$~25

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

\+ O.M.P.(I) 631/2015, I.A.Nos.6196, 6198 & 8722/2017

GE CAPITAL SERVICES INDIA ..... Petitioner

Through Ms.Deepika M.Marwaha and Mr.Vaibhav Asthana, Advs.

versus

BSR DIAGNOSTIC LIMITED ..... Respondent

Through Mr.Manish Kaushik, Mr.Ankit Batra & Mr.Shivesh Kaul, Advocates

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 23.08.2017

1. This petition is filed under Section 9(II)(A)(B) and (D) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the Act'*) seeking a direction to the respondent to hand over the hypothecated medical equipments to the petitioner.

2. The petitioner is a non-banking financial company. The petitioner entered into a Master Loan Agreement dated 16.10.2012. A total of Rs.2,83,50,000/- was given to the respondent for purchase of CT Scan Machinery with Accessories.

3. It is the case of the petitioner that there has been a default in payments of the EMIs by the respondent. On 16.11.2015 the respondent was restrained from transferring, alienating or creating any third party interest in respect of hypothecated medical equipments. On 26.05.2016 the respondent agreed to file an undertaking before the court that the respondent shall regularly pay

the instalments including the remaining 19 instalments. On 28.11.2016 this court noted that in terms of compromise arrived at between the parties, the respondent has undertaken to clear the outstanding amounts in equal monthly instalments to the petitioner. The court also noted that in terms of the order dated 03.06.2016 an affidavit has also been filed by the respondent.

4. A perusal of the records shows that Mr.Manish Khanduja, the director of the respondent has filed two separate affidavits of undertaking. First one dated 08.07.2016 and second is dated 30.05.2017 whereby it was undertaken that various amount would be paid to the petitioner.

5. Today, the learned counsel for the respondent, on instructions from Mr.Manish Khanduja, who is present in court, states that on account of financial difficulty they are not in a position to meet their undertakings given in court. It is submitted that they have no objection in case the petitioner takes possession of the hypothecated medical equipments after 15 days from today and auction them at a fair price. It is further stated that after auctioning the hypothecated medical equipments, the petitioner may return the sale amount after deducting the dues of the petitioner without deduction of unreasonable charges, like penal interest etc.

6. Accordingly, I direct that the petitioner may physically lift the hypothecated medical equipments after 15 days from today and take it into custody and take steps to auction the said hypothecated medical equipments. Mr.Atul Bansal, the authorised representative of the petitioner company is appointed as a receiver to take into custody the said hypothecated medical equipments. The petitioner/receiver will ensure that there is no damage

caused to the said hypothecated medical equipments so as to reduce the value of the said equipments.

7. It has also been agreed by the parties that the balance disputes between the parties be adjudicated by a learned arbitrator under the aegis of the Delhi International Arbitration Centre(*hereinafter referred to as 'the DIAC'*).

8. Accordingly, the matter is referred to the DIAC. It is clarified that direction regarding auction of the said equipments and adjustment of the sale proceed would be subject to the further direction of the learned arbitrator so nominated by the DIAC.

9. In view of the above direction, the present petition stands disposed of. All the pending applications, if any, also stand disposed of.

JAYANT NATH, J.

AUGUST 23, 2017/v