IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4034 OF 2018

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Jewel Tech (I) P. Ltd.
through Mr. Shekhar Mehta & Anr. ....Petitioners
V/S
The State of Maharashtra & Ors. ....Respondents

…

Mr. Prashant J. Pandit for the Petitioners.
Mrs. S.D. Vyas, 'B' Panel for the Respondent No.1/State.
Mr. Rohit Gupta a/w Mr. Parinit Saratkar i/b M/s. SSP Legal for the Respondent No.2.

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CORAM : A.A. SAYED &
RAVINDRA V. GHUGE, JJ.
DATE : 03 APRIL 2018.

ORDER:

1 The Petitioners by this Petition filed under Articles 226 and 227 of the Constitution are essentially impugning the order dated 20 January 2017 passed by the learned Chief Metropolitan Magistrate, Mumbai and the consequent notice dated 22 March 2018 issued by the Advocate Court Commissioner to take physical possession of the secured assets viz. (i) Premises No.1, consisting of basement, pool and ground floor, admeasuring about 1660.60 sq.ft. forming part of the building known as Mini Divyalok, 320 L.D. Ruparel Marg, Malabar Hill, Mumbai 400 006

belonging to Divyalok Co-op Housing Society Ltd., relating to the Share Certificate No.53 dated 01.03.1979, (ii) Premises No.2, consisting of basement, pool and ground floor, admeasuring about 1975.10 sq.ft. forming part of the building known as Mini Divyalok, 320 L.D. Ruparel Marg, Malabar Hill, Mumbai 400 006 belonging to Divyalok Co-op Housing Society Ltd., relating to the Share Certificate No.54 dated 01.03.1979, and (iii) Premises No.3, consisting of basement, pool and ground floor, admeasuring about 499 sq.ft. forming part of the building known as Mini Divyalok, 320 L.D. Ruparel Marg, Malabar Hill, Mumbai 400 006 belonging to Divyalok Co-op Housing Society Ltd., relating to the Share Certificate No.52 dated 01.03.1979.

2 Learned Counsel for the Petitioners submitted that the Petitioners are required to approach this Court, as DRT-1 Mumbai is not entertaining Securitisation Applications filed under section 17 of the SARFAESI Act on the basis of the recent judgment of the Full Bench of the Allahabad High Court in the case of **M/s. N.C.M.L. Industries Ltd. through Director and another vs. Debts Recovery Tribunal, Lucknow and others, 2018 SCC OnLine All 176** which interalia relies upon the judgment of the Apex Court in **Standard Chartered Bank vs. Noble Kumar and others, (2013) 9 SCC 620.**

3 Learned Counsel for the Petitioners submitted that by the impugned order dated 20 January 2017, the Chief Metropolitan Magistrate, Mumbai, appointed a Court Commissioner to take possession of the secured assets. He pointed out that a notice dated 22 March 2018 has now been issued by the Court Commissioner stating that the possession of the secured assets and the execution of the possession warrant is fixed on 4 April 2018 (i.e. tomorrow at 11 a.m.).

4 The Respondent - State Bank of India had come out with a scheme called "One Time Settlement (OTS) of Non-Performing Assets 2017" and in terms of that Scheme, by letter dated 3 October 2017 the Petitioners were offered settlement in the following terms:

> "State Bank of India has come out with a scheme for One Time Settlement (OTS) of non-performing assets 2017. In this connection, we would like to advise you that your dues to the Bank are eligible for settlement under the SBI OTS 2017 on the following terms and conditions:
>
> (i) Ledger outstanding (excluding accrued interest from the date of NPA) on 31.03.2017 : Rs.23,27,30,603/-;
>
> (ii) Amount of OTS : Rs.16,64,11,422/- (Amount recovered after 31.03.2017 will be adjusted against the OTS amount);

(iii) Application for OTS will be processed only on deposit of minimum 10% (Rs.23273060.0) of the Ledger outstanding as on 31.03.2017;

(iv) 25% (Rs.41602856.0) of the OTS amount will have to be deposited by you as upfront money within thirty days from the date of sanction of OTS. This would include the amount deposited by you along with the application;

(v) The balance amount can be paid within 6 months from the date of sanction of OTS (the validity period) together with interest @ MCLR+2%, failing which the OTS sanction will be rendered infructuous;

(vi) However, no interest will be charged, if the entire OTS amount is paid within 3 months from the date of sanction;

(vii) You will be eligible for an additional incentive of 10% discount on the OTS amount, on making payment of the entire OTS amount on or before 31.12.2017."

5 Learned Counsel for the Petitioners submitted that at the relevant time there were certain personal difficulties inasmuch as the Petitioner's uncle was in very poor health and under medical observation in the hospital and unfortunately he passed away on 22 October 2017 and this fact was intimated to the Respondent Bank vide letter dated 1 January 2018. In the

said letter dated 1 January 2018, the Petitioners had stated that they have found an Investor/Financer who was ready to help them in order to settle the dues and alongwith the said letter, the Petitioners enclosed a “photocopy” of the demand draft of Rs.2 crores dated 29 December 2017. It was further stated in the said letter that the Investor/Financer would directly hand over the demand draft to the Bank on receipt of the sanction and the balance of Rs.14.64 crores shall be deposited within 30 days from the receipt of the sanction.

