

\$~32.

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

+

Date of Decision: 09.05.2019

% **W.P.(C) 4733/2019 & C.M. No. 21061/2019**

SH. UDIT AGGARWAL AND ANR.

..... Petitioners

Through: Ms. Seema Gupta, Advocate.

versus

THE AUTHORISED OFFICER,
STATE BANK OF INDIA

..... Respondent

Through: Mr. Sanjiv Kakra, Mr. Irfan Ahmed
and Mr. Bheem Sain Jain, Advocates
for SBI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 30.04.2019, passed by the Debts Recovery Appellate Tribunal, Delhi (DRAT) in Appeal No. 109/2019, arising out of SA No. 41/2017 (DRT-III, Delhi). The DRAT – while passing the impugned order, has dismissed the petitioners' application to seek interim relief against dispossession of the petitioners from their property.

2. The respondent bank and some other banks constituted a consortium with the respondent bank being the lead bank. They sanctioned financial

facilities to the tune of several crores in the year 2007 to M/s Aravali Infra Power Limited. The said company defaulted in repayment of loans and, consequently, its account was declared as NPA on 31.08.2012. The said company requested the bank for re-structuring of the loan. This request was acceded to on 25.09.2011. One of the conditions of the Corporate Debt Re-Structuring (CDR) was that the lender was obliged to raise guarantees for fulfillment of the terms and conditions of the CDR.

3. The petitioner stepped in to offer guarantee by mortgaging its property bearing Commercial Unit No. 201, Second Floor, Plot No. 6, Community Center, Sector 9, Rohini Delhi. The terms of the said deed of guarantee dated 14.03.2013 executed between the petitioner and the respondent bank are material, and we may take note of some of them:

*a. “AND WHEREAS the Guarantors have given their property as described in Schedule III to the Lender as collateral security by way of equitable mortgage for the implementation of CDR Package by the Lenders. (Hereinafter referred to as **collateral security**)*

b. NOW THE INDENTURE WITNESSETH that in consideration of the above premises it is hereby covenanted and agreed (the Guarantors covenanting and agreeing jointly and severally) as follows:

*1. The Lenders have full right to dispose of collateral security and recover its dues in case of default by the borrower. In the event of failure of realization of collateral security, the undersigned hereby extend their personal guarantee only to the extent of value of collateral security [hereinafter referred to as **Guarantee**]. However, if the collateral security is realized by the Lenders, the liabilities of the Guarantors shall deem to be discharged.*

2. The Guarantee shall be irrevocable and enforceable against the Guarantors notwithstanding any dispute between the Lenders and the Borrower for any reason whatsoever including variation in terms of loan agreement, security document, acknowledgment of debt by Borrower.

3 The Guarantors agree that notwithstanding of the Lenders for any reason whatsoever losing and/or parting with any of the securities given by the Borrower, the Guarantors shall not be released or discharged of their obligations under this Guarantee.

4. If the obligation under this Guarantee is discharged by the Guarantors, the collateral security given in favour of Lenders shall be released by the Lenders to the Guarantors immediately. Conversely, if the Lenders realize the collateral security, the guarantors shall deem to be discharged from all obligations under this Guarantee.”

4. From the above, it would be seen that the liability of the petitioner guarantor was limited to the value of the property mortgaged, i.e. the property offered as the collateral security. Clause 4 in the aforesaid deed entitled the guarantor to redeem the mortgage by paying the realizable value of the collateral security.

5. The respondent claimed that the borrower defaulted in the implementation of the CDR package. Consequently, the respondent issued a notice under Section 13(2) of the SARFAESI Act, inter alia, to the petitioner reflecting the entire amount due and payable, which is in excess of Rs.202 Crores. Since the petitioner apprehended dispossession from the property in question, the petitioner preferred the securitization application under Section 17(1) of the SARFAESI Act before the DRT.

6. The petitioner sought stay of dispossession. That application was rejected by the DRT holding that since the CDR was not implemented, the petitioner is liable to the extent of the collateral security. It is then that the petitioner approached the DRAT with the aforesaid appeal alongwith an application for interim relief, which has been rejected.

