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

\+ W.P.(C) 9353/2018

M/S EXCLUSIVE OVERSEAS PVT. LTD. ..... Petitioner

Through: Mr Sanjoy Ghose, Mr Akshay Goel and Mr Rajeev Aggarwal, Advocates.

versus

CORPORATION BANK ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 06.09.2018

C.M. No.36265/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 9353/2018 & CM No.36264/2018

2. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "a. Issue a writ of mandamus directing the respondent bank to decide their representation dated 12.02.2018 and 28-08-18.
>
> b. Issue a writ of mandamus against the respondent directing the respondent to withdraw the Demand Notice under S.13(2) of SARFAESI Act, 2002, Possession Notice dated 19.02.2018 under S.13(4) of SARFAESI Act, 2002 and Sale Notice dated 04.08.2018.
>
> c. issue a writ of mandamus against the respondent directing the respondent to conduct inquiry against the officers responsible for such under valuation of the

Property of the Petitioner."

3. The petitioner company had availed financial assistance from the respondent bank, *inter alia*, against mortgage of the property described as under:-

> Plot No.27, SY No-46-Part, Yarandahalli Village, Bommasandra Industrial Area Phase IV, Jigani Hobli, Anekal Taluk, Bangalore Urban District admeasuring 2808 Sq. Mtrs. alongwith Plant and Machinery situated in the above premises.

4. Admittedly, the petitioner has defaulted in repayment of its debt and its account with the respondent bank was declared as NPA (Non Performing Asset). On 18.11.2017, the respondent bank issued a Demand Notice under Section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter 'the SARFAESI Act') recalling the loan along with interest. The petitioner disputes the said demand; it is stated that the original demand was only ₹24 crores, which was arbitrarily increased to ₹37 crores.

5. Thereafter, the petitioner made a representation dated 12.02.2018 and it is the petitioner's grievance that the said representation has not been decided as yet.

6. On 19.02.2018, the respondent issued a possession notice in terms of Section 13(4) of the SARFAESI Act. This was followed by an auction notice dated 04.08.2018 for sale of the mortgaged property. The auction is scheduled to be conducted online today.

7. In the notice, the reserve price for land and building has been fixed at

₹11,05,00,000/- and the reserve price of plant and machinery is fixed at ₹2,25,000/-. The petitioner is, essentially, aggrieved by fixing of the said reserve price, as according to the petitioner, the same is extremely low.

8. The petitioner states that at the time of granting of the loan, the land and building was valued at ₹21,15,17,240/- and the plant and machinery was valued at ₹8,96,33,274/-. It is stated that this valuation was conducted in the year 2017 and the value of the mortgaged property has since increased.

9. On 28.08.2018, the petitioner made a representation to the respondent bank.

10. Mr Ghose, the learned counsel appearing for the petitioner contends that on account of low reserve price, it is likely that the petitioner's property would be sold at undervalue. He submits this would greatly prejudice the petitioner and, therefore, the respondent be directed to withdraw the e-notice.

11. He also submits that the procedure adopted by the respondent bank is flawed and it was mandatory for the respondent to decide the representations made by the petitioner.

12. Admittedly, the auction notice was issued on 04.08.2018 and the said auction is to be held today. In this view, this Court is not inclined to grant any order for stay of the auction. This Court is also of the view that it would also not be apposite to interfere with the fixation of the reserve price as if the fair market value of the property is as high as it is claimed by the petitioner, the same would be discovered in the fair bidding process, irrespective of the reserve price so fixed. Further, the promoters of the petitioner are also not

precluded from bidding in the auction or arranging for other buyers to submit their bids.

13. It is also relevant to bear in mind that the mortgaged property is being auctioned for enforcement of its security interest and no interference in this process is warranted. However, the petitioner's contention that its representations be decided is merited. The respondent bank is, accordingly, directed to consider the petitioner's representations before accepting any offer pursuant to the auction being conducted today. No further orders are required to be passed today. The same is disposed of. The pending application also stands disposed of.

14. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

SEPTEMBER 06, 2018
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