6 The Respondent Bank replied on 26 February 2018 to the said letter dated 1 January 2018 of the Petitioners in the following terms:

> “With reference to your letter no.01/01/2018 offering Rs.16.64 crs towards settlement of dues in the captioned account.
>
> 2. In this connection, we advise that your offer for settlement Rs.16.64 crs; in the account is considered too low and not in tune with the securities available to the Bank. Hence the offer for settlement is rejected.
>
> 3. This letter is issued without prejudice to the Bank's right to initiate or proceed further with legal action, including action under SARFAESI Act for recovery of the Bank's dues.
>
> Accordingly we are returning herewith the Pay order for Rs.2.00 crs (issued by IDBI Bank, Nana Chowk Mumbai, PO No.011262 dated 29.12.2017 favoring Jewel Tech India Ltd.).”

7 Learned Counsel for the Petitioners submitted that even today the Petitioners are ready and willing to pay the outstanding dues and the Petitioners have found an Investor/Financer and the Respondent Bank may be directed to accept the OTS which was offerred vide letter dated 3 October 2017 of the Respondent Bank.

8 Learned Counsel for the Respondent Bank on the other hand submitted that the OTS of 2017 offered to the Petitioners was not availed of by them. He submitted that the Petitioners had earlier filed Securitisation Application No.162 of 2015 before the DRT-II, Mumbai, challenging the measures under section 13(4) of the SARFAESI Act after the Respondent Bank had demanded from the Petitioners a sum of Rs.140,32,12,821.02 as on 30 November 2014 vide demand notice dated 11 December 2014 under section 13(2) of the SARFAESI Act. The said Securitisation Application came to be rejected vide order dated 14 July 2016 by DRT-II, Mumbai. Aggrieved by the said order, the Petitioners had filed an Appeal before the DRAT. In the Misc. Application filed under section 18(1) of the SARFAESI Act seeking waiver of pre-deposit, an order dated 22 September 2015 came to be passed by the DRAT for deposit of 50% of the amount as demanded in the notice under section 13(2) of the SARFAESI Act, as condition

precedent for entertaining the Appeal. Learned Counsel for the Respondent Bank pointed out that the Petitioners failed to deposit the amount as directed by DRAT and the Appeal accordingly came to be dismissed. Learned Counsel for the Respondent Bank submitted that the Petitioners have suppressed the filing of the Securitisation Application and the orders passed by the DRT and DRAT in the present Writ Petition.

9 Learned Counsel for the Respondent Bank further pointed out the observations of the DRAT, Mumbai in the order dated 22 September 2016 wherein the reference was made to two earlier OTS schemes/proposals. He submitted that the Petitioners had failed to avail the aforesaid two earlier OTS proposals also and that the Petitioners are unable to pay the outstanding dues to the Respondent Bank.

10 We have heard the learned Counsel for the parties and perused the material on record.

11 We find that the offer under the One Time Settlement Scheme of 2017 made by the Respondent Bank has not been availed of by the Petitioners. Under the said OTS Scheme, the Petitioners were required to make initial payment of 10% of the ledger outstanding, which came to Rs.2,32,72,060/-. However instead of paying the said amount the

Petitioners only forwarded "photocopy" of a demand draft, that too of Rs.2 Crores. We also find that the Petitioners have suppressed the fact of having filed Securitisation Application challenging the measure under section 13(4) of the SARFAESI Act, as also the orders passed by the DRT and DRAT in the present Petition. In the case of **Bhaskar Laxman Jadhav and others vs. Karamveer Kakasaheb Wagh Education Society and others, (2013) 11 SCC 531,** it has been held by the Supreme Court that it is the duty of the litigant to disclose all material facts and he cannot decide which facts are material and which are not and the litigant must come to Court with clean hands.

12 Before us the learned Counsel for the Petitioners kept harping upon the OTS Scheme of 2017 which has never been availed of by the Petitioners as the Petitioners even failed to pay the initial 10% amount of ledger outstanding which came to Rs.2,32,72,060/-. The Petitioners had forwarded only a photocopy of demand draft, that too of Rs.2 Crores towards the initial deposit. The Respondent Bank had rightly rejected the belated attempt by the Petitioners to avail of the OTS Scheme of 2017. The Petitioners had also not availed of the earlier two OTS proposals. It is evident that the Petitioners are not in a position to clear the outstanding dues of the Respondent Bank which as per the demand notice

dated 30 November 2014 under section 13(2) of the SARFAESI Act, were to the tune of about Rs.140 crores.

13 In the circumstances, we are not inclined to exercise the writ jurisdiction of this Court and entertain the Petition. The Petition shall accordingly stand dismissed. There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.) **(A.A. SAYED, J.)**

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