7. The submission of learned counsel for the petitioner is that in view of terms of the deed of guarantee, the collateral security offered by the petitioner is not liable to be sold in auction when the petitioner is ready and willing to discharge its liability in terms of the guarantee. Learned counsel submits that the petitioner cannot be, necessarily, subjected to the embarrassment and inconvenience of facing a public auction in respect of its property when the petitioner is willing to discharge its liability under the deed of guarantee.

8. Learned counsel submits that the respondent itself had obtained a valuation report dated 22.11.2016 as per which the total value of the said property was assessed at 2.10 crores; realizable value was assessed at Rs.1.68 crores, and; forced/ distress sale value was assessed at Rs. 1.57crores.

9. On the other hand, learned counsel for the respondent submits that the real value of the property can be ascertained only when it is put to public auction. He submits that the petitioner should participate in the public auction and should secure the property in question by offering the highest amount.

10. He further submits that the valuation report dated 22.11.2016 is a conserving valuation and, that too, of the year 2016, and not relevant as of date.

11. We have heard learned counsels and considered their rival submissions. It is clear to us on a reading of the deed of guarantee that the same is not couched in the language and with terms and conditions as are usually found in such like deeds. What is peculiar in the present case is that the liability of the petitioner is limited only to the extent of the value of the mortgaged property, and no further. Moreover, the petitioner mortgager has been invested the right to seek release of the mortgaged property by discharging the liability under the guarantee. This means that the petitioner can pay the value of the property and seek discharge of the same. The deed of guarantee, however, does not disclose the manner in which the value of the property would be ascertained.

12. The submission of the respondent is that the said value can be ascertained only by putting the property to public auction. We cannot agree to this submission since that is not stated to be the manner of the determination of the market value of the property. Putting the property to public auction would mean that, firstly, the petitioner would be put to embarrassment of seeing its property being sold in public auction, and secondly, creation of complications, and possibly third party claims to the property. At the same time, the submission of learned counsel for the respondent that the valuation got done by the respondent in the year 2016 cannot be relied upon, also has merit.

13. In these circumstances, we are of the view that the only method of valuation of the property, at which the petitioner should be permitted to redeem the mortgage should be arrived at through a quasi judicial process by requiring the DRAT to call for re-valuation by undertaking the exercise on its own, or by requiring the DRT to do so.

14. Learned counsel for the respondent has submitted that the CDR package failed in the year 2014 and it has been over 5 years since then. The respondent bank has not been able to realise its dues till date.

15. Considering the fact that the petitioner is liable, at least, to the extent of the value of the mortgaged property and the petitioner is seeking protection of its possession which, otherwise, is liable to be taken over by the receiver under the SARFAESI Act, we have asked the petitioner to deposit a sum of Rs. 1crore to secure its possession till the time the valuation is undertaken. We have arrived at this conclusion considering the fact that the petitioner states that it has already deposited a sum of Rs.84 lakhs with the DRAT. The petitioner seeks four weeks time to make the said deposit.

16. We, therefore, dispose of this petition with the following directions:

(i) The petitioner shall deposit an amount of Rs. 1 crore with the DRAT within four weeks. The respondent bank shall be entitled to provisionally withdraw Rs. 1.84 crores from the DRAT which would include the amount deposited by the petitioner earlier as well. The deposit and withdrawal shall be without prejudice to the rights and contentions of the parties and subject

to the final valuation of the property that may be arrived at, and at which the property of the petitioner aforesaid may be redeemed.

(ii) Subject to the deposit being made, as aforesaid by the petitioner, the petitioner shall not be dispossessed from the property aforesaid. However, in case, the petitioner does not redeem the property in terms of the valuation that may finally be arrived at, the respondent shall be entitled to proceed to take possession and to deal with the property under the SARFAESI Act.

(iii) The learned DRAT shall proceed to deal with the appeal in the light of this order. The DRAT shall have the property of the petitioner valued either on its own, or by requiring the DRT to undertake the said exercise independently, but with the participation of the parties. The petitioner shall then be entitled to redeem the mortgage at the value so arrived at by the DRAT/DRT. The expenses relating to the valuation of the property shall be borne by the petitioner.

17. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J.

REKHA PALLI, J.

MAY 09, 2019

N.Khanna