

DEBT RECOVERY TRIBUNAL-III, DELHI**TSA/9/2023****DEV RISHABH REAL ESTATE PRIVATE LIMITED
VS. INDIAN OVERSEAS BANK**

14.08.2023

Suppl. List
Item No. 01

Present: Mr. Apporv Aggarwal along with Ms. Prachi Darji, Ld counsels for S. applicant.

Mr. Sanjiv Kakra, Ld. Sr. Advocate along with Mr. Bheem Sain Jain, Mr. Akash Madan and Mr. Deobansh Roy, Ld. counsels for respondent no. 1 bank.

1. This matter is taken up by this Tribunal through Video Conferencing.
2. It is a fresh SA filed on behalf of S. applicant under Section 17 of SARFAESI Act. Record reveals that this SA was originally filed before Ld. DRT-I and notice on this SA was issued vide order dated 08.08.2023.
 - 2.1 Since amount involved in this SA is more than Rs. 100.0 crore, hence, this SA has been received from DRT-I, Delhi on transfer today itself.
3. Ld. Sr. advocate appearing for respondent no. 1 bank informed that he has already filed reply to this SA. He also submitted that bid has been received in the auction sale scheduled to be held today itself i.e. on 14.08.2023.
4. Heard Ld. counsels for both the parties on the issue of interim relief.
5. Ld. counsel for S. applicant submitted that Era Infra Engineering Ltd. i.e. respondent no. 2 herein availed loan facility to the tune of Rs. 150.0 Crore from respondent no. 1

on 15.11.2012 and S. applicant mortgaged certain lands with the respondent bank. He has drawn attention of this Tribunal to Page 113 of SA (Annexure – A 8) viz. auction notice published in newspapers, wherein amount due to respondent bank is given as Rs. 125,83,04,356/- as on 14.10.2012 whereas loan was sanctioned on 15.11.2012. He further submitted that the loan amount due in said notice has already been settled and closed by the bank, hence, impugned auction notice is liable to be set aside and quashed. Apart from this, Ld. counsel for S. applicant submitted that the action of respondent bank suffers from various illegalities which are as follows :-

- (i) that respondent bank failed to serve any possession notice and auction notice;
- (ii) that the properties-in-question are agricultural lands which cannot be sold under SARFAESI Act since same are exempted under Section 31(i) of SARFAESI Act;
- (iii) Rule 8 (4) and 8(6) have not been complied by the respondent bank since no auction notice was uploaded on website by the bank;
- (iv) that Rule 9(1) under SARFAESI Act was not complied with by the bank as no demarcation was done.

Hence, request is made to grant interim relief in favour of S. applicant and respondent bank be directed to stay the operation of impugned Sale Notice dated 10.07.2023 issued by the respondent bank.

6. On the other hand, Ld. Senior advocate appearing on behalf of respondent bank vehemently opposed the request

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made by Ld. counsel for S. Applicant stating that the bank is to recover more than Rs. 500.0 Crore from borrower and guarantors of the bank including S. Applicant. He submits that on committing defaults by its borrower / guarantors, their account was declared as NPA and notice under Section 13(2) of SARFAESI Act dated 13.04.2023 was issued to S. applicant as well as principle borrower and guarantors which were duly sent to them through post and bank has filed postal receipts of the same along with its reply. He submitted that in the said notice, the amount due has been mentioned as Rs. 149.0 crore (approx.) as on 01.07.2013. He further submitted that objections to said demand notice were filed on 08.05.2023 and vide letter dated 19.05.2023, respondent bank disposed off the objections under Section 13(3A) of SARFAESI Act. Thereafter, respondent bank issued possession notice dated 30.06.2023 (Annexure R-15) under Section 13(4) of SARFAESI Act wherein following two amounts have been mentioned which were due :-

- (i) a sum of Rs. 149.0 Crore (approx.) as on 01.07.2013;
- (ii) a sum of Rs. 259.0 Crore (approx.) as on 08.05.2018.

He also submitted that said possession notice was duly served upon S. applicant as well as borrower / guarantors of the bank through post, affixation and publication in two newspapers (proof of same filed with reply).

