

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

% *Date of Decision : May 24, 2016*

+ **REV. PET. 241/2016 in FAO(OS) (COMM) 12/2016**

VASAN HEALTH CARE PVT LTD
THR DIRECTORS

..... Appellant.

Represented by: Mr.Rahul Srivastava, Advocate
with Mr.Manudev Sharma,
Mr.Raghav Kapoor, Advocates

versus

GE CAPITAL SERVICES INDIA
THR AUTHORIZED REPRESENTATIVE

..... Respondent

Represented by: Mr. Arun Kathpalia, Sr.Adv.
instructed by Ms.Deepika
V.Marwaha, Ms.Worthing
Kasar, Mr.Vaibhav Asthana,
Advs.

+ **REV. PET. 247/2016 in FAO(OS) (COMM) 13/2016**

VASAN HEALTH CARE PVT LTD

..... Appellant

Represented by: Mr.Rahul Srivastava, Advocate
with Mr.Manudev Sharma,
Mr.Raghav Kapoor, Advocates

versus

G E CAPITAL SERVICES INDIA

..... Respondent

Represented by: Mr. Arun Kathpalia, Sr.Adv.
instructed by Ms.Deepika
V.Marwaha, Ms.Worthing
Kasar, Mr.Vaibhav Asthana,
Advs.

+ **REV.PET. 242/2016 in FAO(OS) (COMM) 14/2016**

VASAN HEALTH CARE PVT LTD

..... Appellant

Represented by: Mr.Rahul Srivastava, Advocate

with Mr.Manudev Sharma,
Mr.Raghav Kapoor, Advocates

versus

G E CAPITAL SERVICES INDIA

..... Respondent

Represented by:

Mr. Arun Kathpalia, Sr.Adv.
instructed by Ms.Deepika
V.Marwaha, Ms.Worthing
Kasar, Mr.Vaibhav Asthana,
Advs.

+

REV. PET. 245/2016 in FAO(OS) (COMM) 15/2016

VASAN HEALTH CARE PVT LTD

..... Appellant

Represented by:

Mr.Rahul Srivastava, Advocate
with Mr.Manudev Sharma,
Mr.Raghav Kapoor, Advocates

versus

G E CAPITAL SERVICES INDIA

..... Respondent

Represented by:

Mr. Arun Kathpalia, Sr.Adv.
instructed by Ms.Deepika
V.Marwaha, Ms.Worthing
Kasar, Mr.Vaibhav Asthana,
Advs.

+

REV.PET. 243/2016 in FAO(OS) (COMM) 16/2016

VASAN HEALTH CARE PVT LTD

..... Appellant

Represented by:

Mr.Rahul Srivastava, Advocate
with Mr.Manudev Sharma,
Mr.Raghav Kapoor, Advocates

versus

G E CAPITAL SERVICES INDIA

..... Respondent

Represented by:

Mr. Arun Kathpalia, Sr.Adv.
instructed by Ms.Deepika
V.Marwaha, Ms.Worthing
Kasar, Mr.Vaibhav Asthana,
Advs.

+

REV. PET. 240/2016 in FAO(OS) (COMM) 17/2016

VASAN HEALTH CARE PVT LTD Appellant
Represented by: Mr.Rahul Srivastava, Advocate
with Mr.Manudev Sharma,
Mr.Raghav Kapoor, Advocates

versus

G E CAPITAL SERVICES INDIA Respondent
Represented by: Mr. Arun Kathpalia, Sr.Adv.
instructed by Ms.Deepika
V.Marwaha, Ms.Worthing
Kasar, Mr.Vaibhav Asthana,
Advs.

+

REV. PET. 244/2016 in FAO(OS) (COMM) 18/2016

VASAN HEALTH CARE PVT LTD Appellant
Represented by: Mr.Rahul Srivastava, Advocate
with Mr.Manudev Sharma,
Mr.Raghav Kapoor, Advocates

versus

G E CAPITAL SERVICES INDIA Respondent
Represented by: Mr. Arun Kathpalia, Sr.Adv.
instructed by Ms.Deepika
V.Marwaha, Ms.Worthing
Kasar, Mr.Vaibhav Asthana,
Advs.

