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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 53/2016, IA 2564/2016**
L & T FINANCE LIMITED

..... Petitioner

Through: Mr. Punit Kumar Bhalla, Adv.

versus

DELHI CONTROL DEVICES PVT. LTD.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **23.02.2016**

IA 2564/2016

Exemption allowed subject to all just exceptions.

Application stands disposed of.

O.M.P.(I) (COMM.) 53/2016

1. This is a petition filed by the petitioner under Section under Section 9 of the Arbitration & Conciliation Act, 1996 with the following prayers:-

“a) Appoint Mr. Gaurav Tripathi, representative of the petitioner company as a receiver to take over the possession of the "5 (FIVE) Assets" (Details Are Herein Below) from the possession of the respondent, their agents or from anyone else who is in possession of the said CONSTRUCTION EQUIPMENTS and the receiver may be also allowed to take police if necessary for the said purpose.

<i>Agreement No.</i>	<i>Amount Financed</i>	<i>Details of Assets</i>	<i>Engine No.</i>	<i>Chasis No.</i>
<i>EFD461028S300667918</i>	<i>62,00,000.00</i>	<i>NET BLOCK</i>		
<i>EFD461028S1300702176</i>	<i>25,00,000.00</i>	<i>JIT 400T WITH SERVO SYS 415V- 50HZ</i>		
<i>EFD461028S1400750094</i>	<i>34,00,000.00</i>	<i>NET BLOCK</i>		
<i>EFD461028S1400797287</i>	<i>2,58,40,000.00</i>	<i>NET BLOCK</i>		
<i>EFD461028S400810355</i>	<i>21,80,000.00</i>	<i>180KVADG SET</i>		

b) Allow the petitioner company to sell the said Three construction equipments after the same are taken in possession from the possession of the respondent, their agents or any such person from whom the same is recovered; and/ or

c) Pass such other/further order(s) as this Hon 'ble Court may deem fit and proper in the interest of Justice."

2. It is the case of the petitioner that the petitioner sanctioned a loan of Rs.5 Crores under Deal No.1100596 to the respondent company for the purchase of five (5) equipments under the Loan-cum-Hypothecation Scheme dated June 7, 2013. The said deal number was further subdivided into 5 (five) supplementary schedules with regard to each equipment. The respondent was agreed to repay the loan amount in 36 equated monthly instalments. It is the case of the petitioner that the respondent failed to comply with the terms and conditions of the loan. The loan agreement was terminated on April 18, 2015. Learned counsel for the petitioner would

refer to clause 18.1 of the Agreement which relates to arbitration clause and clause 14.1 empowers the petitioner to repossess the equipments.

3. Learned counsel for the petitioner expresses apprehension that the respondent may misappropriate the equipments, which are the only security to the petitioner. According to the learned counsel for the petitioner, the total amount due as on November 26, 2015 was Rs.3,41,05,308/-. The break up, is as under:-

<i>Agreement No.</i>	<i>Compromising of overdue Loan Instalment</i>	<i>Overdue compensation/ charges</i>	<i>Cheque bouncing and other charges</i>	<i>Total Overdues</i>	<i>Future Loan Instalment</i>	<i>Total outstanding/FC amount</i>
<i>EFD461028S300667918</i>	<i>14,62,335</i>	<i>2,91,547</i>	<i>56,566</i>	<i>18,10,448</i>	<i>15,92,657</i>	<i>34,03,106</i>
<i>EFD461028S1300702176</i>	<i>6,00,511</i>	<i>1,23,569</i>	<i>35,263</i>	<i>7,59,343</i>	<i>8,79,349</i>	<i>16,38,692</i>
<i>EFD461028S1400750094</i>	<i>8,15,360</i>	<i>1,69,562</i>	<i>52,218</i>	<i>10,37,140</i>	<i>14,90,975</i>	<i>25,28,115</i>
<i>EFD461028S1400797287</i>	<i>79,73,190</i>	<i>18,97,838</i>	<i>4,34,190</i>	<i>1,03,05,218</i>	<i>1,42,90,149</i>	<i>2,45,95,367</i>
<i>EFD461028S400810355</i>	<i>5,84,484</i>	<i>1,18,425</i>	<i>37,015</i>	<i>7,39,924</i>	<i>12,00,104</i>	<i>19,40,028</i>
<i>Total</i>	<i>1,14,35,880</i>	<i>26,00,941</i>	<i>6,15,252</i>	<i>1,46,52,073</i>	<i>1,94,53,235</i>	<i>3,41,05,308</i>

4. Having heard the learned counsel for the petitioner, it is noticed that in view of the respondent's default in payment of the loan amount, the petitioner has issued notice dated April 18, 2015, which is a demand notice thereby recalling the entire loan facility given to the respondent. In these circumstances, this Court appoints Mr. Gaurav Tripathi, representative of the petitioner company as a receiver to repossess the following five (5) equipments:-

<i>Agreement No.</i>	<i>Amount Financed</i>	<i>Details of Assets</i>	<i>Engine No.</i>	<i>Chasis No.</i>
<i>EFD461028S300667918</i>	<i>62,00,000.00</i>	<i>NET BLOCK</i>		
<i>EFD461028S1300702176</i>	<i>25,00,000.00</i>	<i>JIT 400T WITH SERVO SYS 415V- 50HZ</i>		
<i>EFD461028S1400750094</i>	<i>34,00,000.00</i>	<i>NET BLOCK</i>		
<i>EFD461028S1400797287</i>	<i>2,58,40,000.00</i>	<i>NET BLOCK</i>		
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6. In the event, the respondent makes the payment of the entire outstanding loan amount, the receiver shall release the aforesaid equipments to the respondent on superdari. The respondent is restrained from parting with the possession of, or selling or creating any third party interest in the equipments released to it on superdari.

7. The SHO/In-charge of the police station concerned is directed to render necessary aid and assistance to the Receiver. After taking over possession, the Receiver shall preserve and maintain the equipments till further orders of this Court or any other Court of competent jurisdiction or of the Arbitrator.

8. This order shall remain in force till the respondent makes the payment of the loan amount or till it is modified by the learned Arbitrator during arbitration proceedings or till the termination of the arbitration proceedings.

9. The Arbitrator is free to decide the disputes referred for arbitration

uninfluenced by this order. The respondent is also at liberty to apply to the Court for modification of this order.

10. The petition is disposed of in the above terms. Order be given dasti.

V. KAMESWAR RAO, J

FEBRUARY 23, 2016/ak