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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 263 OF 2017
IN
ARBITRATION PETITION NO. 367 OF 2015**

Tata Capital Financial Services Ltd	...Petitioner
<i>Versus</i>	
Navinchandra Gangadhar Hegde & Ors	...Respondents
<i>And</i>	
Sovin Navinchandra Hedge	...Applicant

Ms Shirin Shaikh, *i/b Raval Shah & Co, for the Applicant/
Respondent No. 2.*

Mr OA Das, *for Respondent No. 7.*

Mr Mayur Khandeparkar, *with T Kadam, i/b MDP Parnters, for the
Petitioner.*

Mrs Kavita Ambekar, *Ist Assistant to the Court Receiver, is present.*

**CORAM: G.S. PATEL, J
DATED: 6th March 2017**

PC:-

1. The Petitioner, Tata Capital Financial Services Limited (“**Tata Capital**”) was the lender. The principal borrowers were Respondents Nos. 5 and 6, Sentinel Rolling Shutters & Engineering Co Pvt Ltd and Octomec Engineering Ltd. Respondents Nos. 1, 2, 3 and 4 were all co-borrowers and guarantors. There was also a

separate transaction in which the Respondent No. 1 stood guarantee for a loan granted by Respondent No. 7, Reliance Assets Reconstruction Co Ltd.

2. For the loan from Tata Capital, the present Petitioner and Respondents Nos. 1, 2, 3 and 4 as owners mortgaged Flat No. 1401, 14th & 15 Floor, RNA Auroville, Junction of Jangadhar Marg, CTS No. G/217/B, Plot No. 23-B, TPS 4 Scheme, Village Bandra, Santacruz 400 054.

3. The property was ultimately sold in a public auction conducted by the Court Receiver. The successful bidder, Mrs Bina Shah, put in an offer of Rs. 17,01,00,000/-. Another bidder's deposit of Rs. 50 lakhs was forfeited. The aggregate amount in the hands of the Court Receiver including other inflows was thus a little in excess of Rs 17,51,00,000/-. From this, the Petitioner, Tata Capital was paid two amounts of Rs 10,77,69,147/- and Rs 3,72,13,872/-. Society dues of Rs 53,25,762/- were also paid. An amount of Rs. 17,01,000/- was paid out as TDS and finally an amount of Rs 3,10,176/- was paid towards municipal taxes.

4. The present application by Respondents Nos. 1 to 4 is that from the balance, 25% should be paid out to the Respondent No. 1 and the remaining 75% to Respondents Nos. 2, 3 and 4.

5. There are several difficulties in accepting this application. To being with, the amount of Rs 50 lakhs, the forfeited amount, has been ordered by the Division Bench to be repaid to the person who

deposited that amount. Second, the 7th Respondent, Reliance Asset Reconstruction Co Ltd has independently filed recovery proceedings in the DRT-I. There it has obtained an order that the entire balance proceeds be brought into the DRT. The Affidavit in Support of the Chamber Summons in paragraph 12 makes this clear. Respondents Nos. 1 to 4 must, therefore, move the DRT for a variation or modification of that order. I note their submission today that they were not heard, but that is an application they must make to the DRT, not to me. It does, however, seem that the Court Receiver of this Court is not a party to the Original Application filed by Reliance Asset. For the present, therefore, the Court Receiver will retain the funds in his hands and will not transfer them pending further orders.

6. Liberty to the Applicant/Respondent to make necessary application before the DRT-I.

7. By consent the Notice of Motion is disposed of in these terms with liberty to the Applicant to file a fresh Notice of Motion, if necessary and if so advised.

8. Affidavit in Reply filed on behalf of the 7th Respondent is taken on record.

(G. S. PATEL, J.)