+

REV.PET. 246/2016 in FAO(OS) (COMM) 19/2016

VASAN HEALTH CARE PVT LTD Appellant
Represented by: Mr.Rahul Srivastava, Advocate
with Mr.Manudev Sharma,
Mr.Raghav Kapoor, Advocates

versus

G E CAPITAL SERVICES INDIA Respondent
Represented by: Mr. Arun Kathpalia, Sr.Adv.

instructed by Ms.Deepika
V.Marwaha, Ms.Worthing
Kasar, Mr.Vaibhav Asthana,
Advs.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The above captioned appeals were disposed of by an order dated April 08, 2016. It reads as under:-

“1. Above captioned appeals lay a challenge to the order dated March 08, 2016 passed by the learned Single Judge in a batch of petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 by GE Capital Services India (hereinafter referred to as GE). The appellant : Vasam Health Care Pvt. Ltd. (hereinafter referred to as Vasam) is the respondent in all the petitions.

2. Eight petitions filed before the learned Single Judge arose out of eleven loan agreements, tenure of nine of which had expired.

3. In para 4 of the impugned order the learned Single Judge has put in a tabular form, which loan agreement(s) pertained to which petition filed under Section 9 of the Arbitration and Conciliation Act, 1996.

4. The learned Single Judge has noted that there was a cross-default clause in the agreement between the parties with respect to all agreements and the intention was to create cross-default and cross-security inter-se all transactions. The effect was that a default under one agreement would be deemed to be a default under all agreements. The learned Single Judge has noted that medical equipments got financed by Vasam from GE was a collateral security under all loan agreements i.e. default to honour any one agreement would result not only in default

of all but additionally entitling GE to take resort to remedy concerning all equipment purchased from the loan taken and offered as collateral security. The learned Single Judge has noted that the statement of account relied upon by GE was not disputed by Vasan. Learned Single Judge has noted that loan advanced under different agreements was ₹100 crores, repayable along with interest. Payment returned was ₹71,77,44,906/-. Balance outstanding was ₹39,66,91,260/-. Pursuant to interim orders passed earlier, as noted in the impugned order, valuation report was obtained as per which report the value of the hypothecated property as of January 06, 2016 would be ₹37,13,09,059/-. It is apparent that depreciation and machinery being old has resulted in its value falling. Learned Single Judge has noted that Vasan is in arrears of rent of rent qua a property taken on lease where one of the many health care centres were established.

5. The learned Single Judge has noted that attempts were made to resolve the issue because outstanding amount was not in dispute. Learned Single Judge has noted that on December 15, 2015, 3 post dated cheques were issued in sum of ₹1 crore, ₹3 crores and ₹3 crores respectively. The first cheque to be presented on January 20, 2016 was dishonoured. The learned Single Judge has noted that Vasan is facing huge financial problems. For non-payment of ESI dues its account has been attached by the ESI authorities. The learned Single Judge has accordingly appointed a receiver to take charge of the property financed with a direction that report shall be submitted by the receiver to the arbitrator and if sold by the receiver first option shall be given to the petitioner to buy the same, failing which to a third party.

6. Core reasoning given by the learned Single Judge is that there is every possibility of the machinery offered as collateral security not being available, if attached by third parties.

7. We have perused the grounds in appeals and have heard learned counsel for the parties. Financial hardship

appears to be the signature tune of the appeals. Vasana wants to project that its intention is honest and due to it not being able to generate enough revenue, it is unable to pay the dues under the agreement.

