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

\+ **W.P.(C) 6957/2017, CM No. 28901/2017, CM No. 28902/2017, CM No. 28903/2017**

DENA BANK ..... Petitioner

Through: Mr. Arun Aggarwal, Advocate.

versus

MADHU BABBAR & ORS ..... Respondents

Through: Mr. Sanjeev Bhandari, Advocate along with Mr. Vipin, Advocate .

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **11.08.2017**

1. The petitioner/Bank is aggrieved by an order dated 02.08.2017 passed by the learned DRAT issuing a notice to show cause to the Senior Manager (Legal), Chief Manager (RMB) and Dy. Zonal Manager of the Bank who are signatories to a departmental note dated 22.06.2017, taking a decision to sell four shops out of a list of 12 shops mortgaged by respondent no. 1 through a private treaty, though they were earlier put to e-auction on two occasions, to explain as to why should it not be assumed that they have abused the process of the Tribunal.

2. Under the impugned order, the DRAT has also directed the petitioner/Bank to deposit the sale proceeds received in respect of the four shops in question from two private persons impleaded in the present

proceeding as respondent nos. 12 and 13, subject to a final order.

3. Briefly stated, the relevant facts of the case are that the respondent no. 11, sole proprietor of M/s Sachdeva Brothers had approached the petitioner/Bank in the year 2010 for extension of cash credit facilities. The said facilities were duly sanctioned by the petitioner/Bank to the tune of Rs. 1 crore. The respondent no. 11 executed collateral securities for repayment of the credit facilities by creating equitable mortgage in respect of property no. B-1, measuring 131.11 sq. yards, with additional area 16.67 sq. yards on the first floor and above, situated in Village Ghondli in the abadi of DLF Colony,Krishna Nagar, Shahdara, Delhi, by depositing the original title deeds with the petitioner/Bank.

4. After availing of the cash credit facility, the respondent no. 11 did not adhere to financial discipline and failed to abide by his commitment to repay the loan. As a result, on 24.12.2015, the petitioner/Bank declared the said loan account as an NPA and initiated measures against the respondent no. 11 under the SARFAESI Act, 2002.

5. A demand notice dated 06.02.2016 was issued by the petitioner/Bank calling upon the owners to deposit a sum of Rs. 1,00,02,841/-. Thereafter, on 22.04.2016, the petitioner/Bank issued the possession notice under Section 13 (4) of the SARFAESI Act, 2002 and approached the learned CMM for appointing a Receiver to take over the physical possession of the mortgaged property. Vide order dated 22.04.2016, the learned CMM appointed a Court Receiver for the said purpose who took over the physical possession of the property on 07.10.2016.

6. After fixing the reserve price of 12 shops situated in the mortgaged

property, the petitioner/Bank issued the first e-auction sale notice on 24.11.2016. However, the e-auction conducted on 30.12.2016, failed in the absence of any bid.

7. In the meantime, the respondent nos. 1-4 filed an application before the learned DRT stating *inter alia* that they had purchased the mortgaged property from the respondent no. 11 through four separate sale deeds. The petitioner/Bank opposed the said application and stated before the DRT that the original title documents were in its possession and therefore, the respondent nos.-1-4 did not had any valid title over the mortgaged property.

8. Thereafter, the petitioner/Bank decided to conduct a second e-auction on 15.02.2017, in terms of a sale notice dated 25.01.2017. As per the said notice, the bids were to be received from the public on or before 10.02.2017. On 14.02.2012, on an application moved by the respondent nos. 1-4, the DRT passed a *status quo* order in respect of the e-auction that was scheduled for 15.02.2017.

