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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6230 OF 2018

M/s. Life Line Global Limited & Ors. .. Petitioners
Vs.
HDFC Bank Limited .. Respondent

Mr. Tushad Cooper I/b Vivek V. Phadke for the Petitioners.
Mr. Chetan Kapadia a/w. Mr. Shashank Fadia, Ms. Priyanka Fadia for the Respondent.
Mr. Banarsilal Gurdasram Madan-Petitioner No.2 present in person.
Mr. Harish Kumar Madan-Petitioner No.3 present in person.

CORAM : K. K. TATED AND N. J. JAMADAR, JJ.
DATE : 29th OCTOBER, 2018.

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1. Learned Counsel for the Petitioners and the Respondents submit that the matter is settled between the parties out of the Court. The parties have tendered Consent Terms. The Consent Terms are taken on record and marked as '**X**'.

2. Petitioner No.2-Mr. Banarsilal Gurdasram Madan and Petitioner No.3-Mr. Harish Kumar Madan entered the witness box on behalf of Petitioner No.1. Petitioners Nos.2 and 3 admit contents of the Consent Terms and execution thereof. Shri Santosh Patil, Area Legal Manager of Respondent entered the witness box and admits the contents of the Consent Terms and execution thereof. The Consent Terms reads as under:

"CONSENT TERMS BETWEEN PETITIONERS & RESPONDENTS

By consent of parties, following order is passed:

1. *The Respondent has filed O.A. No.1132 of 2017 against Petitioner No.1 (principal borrower) and Petitioner Nos.2 to 4 (guarantors/mortgagors) for recovery of a sum of Rs.5,83,88,948.74 as on 18/07/2017 along with further interest thereon @ 10.50% p.a. from 19/07/2017 till payment and / or realisation.*

2. *In order to secure the aforesaid amount, the Petitioner No.2 has created equitable mortgage of immoveable property being Residential Flat bearing No.701, 7th Floor, Santacruz Saryu Premises Co-operative Society Limited, Plot No.64-B, F P No. 107, CST No.567, Linking Road, Santacruz (W), Mumbai 400 054.*

3. *The Petitioner Nos. 2, 3 and 4 are co-borrowers along with Petitioner No.1 and accordingly jointly and severally liable to the Respondent for the aforesaid amounts.*

4. *The Respondent has taken steps against the mortgaged property since issuance of notice dated 25/09/2009 under section 13 (2) of the SARFAESI Act. The Respondent has filed Application under section 14 of the SARFAESI Act bearing No. 261/SA/2015, which is pending before Chief Metropolitan Magistrate Court at Esplanade Mumbai. The Respondent has taken symbolic possession of the mortgaged / secured property on 12/03/2015.*

5. *The present Petition arises from Order dated 20/11/2014 dismissing S.A. No. 281 of 2010 filed by the Petitioners. By Order dated 24/03/2017, Appeal No.84 of 2015 filed by the Petitioner is dismissed and M.A. No. 843 of 2016 is thereafter dismissed by the Debt Recovery Appellate Tribunal on 24/03/2017.*

6. *Original Application No. 1132 of 2017 is hereby allowed in terms of prayer clauses (a), (b), (c) and (e) thereof. A Recovery Certificate be drawn up forthwith in the aforesaid terms. The said prayers are reproduced herein below:*

"a) that this Hon'ble Tribunal be pleased to pass an order under Section 19 (4) of the Recovery of Debt Due to Banks and Financial Institutions Act 1993 directing the Defendants to pay to the Applicants a sum of Rs.5,83,88,948.74 (Rupees Five Crores Eighty Three Lacs Eighty Eight Thousand Nine Hundred Forty Eight and Seventy Four paise Only) as on 18/07/2017 in respect of Loan Against Property Facility together with further interest thereon @10.50% per annum with monthly rests from 19/07/2017 till payment and / or realization thereof, as more particularly described in particulars of claim being Exhibit "F" hereto.

b) that this Hon'ble Tribunal may be pleased to issue Certificate for the Recovery of the dues from the Defendants of Rs.5,83,88,948.74 (Rupees Five Crores Eighty Three Lacs Eighty Eight Thousand Nine Hundred Forty Eight and Seventy Four paise Only) as on 18/07/2017 in respect of the said facility as more particularly described at particulars of claim being Exhibit "F" hereto, together with further interest thereon @ 10.50% per annum with monthly rests from 19/07/2017 till payment and/or realisation, costs, expenses incurred or to be incurred for preservation and enforcement of the security and realisation of the amounts due from the Defendants according to Recovery of Debts Due to Bank and Financial Institutions Act, 1993 and such certificate should be forwarded to the Recovery Officer of the Tribunal for recovery of the said debt from the Defendants in accordance with the provisions of Chapter V of the said Act.

