioners assailing the auction held on 18.10.2010 in favour of the Respondent No.1 pursuant to Order dated 03.09.2010 passed by Recovery Officer, DRT-I, Delhi in RC No.241/2002 be sustained and consequently the said Auction; the order dated 18.05.2011 passed by Recovery Officer, DRT-I, Delhi; order dated 13.09.2012 passed by Presiding Officer, DRT-I Delhi in Appeal No.26/2011 and order dated 24.02.2015 passed by DRAT, Delhi in Appeal No.366/2012 be also set aside on the performance of the under mentioned covenants;

(b) In the first instance the Petitioners shall deposit with the Respondent No.1 an amount of Rs.30,00,000.00 (Rupees Thirty Lakhs Only) by Bankers Cheque / Demand Draft on or before 10.04.2015;

(c) A further amount of Rs.2,50,00,000.00 (Rupees Two Crores Fifty Lakhs Only) to be deposited by the Petitioners with the Respondent No.1 by Bankers Cheque / Demand Draft on or before 30.04.2015;

(d) On such deposit of Rs.2.80 crores in the manner stipulated above, the Respondent No.1 will be entitled to immediate release of the total amount of auction amount as deposited by the Respondent No.1 with the Recovery Officer along with interest accrued thereon till date;

(e) In the event of any default or delay by the Petitioners making deposit of the amounts stipulated in clauses 1 and 2 above, all challenges made assailing the said auction in favour of Respondent No.1 shall be deemed to be given up and withdrawn unconditionally and all the said orders passed by Recovery Officer, DRT-I, Delhi, Presiding Officer, DRT-I, Delhi and DRAT, Delhi assailed in the present petition shall be deemed to have been sustained;

(f) Subject to the issuance appropriate directions by this Hon 'ble Court, the petitioners and respondent no.1 shall approach the learned Recovery Officer for recalling of sale certificate and other necessary steps for giving effect to this settlement after the respondent no.1 receives the entire amount of compensation and the auction money alongwith accrued interest is refunded to him.

4. The Court has considered the submissions of the parties. Mr.Kamaljeet Singh, Manager, Law, IFCI is present. He confirms the fact that OTS between the petitioner and IFCI was in fact entered into; money paid and its dues discharged and taken care of.

5. During the submissions, learned counsel for the parties agreed that the terms of para 2 (b) i.e. obliging the petitioner to pay the first respondent ₹ 30 lakhs extended was by. Accordingly, the petitioner shall be deemed to have discharged its obligation under Clause 2(b) and of the joint application if it pays the sum of ₹ 30 lakhs to the respondent No.1 on or before 17.04.2015. The Court notices that the certified copy of the Resolution dated 17.03.2015 authorising the petitioner company to enter into compromise/settlement with the first respondent is placed on record. Likewise the power of attorney authorising Mr. Ashok Mishrimal Golecha to represent the first respondent is also a part of the record. The affidavits of the petitioner and said power of attorney holder in support of the application are also on the record. This is in addition to the first respondent's affidavit. Having regard to this, the Court is of the opinion that the parties have entered into a lawful and binding settlement.

6. The Court notices that the sale enuring in first respondent's favour was confirmed by the R.O. on 18.05.2011. Having regard to the terms of the settlement that are extracted above, the Court hereby directs the R.O. to take appropriate consequential action in withdrawing/cancelling sale confirmation/sale certificate issued in the first respondent's favour. The R.O. shall, having regard to the payments made by the petitioner to the first respondent and the statement made by the latter, also make appropriate

orders recording satisfaction of the first respondent's claim. Such orders shall also expressly state in such event right, title and interest to the property the sales certificate and confirmation of Sales Certificate and registration of Sale Certificate if any, and any sale, affected by the respondent no.1 in favour of any third party, in pursuance of the sale certificate issued by the Ld. Recovery Officer in relation to property in question i.e. land admeasuring 30.05 Acres in Survey No.210, 241, 24/1/1 to 3, 242/2 and 243 (New comprehensive survey No.210) situated at Dhodipada, Morkhal Road, Village Morkhal, Silvasa in the Union Territory of Dadar and Nagar Haveli; shall be that of the writ petitioner instead of the first respondent.

7. The parties shall be present before the R.O. on 30.04.2015.

8. The writ petition as well as the pending applications are disposed of in the above terms.

9. Dasti.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

APRIL 07, 2015

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