

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO. 152 OF 2019
WITH
CHAMBER SUMMONS NO. 846 OF 2018
WITH
CHAMBER SUMMONS NO. 154 OF 2019
WITH
CHAMBER SUMMONS NO. 155 OF 2019
WITH
CHAMBER SUMMONS NO. 635 OF 2019
WITH
CHAMBER SUMMONS NO. 637 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019
IN
COMM. EXECUTION APPLICATION NO. 1231 OF 2018**

Kotak Mahindra Bank Limited	...Applicant/Intervener
In the matter between	
Bharat Udyog Limited & Anr.	Ori. Claimants.
V/s.	
Maharashtra Industrial Development Corporation.	Org. Respondent

Mr. Gautam Ankhad a/w Mr. Nikhil Patil i/b Mr. P. M. Jadhav,
Advocates for the Decree Holder.

Me. Hemant Prabhulkar, Mr. Anand Nandu i/b Jurisperitus Mumbai,
Advocates for the Applicant in CHS/846/2018

Mr. Ravi Kadam a/w Mr. Ashish Kamat, Mr. Nikhil Rajani i/b V.
Deshpande & Co., Advocates for the Applicant in CHS/152/2019,
CHS/154/2019 and CHS/155/2019.

Mr. M.M. Vashi, Senior Advocate a/w Ms. Aparna Devkar i/b M. P.
Vashi Associates, Advocates for the Applicant in CHS/637/2019.

Mr. Akhileshwar Sharma, Advocate for the Applicant in
CHSCD/154/2019.

Ms. Shyamali Gadre a/w Mr. Pradnyesh Koregaonkar, Ms. Tanvi Doshi
I/b Little & Co., Advocates for Ors. Respondent, MIDC.

Mr. Mayank Bagla a/w Mr. Puneet Gogad, Advocates for the
Intervener, Karur Vysya Bank in IA/1/2019.

CORAM : G.S. KULKARNI, J.
DATE : 23 JANUARY 2020

P. C.

1. This execution application is filed by the award creditors Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd. against the judgment debtors MIDC. An amount of Rs. 38,79,11,223/- has been deposited by the MIDC in this court in pursuance of an order dated 22 October 2018.

2. It so transpires that there are several other creditors of the award creditors Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd. to whom amounts are due and payable. They are Karur Vysya, Oriental Bank of Commerce, Navjeevan Co-operative Bank Ltd., Income Tax, SICOM and Kotak Mahindra Bank, who have intervened in those proceedings.

3. Karur National Bank, Navjeevan Co-operative Bank Ltd. and Kotak Mahindra Bank are stated to have recovery certificates issued by the Debt Recovery Tribunal (DRT) against award creditors, Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd.

4. As noted above all these banks, the creditors of Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd. have approached this court by filing chamber summons and/or interim application which are in the nature of garnishee proceedings on the basis of recovery

certificates / orders passed by the DRT under the provisions of Recovery of Debts and Bankruptcy Act 1993 (for short '**RDB Act**'). These parties fairly agree to the legal position that in respect of their claims it would be the procedure and mechanism under the RDB Act which would be the appropriate procedure for realisation for their dues under the recovery certificates from the property of the judgment debtors in proceedings before the DRT. (See **Allahabad Bank Vs. Canara Bank & Anr. (2000)4 SCC 406**).

5. The Oriental Bank of Commerce is not before the court today. Whereas the counsel for SICOM contended that the original application filed by SICOM against the judgment creditors is Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd. is pending adjudication before the DRT. Thus, today there is no recovery certificate issued in favour of SICOM Ltd.

6. Also there are amounts which are recoverable by the Income Tax Department from from Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd. These are stated to be Rs. 98,67,32,220/- . The Income Tax department hence has also filed chamber summons no. 635/19 making a claim for the said amount.

7. It is thus a situation that there are several claims against Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd. of different entities.

These are mostly claims arising out of proceedings under the RDB Act. In these circumstances, I am of the opinion that it would be appropriate that the amount as deposited by the MIDC in the present proceedings remains deposited in this court. All these claimants/creditors of Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd. who are before this court are at liberty to approach the Recovery officer or any other appropriate authority under the RDB Act for determination of the priority and apportionment qua the amounts entitled to them only after such orders are passed under the RDB Act, it would be possible for this court to pass further orders. Such a course of action is also agreeable to the judgment creditor Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd. This more particularly as the jurisdiction of this court in the present execution proceedings is limited to the recovery of the judgment creditors under the decree obtained by them against the MIDC.

8. At this stage, learned counsel for MIDC would submit that there are some issues in regard to the mortgage of the premises by Bharat Udyog Limited and Swaraj Infrastructure Pvt. Ltd. in respect of the land at Taloja. However, this court being the executing court, all these issues cannot be taken in the present proceedings. MIDC is free to adopt appropriate proceedings as may be permissible in law.

9. With the above observations all these chamber summons and the interim application are disposed of with liberty to the parties to adopt appropriate course of action as noted above. All contention of the parties in that regard are expressly kept open.

10. Liberty to apply.

[G.S. KULKARNI, J.]