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

+ **W.P.(CRL) 2396/2018 and CRL.M.A. 29849/2018**

**EARTHCON CONSTRUCTIONS PVT.
LTD. & ORS.**

..... Petitioners

Through: Mr Sachin Datta, Senior Advocate
with Dr Farrukh Khan, Ms Akanksha
Singh and Mr Changhez Khan,
Advocates.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Mr P.K. Sharma, Mr Sudhir Sinha
and Ms Somya Goel, Advocates.
Mr Piyush Singhal, Advocate for Mr
Ashish Aggarwal, ASC for State.
Inspector Rajneesh, EOW.

AND

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

+ **W.P.(CRL) 2398/2018 & CRL.M.A. 29856/2018**

SREI INFRASTRUCTURE FINANCE LTD.

..... Petitioner

Through: Mr Kirti Uppal, Senior Advocate with
Mr Bhagya K. Yadav and Mr
Abhigyan Choudhary, Advocates.

versus

STATE OF NCT OF DELHI & OTHERS

..... Respondents

Through: Mr Piyush Singhal, Advocate for
Mr Ashish Aggarwal, ASC for State.
Mr P.K. Sharma, Mr Sudhir Sinha
and Ms Somya Goel, advocates.
Insp. Rajneesh, EOW present.

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CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.12.2019

1. The petitioners have filed the present petition, *inter alia*, impugning FIR bearing no. 149/2018 under Sections 420/409/467/468/471/120B of the IPC lodged with PS Economic Offences Wing. The said FIR was lodged at the instance of one Mr N.K. Arora (hereafter 'the Complainant').
2. The Complainant claims that at the material time, he was a shareholder of Khoobsurat Resorts Pvt. Ltd. (hereafter 'Khoobsurat'). He, along with his mother and other family members, held 50% shares in the said company. The balance 50% shares of Khoobsurat were held by Mr Waseem Ahmad Khan. The Complainant alleges that they had identified a plot of land (described as Gulawati land at Ghaziabad). The said land was under the control of Wise Infrastructure Pvt. Ltd. and M/s Wise Industrial Park Pvt. Ltd. and the same was required to be developed into a Special Economic Zone (SEZ). The Complainant alleges that a sum of ₹12.5 lacs had been paid as advance for purchase of the said land to one Mr Sanjay M. Kalatkar (a shareholder and director of Wise Infrastructure Pvt. Ltd. and M/s Wise Industrial Park Pvt. Ltd.). The total consideration for purchase of the said land was agreed at ₹12.5 crores.
3. The said deal had been finalised by Mr Waseem Ahmad Khan and the necessary documentation for purchase of the said land was prepared. The Complainant alleges that Mr Waseem Ahmad Khan had informed the Complainant that it was not possible to purchase the said land in the name of Khoobsurat, as the turnover of the company was not sufficient. He proposed

that the documentation for purchase of the said land be made in the name of M/s Multiwal Pulp and Board Mills Pvt. Ltd. (hereafter 'Multiwal'). The Complainant also states that the necessary funds for purchase of the said land were not available with Khoobsurat and, therefore, the loan for purchase of the said property was taken by Multiwal from SREI Infrastructure Pvt. Ltd. (hereafter 'SREI'). Khoobsurat agreed to stand as a guarantor and mortgaged its property (9.6625 acres at Moradabad – hereafter the 'Moradabad Land') as a collateral for the said loan. It is stated that thereafter, a loan of ₹17.5 crores was arranged by Multiwal from SREI.

4. It is, thus, an admitted case that the Complainant was fully aware of the loan availed by Multiwal. He fully participated in the alleged scheme of availing the loan for purchase of the land at Gulawati, Ghaziabad. He was instrumental in creating the mortgage of the Moradabad Land in favour of SREI for the loan availed by Multiwal.

5. It is also alleged that Mr Waseem Ahmad Khan had obtained the Complainant's signatures on the loan documents. It is, thus, admitted that the Complainant had signed the loan documents of SREI as a director of Khoobsurat.

6. In view of the above, there is no dispute that the Moradabad Land had been mortgaged. It is alleged that the said transaction was done at the instance of Mr Waseem Ahmad Khan and the Complainant was cheated into entering those agreements. It is also alleged by the Complainant that the officials of SREI are complicit in inducing him to enter into the transaction.

