* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 10276/2020 & W.P.(C) 10325/2020**

Date of decision: 22nd December, 2020

IN THE MATTER OF:

W.P.(C) 10276/2020, CM Nos.32531/2020 (interim stay) and 32532/2020 (exemption)

REENA GAMBHIR ..... Petitioner

Through: Mr.Pushkar Sood, Advocate.

versus

CENTRAL BANK OF INDIA & ORS. ..... Respondents

Through: Mr.Yogesh Pachauri, Advocate.

W.P.(C) 10325/2020, CM Nos.32676/2020 (stay) & 32677/2020 (exemption)

REENA GAMBHIR ..... Petitioner

Through: Mr.Pushkar Sood, Advocate.

versus

CENTRAL BANK OF INDIA & ORS. ..... Respondents

Through: Mr.Yogesh Pachauri, Advocate.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. Since the petitioner and the main contesting parties are common in both the writ petitions and they arise from the same set of facts, with the

consent of the parties, both the petitions are taken up together for final adjudication.

2. W.P.(C) 10276/2020 is directed against an order dated 28.10.2020 passed by the learned DRAT setting aside an order dated 12.10.2018 passed by the DRT-II, Delhi. DRT-II, Delhi by its order dated 12.10.2018, had permitted the respondent No.1/Bank to auction the properties of the petitioner but had restrained confirmation of sale of one shop on the ground floor and the entire mezzanine floor between the ground floor and first floor (without roof rights and with proportionate free hold rights on the land underneath the structure measuring 134 square meter, being a part of building No. A-3, Block-A, CC Colony, Opposite Rana Pratap Bagh, Delhi, 110007 (hereinafter referred to as the property), owned by the petitioner, during the pendency of S.A. 207/2018.

3. W.P.(C) 10325/2020 is directed against the order dated 29.10.2020, in Appeal No.181/2019. By the impugned order, the DRAT has set aside the order dated 07.12.2018, passed by the DRT-II, Delhi in O.A. No.157/2015 wherein it has been held that the petitioner was not liable to pay any amount to the respondent No.1/Bank. The DRAT has directed that the Recovery Certificate qua the petitioner herein be issued for a sum of Rs.26,01,06,026/- along with interest @ 12% p.a. from the date of filling of the O.A., till realisation in full with a clause that in case the payment is not made within 30 days, the same shall be recovered from the sale of her two mortgaged properties situated in Rana Pratap Bagh, Delhi.

4. The facts in brief leading to filing of the writ petitions are as under:-

a) Respondents No.2 and 3 are in the business of operating luxury trains. They approached the respondent No.1/Bank for financial assistance. Working capital limit of Rs.20.6 crores was sanctioned in favour of the respondents No.2 and 3. The credit facility was to be collaterally secured by mortgaging a residential flat bearing No. 8410, C-8, Vasant Kunj, New Delhi, owned by the respondent No. 3 and a parcel of land measuring about 32,400 square metres situated at Kiratpur, Jaipur, Rajasthan (hereinafter referred to as Kiratpur property), owned by M/S Luxury Deluxe Hotels Pvt. Ltd/Respondent No.5 in W.P.(C) 10325/2020. A perusal of a copy of the sanction letter dated 11.04.2013 issued by the respondent No.1/Bank shows that the collateral security in the form of a parcel of land situated in Kiratpur, Jaipur had to be perfected.

b) On 11.09.2013, respondent No.2/ M/s Luxury Trains Pvt. Ltd wrote a letter to the respondent No.1/Bank stating that the petitioner's property was being offered as a security as an interim arrangement till the security for the Kiratpur property owned by the respondent No.5 is perfected, since they are in need of money.

c) The Senior Regional Manager of the respondent No.1/Bank wrote a letter dated 23.09.2013 to the Assistant General Manager, Parliament Street Branch of the respondent No.1/Bank wherein the latter was permitted to allow full sanction limit of Rs.20.6 crores to the respondents No.2 and 3. The Assistant General Manager was also permitted to extend the time till 30.11.2013, to enable the respondents No.2 and 3 to perfect the security given for the Kiratpur property. The letter also stated that the above approval was subject to creation of a collateral mortgage of the petitioner's property. The internal communication also stated that the petitioner had to give a personal guarantee for the entire loan and the properties kept as securities for the intervening period would be released only after perfection of securities in respect of the Kiratpur property.