c) that this Hon'ble Tribunal be pleased to declare that the said *mortgaged immovable property described at Exhibit "B" hereto are validly mortgaged in favour of the Applicants and that the same are charged with repayment of Applicants' dues and that the said mortgage are valid, subsisting and enforceable for recovery of Applicants' dues;*

e) that in the event of the sale proceeds and/or realisation of the said mortgaged property described at Exhibit "B" hereto and being found to be insufficient the Defendants be ordered and decreed to pay to the Applicants the shortfall of the deficiency of the amount due to the Applicants as mentioned in prayer (a) above"

7. *The Application bearing No. 261/SA/2015 before ACMM under Section 14 of the SARFAESI Act is allowed in terms of prayer (a) and (b) thereof. Prayer (a) and (b) thereof are reproduced hereinbelow:*

   "a) direct the concerned Registrar to take physical possession and control of the secured asset viz.,Flat No. 701, 7th Floor, Saryu Premises CS Ltd., Plot No. 64-B, FP No.107, CTS No. 567, Linking Road, Santacruz (w), Mumbai – 400054 in the Registration Districts Bombay City and Bombay Suburban, with reasonable force which includes the breaking open of lock (s), wherever necessary and also direct the concerned Police Station to provide help/assistance in taking physical possession of the secured asset;

   b) Utilize or direct the utilization of such force including assistance of police force, remove any person/s occupying the said secured asset as permissible in law, as this Hon'ble Court deems fit, proper and appropriate to secure the possession of the secured asset as described and detailed in the schedule hereunder written"

8. *The Recovery Certificate to be drawn in favour of the Respondent as set out in paragraph 6 hereinabove and the Order of physical possession in respect of the mortgaged property as set out in*

paragraph 7 hereinabove is hereby agreed between the Parties not to be implemented, if and subject to the Petitioners jointly and / or severally making the below mentioned payments to the Respondent on or before the dates mentioned hereinafter:

(a) Rs.20,00,000/- (Rupees Twenty Lakh only) vide pay order No. 578177 drawn on Canara Bank, Fort branch in favour of the Respondent on the execution hereof; &.

(b) Rs.2,40,00,000/- (Rupees Two Crore Forty Lakh only) on or before 31/12/2018.

In the event both the aforesaid payments are made by the Petitioners to the Respondent as stipulated hereinabove the Recovery Certificate as set out in para 6 hereinabove shall stand fully satisfied and the Respondent Bank shall thereafter have no further claim of any nature whatsoever against the Petitioners or any of them nor shall the Respondent have any claim to or in respect of the property mortgaged to the Respondent. Further the Respondent Bank on receipt of the above payments shall handover to the Petitioners the title documents in respect of the mortgaged property and No Dues Certificate within 24 hours.

9. In the event payment as set out in clause 8 (b) hereinabove is not made within the time as agreed i.e. on or before 31.12.2018, the Petitioners undertake to this Hon'ble Court to hand over physical possession of the mortgaged property to the Respondent bank at 11.00 am on 01/01/2019 without any further notice in that regard.

10. *In the event of the Petitioners failing to hand over possession as aforesaid, the Petitioners will be in breach of the undertakings given to this Hon'ble Court and be liable for having committed contempt of this Hon'ble Court. The Respondent bank shall further be entitled to enforce the Order referred in para 7 hereinabove and thereby take physical possession of the mortgaged property with the help of concerned police station. The Senior Inspector of the concerned police station where under the secured property is situated i.e. Flat bearing No.701, 7th Floor, Santacruz Saryu Premises Co-operative Society Limited, Plot No.64-B, F P No. 107, CST No.567, Linking Road, Linking Road, Santacruz (W), Mumbai 400 054, is hereby directed to render assistance to the Respondent bank to execute the present order.*

11. *The Respondent shall be free to proceed with sale of the mortgaged property under the provisions of the SARFAESI Act as also execute the recovery certificate in accordance with Law.*

12. *The DRT-II shall pass necessary orders in accordance with the present Consent Terms in O.A. No.1132 of 2017. The Chief Metropolitan Magistrate and/or Additional Chief Metropolitan Magistrate shall pass necessary orders in S.A. bearing No. 261/SA/2015 in accordance with the present order. The Writ Petition is disposed off and the orders dated 20/11/2014 and 24/03/2017 are confirmed.*

13. *The CMM/ACMM will act in accordance with these Consent Terms upon receipt of the certified copy of the Order passed along with these Consent Terms."*

4. The Undertaking given by the respective parties in the Consent Terms are accepted as the Undertaking to the Court.

5. The Writ Petition stands disposed of as compromised in view of the aforesaid Consent Terms. In the circumstances, there is no order as to costs.

[N. J. JAMADAR, J.] **[K. K. TATED, J.]**