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

\+ BAIL APPLN. 2307/2018

MANDHIR SINGH TODD ..... Petitioner

Through Mr. Neeraj Kumar, Mr. Harsh Vardhan & Mr. Harshit Gulati, Advs for non applicant

versus

STATE (EOW DELHI) GOVT OF NCT DELHI ..... Respondent

Through Mr. Hirein Sharma, APP for State
Insp. Rajneesh, PS EOW
Mr. Sanjeev Sagar & Ms. Maria Parveen, Std. Counsel for Volkswagen
Mr.Harshad V. Hameed, Adv. with Mr.Dileep Poolakkot, Adv. for Federal Bank.
Mr. Rajeev Mehra, Sr. Adv with Mr. Ateev Mathur, Ms. Jagriti Ahuja & Ms. Aditya, Advs. for HDFC Bank

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

O R D E R

% **20.11.2019**

CRL.M.A. 40725/2019 (by applicant bank seeking clarification in order dated 14.11.2019)

The applicant bank has filed the instant application seeking clarifications in the order dated 14.11.2019 whereby liberty was given to the petitioners to use the funds lying in the accounts mentioned in the said order.

Mr. Rajeev Mehra, learned senior counsel appearing on behalf of the applicant bank submits that the applicant bank is to recover huge amount of over ₹ 110 crores as on August, 2018 along with interest and other charges on account of credit facilities extended to M/s. Zenica Cars India Pvt. Ltd. and M/s. Zenica Performance Cars Pvt. Ltd. The petitioners in the bail applications are the Directors/Guarantors in respect of those facilities. The applicant bank has lien on the amounts lying/available in the aforesaid accounts. The petitioners are taking advantage of the observations contained in the order dated 14.11.2019, wherein this Court had given liberty to the petitioners to use the amounts lying in the accounts and the petitioners have not disclosed to the Court about the fact that the other securities, which are available with the Applicant Bank, are not sufficient to recover the outstanding dues.

He further submits that at the time when the order dated 14.11.2019 was passed, it was represented by the petitioners that with respect to their outstanding dues with the applicant bank, they have offered to sell two properties situated in Gurgaon and have mortgaged a third residential property, which is also situated at Gurgaon, with the applicant bank but it was not disclosed by the petitioners before the Court that the properties mentioned by the petitioners were already provisionally attached by the Enforcement Directorate under Prevention of Money Laundering Act and the applicant bank challenged the said attachment before this Court by filing a writ petition bearing No. WP(C) 10242 of 2019, wherein the co-ordinate Bench vide order dated 16.10.2019 has permitted the applicant bank to sell the properties under SARFAESI subject to prior approval of the Court.

He further submits that under these circumstances, the present application is being moved so as to seek clarification from this Court to the effect that the liberty given to the petitioners to withdraw the amounts from the accounts is subject to the rights of the applicant bank. It is submitted that on account of the outstanding dues, which are recoverable from the account holders, the applicant bank exercised lien on the available amounts and the lien could not be exercised for the reason that the aforesaid accounts were frozen on the request made by the Investigating Officer.

He further submits that vide order dated 22.11.2018, the Debt Recovery Tribunal passed an order in HDFC Bank Ltd. Vs. M/s Zenica Performance Pvt. Ltd. and a similar order was passed in HDFC Bank Ltd. Vs. M/s. Zenica Cars India Pvt. Ltd. The relevant portion of the said order is as under:-

> ***"The prayer at Para 7 (D) is concerned, this prayer is allowed to the extent that the defendants are directed to disclose on oath their stocks of cars lying at the addresses mentioned in para no.7 (C), list of its debtor with details of name, address and amount due as on date, the amount lying deposited with M/s. Volkswagen Group Sales India Pvt. Ltd., better particulars of their personal properties with their specific shares in each of them, including the properties mentioned in para no.7B of this O.A., list of all bank accounts (in India and abroad) including FDRs, bank lockers and demat account with copies of the same for the last three years, list of all immovable properties along with copies of the title deeds, details of the movable assets, including vehicles etc., income tax and wealth tax returns for the last five years, list of all LIC policies, Mutual fund Schemes, shares and securities held by the defendants no.1 to 4 and receivables, both present and future and to deposit the same***

with the court / routed directly to the applicant before the next date till further orders."

It is not in dispute that after passing the order by the Tribunal on 22.11.2018, the petitioners approached the High Court of Punjab & Haryana at Chandigarh with regard to their outstanding dues towards the applicant bank and they had offered to sell two commercial properties situated in Gurgaon and have pledged a third residential property, which is also situated at Gurgaon. In order dated 14.11.2019 passed by this Court, it is recorded that pursuant to consent order dated 29.04.2019 passed by the High Court of Punjab & Haryana at Chandigarh, the petitioners with regard to their outstanding dues towards HDFC bank, have offered to sell two commercial properties situated in Gurgaon and have pledged a third residential property which is also situated in Gurgaon.

Mr. Mehra, learned senior counsel has disputed the said fact and has clarified that the aforesaid three properties, already stood mortgaged with the applicant bank against SARFAESI proceedings initiated against the petitioner.

A perusal of order dated 29.04.2019 passed in WP (C) 11053/2019 and WP (C) 11054/2019 reveals that the said petitions were disposed of by clarifying that in so far as the commercial properties bearing Unit No.G-01, Ground Floor and G-01, First Floor, Tapasya Corporate Heights, Sector-53 Gurgaon, the physical possession of the mortgaged properties was to be delivered by the petitioner by 30.04.2019 and in case the petitioner fails to abide by the statement made by his counsel in the Court, the writ petition shall be deemed to have been dismissed.

It is not in dispute that though all the three the properties were mortgaged with the applicant bank, however, the physical possession of only two commercial properties had been handed over to the applicant bank while the residential property is in the possession of the petitioner.

On this situation, pursuant to the directions passed by the High Court of Punjab & Haryana at Chandigarh, physical possession of the commercial properties have been handed over to the applicant bank to dispose of the same and satisfy their dues partially against the petitioner company bot, since the aforesaid properties have provisionally been attached by the Enforcement Directorate, therefore the applicant bank could not dispose of the said properties.

It is not in dispute, to come out from that situation, the applicant bank has filed a writ petition before this Court, as mentioned above, and the same is pending disposal. Thus, if the applicant bank succeeds in the petition filed by it, the applicant bank would be in a position to dispose of the properties and use the sale proceeds to partially satisfy its dues against the petitioner.

It is also not disputed that on two consecutive dates the applicant bank remained unrepresented, therefore, the order dated 14.11.2019 was passed after due deliberation with the parties. Therefore, I find no fault or illegality in the said order, therefore the present application deserves to be dismissed.

Though Mr. Rajeev Mehra, has pointed out that order passed by this Court is in direct conflict with the order passed by the Tribunal on 22.11.2018 and also effects the right of the applicant bank, the fact remains that the order passed by the High Court of Punjab and Haryana has been accepted by the applicant bank and it took physical possession of the commercial properties of the petitioner, as mentioned above.

Accordingly, the applicant bank is directed to allow the petitioner to use the amount lying in the accounts which are mentioned in order dated 14.11.2019.

Learned counsel for the petitioner bank has raised an issued that as on date, no money is lying in the aforesaid accounts.

Mr. Mehra, on instructions from Mr. Joginder Singh, Law Officer of the applicant bank submits that the entire amount in the aforesaid bank is lying intact and no money has been withdrawn.

Finding no merit in the instant application, the same is dismissed and disposed of accordingly.

Order dasti under signatures of the Court Master.

SURESH KUMAR KAIT, J

NOVEMBER 20, 2019
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