(d) The petitioner had given an unconditional guarantee for securing the sum of Rs.20.6 crores advanced by the respondent No.1/Bank to the respondent No.2.

(e) On 30.06.2014, the accounts of the respondents No. 2 and 3 turned into a Non Performing Asset (in short "NPA"). A notice dated 10.10.2014, under Section 13(2) of the SARFAESI Act was issued by the respondent No.1/Bank to the borrower and the guarantors demanding payments due to it. Since no payment was made, a notice under Section 13(4) of the SARFAESI Act was issued on 08.01.2015. The respondent No.1/Bank also initiated steps under Section 14 of the SARFAESI Act for taking over possession of the mortgaged properties and vide order dated 28.04.2015, the learned CMM, Rohini Court appointed a Court Receiver to take over possession of the properties.

(f) The respondent No.1/Bank also filed O.A. No.157/2015 against the respondents No.2 and 3 and other persons, including the petitioner herein who stood guarantee for repayment of the loan, for recovery of a sum of Rs.24,59,85,781/-

(g) It is stated by the petitioner that in the meantime, the original title deeds and all the necessary permissions with respect to the Kiratpur property were obtained on 15.07.2015 and the mortgage was perfected. This was however beyond the date within which the security had to be perfected.

(h) The petitioner filed S.A. No.296/2015 before DRT-III, Delhi praying for quashing the demand notice dated 10.10.2014 and possession notice dated 08.01.2015. The said S.A. was dismissed on 15.05.2015. It is stated that a Review Petition has been filed before DRT-III, Delhi and the same is pending. However, the order passed in S.A. No.296/2015, has not been stayed.

(i) After dismissal of S.A. No. 296/2015, the respondent No.1/Bank issued a Sale Notice on 02.09.2018 for an auction to be held on 12.10.2018, to sell the petitioner's property.

(j) A second application being S.A. No.207/2018 was filed by the petitioner before another DRT i.e. DRT-II, Delhi, challenging the very same notice dated 10.10.2014 issued under Section 13(2) of the SARFAESI Act, possession notice dated 08.01.2015 issued under the SARFAESI Act and the Court Receiver's notice dated 15.05.2015. The Sale Notice which had been issued after dismissal of S.A. No.296/2015 by DRT-II was also challenged by the petitioner in the said S.A. DRT-II by its order dated 12.10.2018, found that the securities given by the petitioner were only as a stopgap arrangement till the mortgage on the Kiratpur land was perfected. The learned Tribunal was *prima facie* of the opinion that once the securities had been perfected, the property given as security by the petitioner stood automatically released. DRT-II passed an order permitting the sale to go on but with a rider that the sale was to be confirmed only subject to the final judgment in S.A. No. 207/2018.

(k) Vide order dated 17.12.2018, the DRT allowed O.A. 157/2015 against all the defendants arrayed therein except for the petitioner herein. The DRT held that once the property at Kirtarpur which had been given as a security had been perfected, the guarantee and the properties given by the petitioner as security for repayment of the loan stood discharged and therefore, she was not liable to pay any amount to the respondent No.1/Bank.

(l) The respondent No.1/Bank challenged the orders dated 12.10.2018 and 17.12.2018 by filing Misc. Appeal 546/2018 and Appeal No.181/2019, respectively before the learned DRAT.

