

DEBTS RECOVERY TRIBUNAL-III, DELHI

TSA/9/2023

Dev Rishabh Real Estate Pvt Ltd Vs Indian Overseas Bank

03.01.2025

Item no. 17

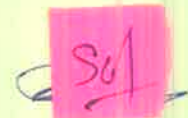
Present: Mr. Anniruddha Sharma, Ld. counsel for S. Applicant.
Mr. Parmod Kumar, Ld. counsel for IOB.
Mr. Abhishek Batra, Ld. counsel for respondent no. 4.

1. This matter is taken up by this Tribunal through Hybrid mode.
2. **IA No 1280/2024**, this application has filed on behalf of Securitization applicant stating therein that the Applicant Company, M/s Demas Developers Private Limited, has approached this Hon'ble Tribunal with the present application to place on record the Order dated 21.10.2024, passed by the Hon'ble NCLT in CP(IB) 190(PB)/2017, which clearly establishes the approval and implementation of the Resolution Plan of the Principal Borrower. The said Resolution Plan, having been duly implemented, resulted in the Respondent Bank receiving its dues through upfront payment, Non-Convertible Debentures (NCDs), and equity in the Principal Borrower. Consequently, there exists no default in the books of the Respondent Bank concerning the account of the Principal Borrower, and therefore, the invocation of proceedings under the SARFAESI Act against the Applicant is legally untenable. In light of the above, the Applicant prays for the Respondent Bank to be directed to disclose the details of the payments received under the approved Resolution Plan to ensure a fair and just adjudication of the pending Securitization Application.
3. On other hand, the Respondent Bank vehemently denies all the contentions raised by the Applicant in the instant Application and asserts that the approval of the Resolution Plan for the Principal Borrower does not impede the Respondent Bank's rights to pursue securitization measures against the subject properties secured by the guarantors, including the Applicant herein. It is well established in law that the liability of the guarantor is co-extensive with that of the principal borrower and does not get extinguished merely upon approval of a Resolution Plan under the Insolvency and Bankruptcy Code, 2016, as clarified by the Hon'ble Supreme Court in *Lalit Kumar Jain v. UOI & Anr* 2021 (9) SCC 321. Therefore, the Respondent Bank retains the right to proceed under the SARFAESI Act, 2002, against the secured assets for the recovery of its dues, and the present application, being misconceived and filed with the intent to delay the SARFAESI proceedings, deserves outright dismissal.

Sd/-

4. Considering the submissions advanced on behalf of Ld. Counsel for both the parties, it is clear that the Resolution Plan dated 21.10.2024, approved by the Hon'ble NCLT in CP(IB) 190(PB)/2017, has been duly implemented, reflecting the discharge of the financial obligations of the Principal Borrower towards the Respondent Bank through upfront payment, Non-Convertible Debentures (NCDs), and equity in the Principal Borrower. However, it is a settled principle under the Insolvency and Bankruptcy Code, 2016, as affirmed by the Hon'ble Supreme Court in *Lalit Kumar Jain v. UOI & Anr* 2021 (9) SCC 321, that the liability of guarantors is co-extensive and independent of the discharge of the corporate debtor's liabilities. The approval and implementation of the Resolution Plan do not absolve the Applicant, as a guarantor, from being proceeded against under the SARFAESI Act, 2002, for the secured interest created. Therefore, while the Tribunal allows the application **IA No 1280/2024** partly only to the limited extent of taking on record the Resolution Plan dated 21.10.2024, the prayer seeking disclosure of payments received and extinguishment of the Respondent Bank's rights to enforce security interest is hereby dismissed as untenable in law.
5. List the matter on 09.01.2025 for final arguments.

03.01.2025



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