7. This Court has reservations as to whether any of the allegations

against SREI are maintainable. The principal ground urged for alleging that the officials of SREI are complicit is that they did not verify that the lease of the Gulawati Land had been cancelled and thus the principal reason for availing the loan – developing the same into a SEZ – was non-existent. It is also alleged that the officials of SREI did not verify the use of the loan availed by Multiwal. Both the aforesaid reasons do not indicate any complicity on the part of officials of SREI and at any rate, the Complainant being a party to inducing SREI to grant the said loan, cannot urge the same. Any doubts that one may have are put to rest by reading the appeal filed under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter 'the SARFAESI Act') against SREI's action to enforce its security interest in respect of the Moradabad Land. The said appeal was instituted by the Complainant on behalf of the appellants therein, which included Multiwal and Khoobsurat. In that appeal, the Complainant had made a grievance that SREI was not supporting the borrower by extending a further loan for working capital.

8. However, it is not necessary to examine the above in any detail since it is stated that there is no dispute that as far as the mortgage of the Moradabad Land is concerned, the same had been validly executed by Khoobsurat in favour of SREI.

9. Admittedly, Multiwal failed and neglected to repay the loan and this has led SREI to enforce its security interest under the SARFAESI Act. SREI took possession of the Moradabad Land and thereafter, took steps to auction the same. A notice for auction was issued and the said auction took place on

19.08.2015. The petitioner in W.P.(CRL) 2396/2018 (Earthcon Constructions Private Limited) is the auction purchaser, who had purchased the Moradabad Land in an open auction for a consideration of ₹11,96,08,984/-. A sale certificate was issued in favour of the petitioner on 01.09.2015 by SREI.

10. The Complainant filed an appeal under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal challenging the auction of SREI under Section 13(4) of the SARFAESI Act. It is material to note that the Complainant had signed the said appeal on behalf of Khoobsurat as well as the principal borrower – Multiwal.

11. The said appeal was dismissed by the Debt Recovery Tribunal on 23.01.2017. The appellants (including Khoobsurat) therein had preferred a further appeal impugning the order dated 23.01.2017 before the Debt Recovery Appellate Tribunal (DRAT), which was also dismissed on 20.09.2017. The said order of DRAT was challenged in a Writ Petition No. 2482/2017 before the Allahabad High Court. However, the same was also dismissed.

12. The principal allegation against the petitioner is that Mr Waseem Ahmad Khan in conspiracy with officials of SREI and the petitioner, had arranged that the Moradabad Land be auctioned to the petitioner at a fraction of its value.

13. In the given facts, it is apparent that the aforesaid allegation is without merit and the said claim has been made only with the view to prolong the proceedings and somehow, to create a cloud on the said sale. The Complainant has been all along aware on the mortgage of SREI. Although

the Complainant stated that he was not aware of the auction, there is enough material on record to indicate that the said contention is also unmerited.

14. Nonetheless, since an allegation had been made that the Moradabad Land has been sold at an undervalue; Mr Dutta, learned senior counsel appearing for the petitioner in W.P. (Crl.) 2396/2018, had offered that the petitioner would be ready and willing to assign all its rights under the certificate of sale to the Complainant, on receipt of the entire consideration actually paid by the petitioner along with all expenditure (including stamp duty and registration charges), along with simple interest at the rate of 9% per annum on the all amounts paid by it.

15. Mr N.K. Arora (the Complainant) is present in Court and he states that he is ready and willing to pay the entire amount paid by the petitioner for the purchase of the Moradabad Land, plus all expenses (including expenses for registration) along with simple interest at the rate of 9% per annum. He, however, states that he would require some time to pay the said amount.

16. He undertakes that he will deposit the said amount with the Registry of this Court within a period of six months from today, that is, on or before 13.06.2020. With the consent of the petitioner, his undertaking is accepted. He is bound down to the same. The import of giving the undertaking has been explained to Mr N.K. Arora and he fully understands the consequences for breaching an undertaking to this Court.

17. On the said amount being deposited, the petitioner shall execute the necessary documents or assigning its rights to the Complainant. All

expenditure, including stamp duty for the said assignment, shall be paid by the Complainant.

18. He also states that in view of the above, his grievance, if any, against the petitioner does not survive and he does not wish to pursue the FIR against the petitioner. He also states that independent of the above, he does wish not pursue the FIR in question against SREI and has no grievances against SREI or its officials. He states that he shall limit the proceedings only against Wasim Ahmad Khan.

19. The Complainant shall sign a copy of this order as an acknowledgement of his statements recorded herein.

20. In view of the above, the FIR in question, to the extent that it relates to the petitioner and SREI, is set aside.

21. The petitions are disposed of with the aforesaid directions. The pending applications are also disposed of.



VIBHU BAKHRU, J

DECEMBER 13, 2019
RK

Narendra Kumar Arora
(NARENDRA KUMAR ARORA)
COMPLAINANT.