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

+ O.M.P.(I) (COMM.) 90/2016

GE MONEY FINANCIAL SERVICES PVT LTD Petitioner

Through: Mrs Deepika V. Marwaha and Mr
Vaibhav Asthana, Advocates with Mr
Atul Bansal, AR of the Petitioner.

versus

STARLOG ENTERPRISES LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.07.2016

1. None appears for the respondent despite service.
2. Ms. Deepika Marwaha, the learned counsel for the petitioner earnestly prays that an order be passed for appointing a receiver to take over the Cranes over which the petitioner claims to have exclusive charge in terms of the loan agreement dated 16.01.2012.
3. Ms Marwaha has referred to a letter dated 22.12.2011, which indicates that the petitioner granted the term loan to the respondents on certain terms and conditions. In the said letter, it is *inter alia* expressly specified that the respondent's obligation under the facility would be secured by:

- “1. Exclusive charge over the equipment; and
2. Exclusive charge over the receivables linked to the equipment.”

4. The term Equipment is defined as Cranes as per Annexure C to the letter which were then charged to Bank of India. Annexure C to the above letter specifies the Equipment as under:

Sr. No.	Asset Type	Manufacturer	Model No.	Serial No.
1	Crawler Crane	Terex Demag GmbH/Germany	CC6800	52017
2	Crawler Crane	Fushun Excavator Corporation Ltd	QUY80A	1127
3	Crawler Crane	Fushun Excavator Corporation Ltd	QUY80A	1128
4	Crawler Crane	Fushun Excavator Corporation Ltd	QUY80A	1129
5	Crawler Crane	Fushun Excavator Corporation Ltd	QUY80A	1130
6	Crawler Crane	Fushun Excavator Corporation Ltd	QUY80A	1131

5. Annexure I to the Loan agreement dated 16.01.2012 contains specific terms and conditions of the loan which were similar to the terms and conditions specified in the sanction letter dated 22.12.2011.

6. Ms. Marwaha submits that the respondent defaulted in repayment of the loan instalments and sought to re-schedule the repayment of the loan. This was agreed to by the petitioner; but even thereafter, the respondent failed and neglected to adhere to the modified schedule of repayment. She submits that apart from a sum of Rs.92 lakhs paid in October, 2015 the respondent has not paid any sum thereafter even though he has made payments to other financial institutions and banks. She contends that in the

circumstances, the petitioner has no other recourse but to immediately take over the charged assets and seek orders for their sale from the arbitral tribunal to be constituted.

7. It is noticed that the order granting ad interim protection whereby the respondent was restrained from selling, alienating, parting or creating any third party rights in respect of the six cranes was passed on 21.03.2016 and more than ninety days have since elapsed. However, the petitioner has not initiated the arbitration proceedings as yet. Learned counsel for the petitioner submits that the petitioner would take immediate steps for initiation of the arbitration proceedings and seeks further time for the same.

8. As per the loan agreement dated 16.01.2012, the petitioner has an exclusive charge over the equipment as specified under Annexure II to the loan agreement which is similar to Annexure C to the sanction letter dated 22.12.2011 (and as quoted above). It is stated that at the moment, the said equipment is lying idle.

9. It *prima facie*, appears that the petitioner would be entitled to claim possession of the equipment and recover the amounts owed by the respondent *inter alia* by sale of the said equipment. In the given circumstances, although, I am satisfied that the orders for protecting the

above assets are required to be passed, however, I am unable to accede that an order appointing receiver is necessary at this stage. Accordingly, it is directed that the respondent shall not alienate, sell, transfer or in any manner encumber the equipment (the six Cranes) as specified above till the conclusion of the arbitral proceedings or until further orders. This is subject to the petitioner initiating arbitration proceedings within a period of thirty days from today.

10. In the event, the petitioner institutes arbitration proceedings within a period of thirty days from today, it would be open to the petitioner to seek further orders from the Arbitrator.

11. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

JULY 08, 2016
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