8. *It is trite that an Appellate Court is concerned with the legality of an order passed by the learned Single Judge. Unless it was shown that the learned Single Judge has misapplied the law or has ignored material facts or has relied upon irrelevant facts, a discretionary order passed would not be interdicted by a superior Court.*

9. *But in our view a commercial solution has to be found while preserving the right of the respondent GE.*

10. *Concurring with the view taken by the learned Single Judge that the right of GE has to be protected and lest somebody else claims a lien over the hypothecated property, it should be placed under the custody of a receiver.*

11. *The appellants have handed over a banker's draft in favour of GE to learned counsel for GE. The banker's draft is in sum of ₹2.5 crores and is received by learned counsel for GE without prejudice.*

12. *Sale of the equipment in question would take time. The learned Single Judge has given first right of purchase to Vasana.*

13. *Learned senior counsel for Vasana states that Vasana would try and raise necessary resources to clear the dues of GE. As regards the hypothecated machinery, we are of the opinion that permitting the receiver appointed by the learned Single Judge who is an employee of GE to take charge of the property, which are machines and equipments used for diagnostic purposes, would mean that warehouse charges would have to be incurred by GE and the machinery would lie idle till it is sold. It would be better if the hypothecated machinery is put under custody of joint receivers, one nominee of Vasana and the other of GE with the obligation on the nominee receiver of Vasana responsible*

for its safe custody, meaning thereby that the hypothecated equipment and machinery could continue to lie at the place where it is but under receivership; with physical possession being with the receiver nominee of Vasan, who would be personally accountable for the machinery if it is lost.

14. Thereafter the two receivers could jointly sell the hypothecated property, with the sale supervised by the Arbitrator, which as per the impugned order has to be nominated by GE within 30 days from the date of the impugned order dated March 08, 2016. Meaning thereby the Arbitrator needs to be appointed forthwith.

15. We dispose of the appeals directing that upon Vasan paying to GE a sum of ₹5,00,000/- per week commencing from the week commencing April 10, 2016 and ending on April 16, 2016 and so on, the direction in the impugned order would be superseded with the direction that the hypothecated property would be in the deemed possession of joint receivership of Sh.Gaurav Tyagi the nominee receiver of GE and Dr.Radha Krishnan Salai the Managing Director of Vasan, with the hypothecated property remaining where it is, but under the possession of Dr.Radha Krishnan Salai who would be accountable not only to this Court but even to the learned Arbitrator if hypothecated machinery is found missing. The remainder directions issued by the learned Single Judge concerning sale of the hypothecated property are maintained with the modification that the sale shall take place before the learned Arbitrator appointed by GE.

16. The joint receivers shall file a report before the Arbitrator within a period of three weeks from today.

17. The appeals are disposed of without any orders as to costs.”

2. We had concurred with the view taken by the learned Single Judge that it was a fit case where the medical equipments got financed by the appellant from the respondent and in respect of which the respondent had a

lien, were liable to be repossessed under the agreement(s) between the parties. But, had attempted to find a commercial solution to the problem because sale of the hypothecated machinery over which the respondent had a lien would have taken time and if the machinery was kept in a warehouse and made to idle, nobody would have gained and possibly its price may have diminished. Thus, upon the condition that the appellant paid ₹5 lacs per week we had permitted the machinery to be retained by the appellant but under a joint receivership of the Managing Director of the appellant and the receiver appointed by the learned Single Judge till it was sold.

3. The respondent has filed the above captioned review petitions pointing non-cooperation from the Managing Director of the appellant with further grievance that a lot of hypothecated machinery is not to be found at the places it was installed, and the agreement(s) between the parties prohibit the appellant from removing the machinery without the prior consent of the respondent.

4. The appellant does not dispute that a lot of hypothecated machinery is not in the premises where it had to be kept, but justifies the same as appellant's compulsion because the landlords of the buildings taken on rent to run diagnostic centres have regained possession.

5. Learned counsel for the respondent has produced an e-mail sent by the appellant which purportedly informs the respondent the current whereabouts of the hypothecated machinery. The same has been seen by us. Regretfully, the communication does not record the nature, the number or the make of the machinery.

6. The fact of the matter remains that till date the respondent is clueless to the whereabouts of the hypothecated machinery and the commercial solution which we had found being frustrated by the appellant, in our

opinion the ends of justice warrants the review petitions to be allowed.

7. Order dated April 08, 2016 is recalled and the appeals are dismissed.

8. The result would be that the receiver appointed by the learned Single Judge would now act as the Sole Receiver and would take charge of the hypothecated machinery.

9. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 24, 2016
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