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

+ **W.P.(C) 3508/2017 & CM No. 15310/2017**

M/S AEC SSANGYONG LTD. & ANR

..... Petitioners

Through: Mr. Pushkar Sood, Advocate along
with Mr. Virendra Kumar Tiwari,
Advocate.

versus

M/S INFINITY SEZ PVT. LTD. & ORS

..... Respondents

Through: Mr. Ajit Yadav, Advocate for R-1.
Mr. Nitin Dahiya, Advocate for R-2.
Mr. Surekh Kant Baxy, Advocate
along with Mr. Ashish Rana,
Advocate for R-3.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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06.09.2017

1. Pleadings *qua* respondent No. 1 are complete. Learned counsel for petitioners states that the respondent No. 2 and respondent No. 3 are co-lenders *qua* petitioner No. 2. Respondent No. 4 is a sister concern of petitioner No. 1.
2. The petitioners are aggrieved by the order dated 28.03.2017 passed by the learned DRAT on an appeal filed by it against the order dated 20.05.2015 passed by DRT-1, Delhi in an Appeal no. 21/14.
3. Under the impugned order, the DRAT has directed the petitioners to first deposit an amount of Rs. 1.70 crores drawn in favour of respondent No.

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2/IFCI within two weeks.

4. Mr. Sood, learned counsel for the petitioners states that the petitioners are aggrieved by the impugned order for the reason that the petitioners have already arrived at a one time settlement with the respondent No. 2/IFCI and respondent No. 3/Bank of India in terms of OTS letter dated 15.03.2011, whereunder, a sum of Rs. 3 crore 60 lakhs with interest has already been paid to the respondent Nos. 2 and 3. He submits that a sum of Rs. 1.70 crores which is in dispute is the amount that was deposited by the respondent No. 1 directly with respondent No. 2/IFCI on account of the first OTS offer dated 08.07.2008 made by the respondent No. 4, sister concern of the petitioner No. 1 jointly with respondent No. 1.

5. It is an undisputed position that though the respondent No. 1 had deposited a sum of Rs. 1.70 crores with respondent No. 2, the first OTS fell through. It was only thereafter, that the petitioners settled their dispute with the respondent Nos. 2 and 3 in terms of the second OTS letter dated 15.03.2011 issued by the respondent No. 2/IFCI.

6. Learned counsel for the respondent No. 2/IFCI states that the second OTS came through only after appropriating the sum of Rs. 1.70 crores deposited by the respondent No. 1 in the no lien account maintained by respondent No. 2/IFCI. In other words, the petitioners were the beneficiaries of the said amount deposited by the respondent No. 1 with respondent No. 2/IFCI, when the second OTS was being worked out.

7. In such circumstances, we do not see any reason to interfere with the impugned order dated 28.03.2017 passed by the learned DRAT, directing the petitioners to deposit a sum of Rs. 1.70 crores as a pre-condition to hear

the appeal.

8. In any case, learned counsel for respondent No. 1 states that aggrieved by the order dated 20.05.2015 passed by DRT-1, the respondent No. 1 had already filed an appeal before the DRAT which is pending consideration. The petitioners are parties in the said appeal and will have an opportunity to place their defence before the DRAT.

9. Accompanying the said appeal, was an application for condonation of delay filed by respondent No. 1, on which order was reserved on 25.04.2017 and has not been pronounced so far, due to the pendency of the present petition.

10. The present petition is disposed of with liberty granted to the petitioners to deposit a sum of Rs. 1.70 crores with the DRAT on or before 25.09.2017, as the next date fixed before the DRAT is 28.09.2017.

11. If the petitioners fails to do so, the DRAT shall be at liberty to pass appropriate orders on the petitioner's pending appeal, in accordance with law. Further, there is no impediment on the DRAT to proceed further with the appeal filed by the respondent No. 1, which is pending consideration.

HIMA KOHLI, J

DEEPA SHARMA, J

SEPTEMBER 06, 2017/ss