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

\+ FAO(OS) 74/2017, CM APPL. Nos. 10237-10238/2017 and CAV No. 243/2017

L&T FINANCE LTD ..... Appellant
Through : Mr. Punit K. Bhalla and Mr. Kashish Narang, Advocates

versus

BRAHMAPUTRA INFRASTRUCTURE LTD & ORS ..... Respondents
Through : Mr. Udaibir Singh Kochar, Adv. Mr. R.V. Sinha, Mr. A.S. Singh and Mr. Amit Sinha, Advs. for R-23/Railways

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% **12.04.2017**

Issue notice.

Mr. Udaibir Singh Kochar, learned counsel accepts notice on behalf of the respondents.

The present appeal is directed against an order dated 14.12.2016 passed by the learned single Judge.

The brief facts of the case are that the respondents had availed of a working capital loan to the tune of Rs. 25 crores and had also hypothecated equipment, machinery etc. as security.

Upon default, the appellant moved a garnishee application for diversion of payments due to the respondents.

In the course of proceedings, the Court recorded the settlement between the parties whereby the respondents agreed to liquidate its outstanding amount in 16 equal monthly installments of Rs. 50 lakhs each. The said order was passed by the Court on 10.08.2016.

Thereafter, the respondents moved an application i.e. IA No. 3918/2016 for alteration of the conditions. An advance copy was served upon the appellant's counsel. On the day of listing of the aforesaid application, the learned single Judge, on the very first date of its hearing, proceeded to accept the request and substantially altered the conditions for repayment of money and instead of 16 equated monthly installments, the payments were varied to 32 installments – the last monthly installment being 25.02.2019. The amount too was halved from Rs. 50 lakhs to Rs. 25 lakhs per month. The learned Single Judge, *inter alia,* directed as follows:-

> "4. In the circumstances he prays that no order be passed for handing over of the machinery in the business premises to the Petitioner as the Respondents are very keen to settle the entire matter and honour their commitment to make payments.
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> 5. Learned counsel for the Petitioner states, on instructions, that these cheques cannot be accepted by the Petitioner. However, the Court is of the view that in view of the circumstances explained by the Respondents, they should be given one more opportunity to make good their assurances to the Court. Learned counsel for the Petitioner accepts the cheques without prejudice to the rights & contentions of the Petitioner.
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> 6. In view of the undertaking and the cheques issued to the Petitioner today, the cheque for Rs.50 lakh issued by the

> Respondent earlier will not be deposited by the Petitioner till the next date. It is made clear that if any of the cheques given in the Court today to the Petitioner including the fresh cheque for December is dishonoured then the Court would proceed to pass appropriate orders in terms of the undertaking already given to the Court."

It is evident from the impugned order that the learned single Judge varied the order made earlier, substantially. Whilst the jurisdiction to alter the previous order is undoubted, any order ought to contain some reasons as to why the previously agreed settlement, needed to be varied. This Court discerns no such reason and in the circumstances, the impugned order dated 14.12.2016 is hereby set aside.

The matter is remanded back for fresh orders in IA No. 3918/2016 and 15198/2016.

The parties shall remain present before the learned single Judge on 26.04.2017, according to the roster allocation.

The present appeal is partly allowed in the above terms.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 12, 2017
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