9. Aggrieved by the aforesaid order, the petitioner/Bank approached the the DRAT in the last week of May, 2017. Vide order dated 02.06.2017, while issuing notice in the appeal returnable on 27.06.2017, as an interim measure, the DRAT stayed the order dated 14.02.2017 passed by the DRT. In other words, the *status quo* order dated 14.02.2017 passed by the DRT restraining the petitioner/Bank from conducting an e-auction of the shops in question was vacated, thereby entitling the petitioner/Bank to conduct an e- auction of the said shops as planned earlier. Instead of following the said route, three senior officers of the petitioner/Bank took a decision on 22.06.2016, to enter into a private treaty in respect of four shops that were part of the lot of 12 shops

which had earlier been put to e-auction, with the respondent nos. 12 and 13. On the basis of the said private treaty, the petitioner/Bank handed over the physical possession of the four shops in question to the respondents no. 12 and 13 on 20.07.2017**.**

10. It is an undisputed position that the above steps were taken by the petitioner/Bank without first approaching the learned DRAT for seeking permission to conduct a private auction instead of adopting the e-auction mode as it had done earlier. When the aforesaid position was brought to the notice of the learned DRAT by the respondent nos. 1- 4, the impugned order dated 02.08.2017 came passed wherein a *prima facie* view has been expressed to the effect that there is something fishy about the whole transaction and the attempt of the petitioner/Bank to sell some of the shops by private treaty while contemporaneously proceeding to e-auction the remaining shops, did not appear to be legally permissible, particularly, when the Bank had approached the DRAT for seeking vacation of the *status quo* order passed by the DRT, restraining the Bank from conducting an e-auction of all the 12 shops on 15.02.2017.

11. On examining the view expressed by the Senior Manager (Legal), Chief Manager (RMD) and Dy. Zonal Manager of the petitioner/Bank, in their note dated 22.06.2017, whereby a decision was taken to proceed with the sale of four shops by entering into a private treaty with the respondent nos. 12 and 13, the learned DRAT issued a notice to show-cause to the aforesaid officers to explain their conduct. The said order brings the petitioner/Bank to this Court in appeal.

12. Mr. Aggarwal, learned counsel for the petitioner submits that pursuant

to the impugned order, possession of the four shops has been taken back from the respondent nos. 12 and 13/purchasers and the sale proceeds received by the Bank have been deposited with the DRAT. Now, the only grievance of the petitioner/Bank is the direction of the DRAT calling upon the three Senior Officials of the Bank to reply to the notice to show cause issued by the DRAT, explaining *inter alia* as to how and what manner did they adopt the route of private treaty when all the 12 shops in question were put to e-auction by the Bank on two earlier occasions and even when the Bank had approached the DRAT in appeal, its grievance against the DRT was that the Bank had been wrongly restrained from conducting an e-auction.

13. Mr. Aggarwal, learned counsel for the petitioner submits that respondents no. 12 and 13 had in fact participated in the second e-auction that was to be conducted by the Bank by submitting their bids but the same had to be aborted due to the stay granted by the DRT and it is not as if the said respondents were personally known to any of the Officers of the Bank. Instead, it was on the basis of their submitting bids in the second e-auction and later on, directly approaching the Bank for entering into a private treaty in respect of the four shops that the aforesaid sale transaction had taken place on 22.06.2017.

14. We are of the opinion that the petitioner/Bank and the officers who took a decision on 22.06.2017 to enter into a private treaty with the respondents no. 12 and 13 ought to satisfy the DRAT with regard to their *bona fides*, particularly when the said decision was taken when the matter was subjudice before the DRAT. Simply because the DRAT has called upon the concerned officers of the Bank to explain what weighed with them to

entertain a private treaty with the respondent nos. 12 and 13 when the Bank itself had approached the DRAT with a grievance that the DRT had illegally stayed the e-auction of all the shops scheduled on 15.02.2017, cannot be the ground for us to interfere with the impugned order, that too at a stage when the learned DRAT has yet to examine the affidavits directed to be filed by the Officers of the Bank and take a view in the matter.

15. On enquiring, learned counsel for the petitioner submits that the affidavits have been drafted but they have not been filed so far. He undertakes that the same shall be handed over before the DRAT on the next date of hearing i.e on 14.08.2017.

16. We deem it appropriate to direct the presence of all the three Officers on 14.08.2017, before the DRAT, just in case any query is required to be posed to them on the basis of the averments made in their respective affidavits and the counsel appearing for the petitioner/Bank is not completely briefed on that aspect. We are sure that the learned DRAT will proceed further in the matter only after examining the affidavits in question and satisfying itself.

17. The present petition is disposed of as premature along with the pending applications.

HIMA KOHLI, J

DEEPA SHARMA, J

AUGUST 11, 2017

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