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

\+ W.P.(C) 1079/2018

M/S SHIVAM AGRI OILS PVT. LTD. AND ORS. ..... Petitioners

Through: Mrs Nishi Choudhary and Mr Y. Gupta, Advocates.

versus

THE AUTHORISED OFFICER STATE BANK OF INDIA AND ORS. ..... Respondents

Through: Mr Jitendra Kumar, Advocate for State Bank of India/R-1.
Mr Sarvesh Tiwari, Mr Sumit Kr Gaur, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 24.09.2018

C.M. Nos.4506/2018 & 38178/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 1079/2018 & C.M. Nos.4505/2018 & 38177/2018

2. The petitioner has filed the present petition, *inter alia,* praying that directions be issued to the respondent bank (State Bank of India – hereafter 'SBI') not to adjust/consider/credit the amount paid by the petitioner company (a sum of ₹10.46 crores) towards sanction of the One Time Settlement (OTS) between the SBI and respondent no.2 (Shri Krishna Vanaspati Pvt. Ltd. – hereafter 'the borrower').

3. It is the petitioner's case that it had entered into an arrangement with the borrower for purchasing its factory for a total sale consideration of ₹15 crores. Admittedly, the said immovable property (Plot no.6A, Sector-1, Pant Nagar, Industrial Estate, Rudrapur, Udham Singh Nagar, Uttarakhand – hereafter 'the Property') is mortgaged to SBI for financial assistance provided by SBI to the borrower. Concededly, the said transaction was subject to SBI releasing the title deed of the Property.

4. The petitioner claims that in the given circumstances, the petitioner paid an aggregate sum of ₹10.46 crores to SBI towards a OTS that was proposed at the material time for discharging the dues of the borrower. It is stated that SBI had acknowledged the receipt of money deposited by the petitioner; however, the OTS did not fructify and the SBI did not release the title deeds of the Property. Consequently, the agreement to sell/purchase entered into between the petitioner and the borrower was not consummated.

5. It is pointed out that in the meanwhile, the petitioner also sought to raise funds against the security of the Property from its bank (namely Syndicate Bank) and there was some correspondence in this regard. However, since the title deeds of the Property were not released by SBI, the said transactions also could not fructify.

6. The petitioner now states that the borrower and SBI have entered into another agreement for settling the dues of the borrower and the petitioner is excluded from the said transaction. It is apprehended that the borrower would settle its dues with SBI by taking credit of the funds paid by the petitioner. The petitioner further apprehends that once the title deeds of the Property are released by SBI, the same would be further encumbered by the

borrower.

7. The learned counsel appearing for SBI states that all the sums received by it were credited to the account of the borrower and adjusted against the dues owed by it. He submits that even though some of the funds may have been paid by the petitioner, there is no contract between the petitioner and SBI. He further states that the petitioner had deposited the amounts in the current account of the borrower and it is from that account, the sums have been appropriated by SBI.

8. It is clear from the facts, as stated above, that SBI cannot be interdicted from entering into agreement with the borrower for settlement of the dues owed by the borrower to SBI. The borrower also cannot be interdicted in these proceedings from making efforts to settle the amount owed to SBI.

9. It does appear from the averments made in the petition that the petitioner has parted with substantial amounts in order to purchase the Property. Indisputably, the borrower would have to account for any amount received by the petitioner. However, this is a matter between the petitioner and the borrower. This Court is also informed that the agreement between the petitioner and the borrower contains an arbitration clause and the petitioner has already initiated steps, by filing an application under Section 11 of the Arbitration and Conciliation Act, 1996 before the Uttarakhand High Court at Nainital.

10. The petitioner's claim does not lie against SBI and in this view, this Court is not inclined to entertain the present petition. However, since it is apparent that there are disputes between the petitioner and the borrower, and

the petitioner has already taken steps for availing remedies in this regard, this Court considers it apposite to direct SBI not to release the title deeds of the Property to the borrower or any other person for a period of 10 days from today. It is so directed. This is to enable to petitioner to avail of the remedies against other respondents (other than SBI).

11. The petition is disposed of in the aforesaid terms. All pending applications stand disposed of.

12. It is clarified that all rights and contentions of the concerned parties are reserved.

VIBHU BAKHRU, J

SEPTEMBER 24, 2018
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