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

\+ W.P.(C) 6709/2015

H.S. BEDI ..... Petitioner

Represented by: Mr.Rishabh Kapur, Adv.

versus

IDFC LTD. ..... Respondent

Represented by: Ms.Usha Singh, Mr.Sachin Sharma, Advs.

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

<u>O R D E R</u>

% **16.02.2016**

1. Heard learned counsel for the parties.

2. M/s. Tulip Telecom Limited of which petitioner Lt.Col. H.S.Bedi (Retd.) was the Managing Director of had availed of a credit facility from IDFC. An agreement dated May 06, 2011 was arrived at containing the terms and conditions for the credit to be advanced. The writ petitioner executed a deed of guarantee.

3. As per Clause 3.1 of the written agreement a first mortgage and a charge on the principal borrower's immovable property located at Plot No.32, MIDC, Central Road, Andheri East, Mumbai has to be created.

4. Taking the credit, the principal borrower failed to execute a deed of mortgage or deposit the title deed of the property promised to be mortgaged with the bank.

5. The credit became sticky. IDFC filed an application under Section 19

of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (RDDBFI Act) and along therewith it filed IA No.40/2013 praying for attachment of various properties belonging to the borrower and the guarantor.

6. Noting that the debt claimed was in sum of ₹94,98,65,498/-(Ninety Four Crores Ninety Eight Lakhs Sixty Five Thousand Four Hundred and Ninety Eight only), the Debts Recovery Tribunal passed an order on June 21, 2013 restraining the respondents before it from encumbering, parting with possession or selling the properties in respect whereof interim relief was prayed for; details of which property have been noted in paragraph 11 of the order.

7. Carried in appeal the order dated June 21, 2013 was interdicted by the Debts Recovery Appellate Tribunal vide order dated April 06, 2015, which has been impugned.

8. In a curiously worded order, the Appellate Tribunal has held that since principles akin to order XXXVIII Rule 5 of the Code of Civil Procedure were not attracted the Debts Recovery Tribunal could not have passed the order. After holding so, the termination of the order is by passing a direction which negates the order. The direction is that the impugned order would be set aside provided the appellant before the Debts Recovery Appellate Tribunal furnishes security of the value of the property at Mumbai.

9. The impugned order has not been challenged by IDFC.

10. As regards the writ petitioner the challenge must fail on the simple reason that the loan agreement warranted a mortgage of the property at Mumbai. Admittedly the petitioner has not created the mortgage.

Therefore, either said property has to remain under an attachment or a security in terms of money for the value of the property needs to be furnished to the satisfaction of the Debts Recovery Tribunal.

11. The petition is dismissed.

12. No cost.

CM 12231/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 16, 2016
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