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

\+ FAO(OS) (COMM) 55/2016, CM Nos. 26842-26844/2016

GE MONEY FINANCIAL SERVICES PVT LTD ..... Appellant

Through: Ms. Deepika V.Marwaha, Advocate along with Ms. Worthing Kasar, Mr. Vaibhav Rai Asthana, Mr. Gaurav Singh and Ms. Raunika Johar, Advocates.

versus

STARLOG ENTERPRISES LTD ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **29.07.2016**

This appeal is directed against the order of a learned Single Judge dated 08.07.2016 whereby even while confirming the previous order restraining the respondent from selling or alienating the crawler cranes which are in a control and possession of the respondent, he declined to appoint a receiver.

The appellant argues that by the impugned order, the learned Single Judge erroneously refused to exercise discretion. It is stated that the respondent owed – as on 23.12.2015, the overdue amount of ₹ 30,41,63,105/- (Rupees Thirty Crores Forty One Lakhs Sixty Three Thousand One Hundred Five Only). Consequently, the appellant terminated the loan agreement and recalled the entire amount due which was to the tune of ₹ 30,41,63,105/- . Despite the demand made by the letter dated 07.01.2016, the respondent did not return the amount or any part thereof citing various reasons including severe cash flow constraint and that it was not generating enough revenue. The appellant applied under Section 34(4) for two reliefs i.e. 1) an order restraining the respondent from alienating, selling or parting possession which were subject to deed of hypothecation with the appellant and, 2) an order for appointment of receiver. The court issued notice on 21.03.2016, while restraining the respondents from creating any third party rights or selling or alienating the equipment in any manner whatsoever. The court provided the full description of those six cranes to the respondent. The impugned order considered these aspects and confirmed the restraining order. However, the learned Single Judge declined to grant the request for appointment of a receiver in the following terms:-

> *"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 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 an 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."

The appellant submits that non-appointment of the receiver is severely prejudiced. The learned Single Judge fell into error and refused to exercise his discretion on this aspect. Counsel for the appellant relied upon the decision of the learned Single Judge in GE Capital Service India vs. Vasan Healthcare Pvt. Ltd., OMP (I) (COMM)-1/2015 and submitted that non-payment of outstanding amounts in that case had enabled the creditor i.e. the appellant itself, identical reliefs i.e. the appellant could take charge of the assets. Taking all these aspects into consideration, ld. Single Judge had granted appointment of a receiver. That order of the court was left undisturbed at the appellate level and also by the Supreme Court.

The counsel argued that the hypothecated crawler cranes are security for the loan advanced by the appellant and it is entitled to its possession. It was contended that without court order it is next to impossible to take charge of the asset, given that it is in Jamnagar, Gujarat. The appellant's prejudice, it is urged, is compounded by respondent's imminent winding up.

This court has considered the submissions.

The appellant urges that it recalled the entire loan amount in January 2016; outstanding to the extent of ₹ 11,32,54,542/- allegedly as on 23.12.2015. It is a matter of record-observed by the learned Single Judge that even the agreement enables the appellant to take charge of the assets. The appellant has not been able to bring anything on record to show that the respondent would resist its remedies available in law or that it has taken steps to dispose of the asset despite the court's order. The exercise of granting or refusing to appoint the receiver is best decided at the level of the court of first instance. Unless the exercise of discretion is shown to be palpably unreasonable, the appellate court in interlocutory proceedings would be hesitant to interfere and substitute its own decision. We are also that even though the loan was recalled in January 2016, till date the arbitration clause has not been invoked by the appellant (a fact which the Single Judge was aware of when he made the order of 08.07.2016). In these circumstances, we find no merit in the appeal.

The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JULY 29, 2016

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