Ld. Sr. advocate appearing on behalf of respondent bank submitted that S. applicant cannot take advantage of clerical mistake occurred in auction notice when two figures of

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amount due as on 01.07.2013 and 08.05.2018 have been given in possession notice. He further submitted that auction notice dated 10.07.2023 was also sent through post, affixed through banner on lands and published in two newspapers one in English and other in Hindi Language (proof of same filed with reply). He also submitted that at the time of creation of mortgage, license was applied for 108 acre of land, hence, it cannot be said that these lands are agricultural lands. He also submitted that the e-auction notice was duly uploaded on website of Indian Banking Publication Information (copy of screenshot enclosed with reply i.e. Annexure R-18). Thus, Ld. Sr. advocate appearing on behalf of respondent bank submitted that the respondent bank followed the due procedure under law while taking action under SARFAESI Act. Hence, request is made to dismiss the interim relief prayer of S. applicant.

In support of his contentions made hereinabove, Ld. Sr. Advocate for respondent bank has relied upon following judgments :-

- (i) Judgment passed by Hon'ble Supreme Court in the case of "ITC Limited Vs. Blue Coast Hotels Limited";
- (ii) Judgment passed by Hon'ble Supreme Court in the case of "Indian Bank and Others Vs. K. Pappireddy & Ors.";
- (iii) Judgment passed by Hon'ble Supreme Court in the case of "K. Sreedhar Vs. M/s Raus Constructions Pvt. Ltd. and Ors. [Dated 05.01.2023 passed in Civil Appeal Nos. 7402 of 2022];

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- (iv) Judgment passed by Hon'ble Supreme Court in the case of "Lalit Kumar Jain LVs. UOI and Anr." reported in (2021) 9 SCC 321;
- (v) Judgment passed by Hon'ble High Court of Delhi in the case of "Vineet Saraf Vs. Rural Electrification Corporation Ltd." reported in (2023) SCC Online DEL 4291.

7. Considered the rival contentions of both the parties and perused the records. In the present case, more than Rs. 500.0 Crore is due against the borrower / guarantor of the bank. On perusal of documents filed by both the parties, it appears that S. applicant has not denied receiving of notice issued under Section 13(2) of SARFAESI Act and filed objections to the same as well. Further, respondent bank also disposed off the objections under Section 13(3A) of SARFAESI Act. Moreover, possession notice has also been sent to the S. applicant through post, affixation and publication in two newspapers. Thereafter, auction notice dated 10.07.2023 has also been received by S. applicant (since receiving of same not denied by S. applicant) and the auction/sale is fixed for 14.08.2023 which is well beyond 30-days from the receipt of sale notice. As per the respondent bank, the demand notice, symbolic possession notice and other subsequent notices have issued in accordance with law and after following due process of law. So far as, question of typographical error occurred in sale notice is concerned, this Tribunal is of the view that no prejudice will be caused to S. applicant since availment of loan facility and creation of mortgage has been admitted by S. applicant. Further, Ld. counsel for S. applicant has

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failed to point out any illegality or irregularity in the sale notice dated 10.07.2023 issued by the respondent bank. Hence, I do not find any prima facie case exists in favour of S Applicant and balance of convenience also does not lie in favour of the S. applicant. Rather, respondent bank, of course, would suffer irreparable loss, in case the stay is being granted in favour of the S. Applicant, as the respondent bank is to recover huge amounts to the tune of Rs. 500.0 Crore (approx.) in the account of borrower and guarantor. Accordingly, prayer of S. Applicant for granting interim relief for restraining the respondent bank from auctioning/selling properties-in-question on 14.08.2023 is liable to be rejected, hence, same stands declined by this Tribunal.

8. Ld. counsel for S. applicant seeks two weeks time to file the rejoinder. Let him file the same with copy to other side.

9. Now the matter stands adjourned to 31.08.2023 before Ld. Registrar for filing affidavit in evidence by both the parties. Ld. Registrar is also directed to ensure service of other respondents and completion of pleadings on their part as well.

14.08.2023

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17.08.2023

(SHIV KUMAR - I)
PRESIDING OFFICER,
DRT-III, DELHI