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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO. 509 OF 2016
IN
COMPANY PETITION NO.258 OF 2002

Sarojben N. Patadia ...Applicant

In the matter between

Choksi Arvind Jewellers ...Petitioner

vs

Liquidator of M/s Hitachi Jewellery Industries Ltd...Respondent

WITH

COMPANY APPLICATION (L) NO. 510 OF 2016
IN
COMPANY PETITION NO.258 OF 2002

P. Magan Manufacturers ...Applicant

In the matter between

Choksi Arvind Jewellers ...Petitioner

vs

Liquidator of M/s Hitachi Jewellery Industries Ltd...Respondent

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Mr Sharan Jagtiani a/w Mr Dipak Khilari i/b MMK Law Associates for the Applicants in both CA.
Mr D.G.Rangras for the Respondent Co. (In Liqn.) in both CA
Mr Pankaj Shah i/b Priyanka Mishra for Pearl Opticals Ltd. (Intervener) in both CA.
Ms Vandana Jaisingh for M/s Indusind Bank Ltd. in both CA
Mr Farhad Jiwani, Asstt. Vice President of Indusind Bank Ltd.
Mr Kiran Chanta, Vice President and Zonal Head West FRR of Indusind Bank Ltd.
Mr Mahendhar Aithe, Co-prosecutor for OL in both CA

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CORAM : B. P. COLABAWALLA J.

JULY 20, 2016

P.C. :

Both these Company Applications have been filed seeking an order and direction to unseal the premises being that piece and parcel of two plots of lands situate at Survey No.8, Village Sanjan, Toombh, Sanjan Bhilad Road, Taluka Umargam, Dist. Bulsar, Gujrat admeasuring approximately 4046.73 sq.mtrs. (hereinafter referred to as the "**Sanjan Property**"). These applications have been filed in view of the fact that on 5 July, 2016, this Court had directed the Official Liquidator to hand over the Sanjan property along with another property [being Industrial Gala No.27 on the 1st floor, Nandini Industrial Estate, Survey No.110/2/12, Amli in the Union Territory of Dadra and Nagarhaveli (the "**Silvasa Property**")] to Indusind Bank Ltd. who claimed to be the secured creditor in relation to both these properties. As far as these applications are concerned, they are only with reference to the Sanjan property.

2 Ms Jaisingh, learned counsel appearing on behalf of the Indusind Bank Ltd. tendered a decree and order passed by the Debt Recovery Tribunal – II, Mumbai ("DRT") in O.A. No.358 of 2002 passed against the Respondent Company (In Liqn) as well as other parties wherein the DRT has *inter alia* given a declaration that the Sanjan property is secured by an equitable mortgage.

3 This being the position, Mr Jagtiani, learned counsel appearing on behalf of the Applicants, fairly stated that in view of this declaration he is not in a position to seek the reliefs claimed in the present Company Applications. He states that it is the case of the Applicants herein that this property was never owned by the Respondent Company (In Liqn.) and could, therefore, have never been mortgaged in favour of the Indusind Bank Ltd. He, however, states that in view of this declaration given by the DRT, he will take appropriate proceedings in the DRT to have the Judgment and Order dated 29 March, 2004 passed by the DRT modified and/or varied. He, however, requested that till he takes appropriate proceedings, a limited protection be given directing the Indusind Bank Ltd. not to take any further steps under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") for disposing of the Sanjan property.

4 Ms Jaisingh, on instructions of the officers of the bank who are present in the Court today, states that purely as an indulgence, the Respondent Bank shall not take any further steps in relation to the Sanjan property under the SARFAESI Act for a period of four weeks from today. The said statement is accepted.

5 In the light of this, the Official Liquidator is directed to forthwith comply with the order passed by this Court on 5 July, 2016 in Company Application No.275 of 2014 in Company Petition No.258 of 2002. The Official Liquidator shall handover the possession of both the properties mentioned in the order dated 5 July, 2016 on 25 July, 2016. It is clarified that the statement made by Indusind Bank Ltd. is only in relation to the Sanjan property and not in relation to the Silvasa property. Once proceedings are adopted by the Applicants herein before the DRT/DRAT, the same shall be decided by the said Tribunal on its own merits, uninfluenced by any observations made by this Court. It is clarified that all contentions of both sides including the issue of limitation are kept open, which shall be decided by the Tribunal on its own merits. It is further clarified that the Applicants herein as well as the Ex-Directors of the Respondent Company (In Provisional Liquidation) will be at liberty to take whatever objections which they are entitled to in law, to the proposed action under the SARFAESI Act.

6 It is submitted before me that the Sanjan property has a tenant in it by name of 'Pearl Opticals Ltd.'. It is clarified that I have not examined that whether 'Pearl Opticals Ltd.' is a tenant, genuine

or otherwise. If 'Pearl Opticals Ltd.' is aggrieved by any action taken by Indusind Bank Ltd. under the provisions of the SARFAESI Act, they are free to file their independent proceedings, which will be decided on its own merits and in accordance with law. I have not opined, one way or the other, on the genuineness of the tenancy claimed by the 'Pearl Opticals Ltd.'

7 The Company Applications are disposed of in the aforesaid terms. The parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

(B. P. COLABAWALLA J.)