5. The order dated 12.10.2018 has been set aside by the learned DRT-II vide judgment dated 28.10.2020, which has been impugned in W.P.(C) 10276/2020. By the impugned order, the learned DRAT has held that S.A. 207/2018 was the second application filed by the petitioner to challenge the notice issued under Section 13(2) and 13(4) of the SARFAESI Act. The earlier attempt had failed on dismissal of S.A. No.296/2015 by DRT-III. The learned DRAT held that in view of the earlier S.A. having being dismissed, there was no balance of convenience in favour of the petitioner for restraining confirmation of the sale of the mortgaged property in the auction.

6. The order dated 17.12.2018 was challenged by the petitioner in Appeal No.181/2019. The DRAT held that the guarantee deed given by the petitioner did not contain any clause stating that the guarantee was only given as a stopgap arrangement. The Tribunal also held that there is nothing on record to show that any sort of assurance was given by the respondent

No.1/Bank to the petitioner that the security given by her was only a stopgap arrangement. The DRAT further held that when the notice under Section 13(2) and 13(4) of the SARFAESI Act was given by the respondent No.1/Bank and when O.A. 157/2018 was filed under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "RDDBFI Act"), the securities given by the respondents No. 2 and 3 had not been perfected. Thus there was nothing to show that the respondent No.1/Bank had agreed to replace her properties with any other security.

7. Both the aforesaid orders have been challenged by the petitioner by filing W.P.(C) 10276/2020 & W.P.(C) 10325/2020 respectively.

8. Mr.Pushkar Sood, learned counsel for the petitioner very strenuously contended that the property in question was given as security only as an interim arrangement. Considerable reliance has been placed on the intra departmental communication dated 23.9.2013 between the Sr. Regional Manager of the respondent No.1/Bank and the Assistant General Manager of the respondent No.1/Bank, Parliament Street Branch wherein it was stated that the properties of the petitioner kept as securities for the intervening period shall be released after perfection of securities in respect of the property at Kiratpur, Rajasthan.

9. He stated that the immovable properties and the personal guarantee offered by the petitioner was only a stopgap interim arrangement till the securities were perfected by the respondents No.2 and 3 and thereafter, the petitioner stood automatically discharged and the proceedings under SARFAESI Act and under RDDBFI Act cannot be permitted to continue against her.

10. On the other hand, Mr. Yogesh Pachauri, learned counsel for the respondent/Bank supported the impugned order and stated that no interference is warranted under Article 227 of the Constitution of India.

11. We have heard Mr.Pushkar Sood, learned counsel appearing for the petitioner and Mr. Yogesh Pachauri, learned counsel appearing for the respondent and have carefully perused the records.

12. Admittedly respondents No.2 and 3 had availed of credit facilities of Rs.20 crores from the respondent No.1/Bank. Respondents No.2 and 3 had offered flat bearing No. 8410, C-8, Vasant Kunj, New Delhi, owned by the respondent No. 3 and a parcel of land situated at Kiratpur, Jaipur, Rajasthan measuring about 32,400 Square Metres owned by respondent No.5/M/S Luxury Deluxe Hotels Pvt. Ltd in W.P.(C) 10325/2020. Personal guarantees were also given by the respondents No. 3, 4 and 6 and corporate guarantee of the respondent No.5/ M/s Luxury Deluxe Hotels Pvt. Ltd in W.P.(C) 10325/2020 was given as a security to secure repayment of the loan. Since there were certain defects in the property situated at Kirtarpur, it could not be offered for mortgage, the property of the petitioner being shop in the name of Mrs. Reena Ghambhir at A-3 Ground Floor, Block A, situated at CC Colony opposite Rana Pratap Bagh Delhi, reportedly valued at about Rs.1.5 crores. Property at A-3 Mezzanine floor block A, situated At CC colony opposite Rana Pratap Bagh Delhi reportedly valued at about Rs.2.5 cores was also offered as security which, according to the petitioner, was an interim arrangement. It is submitted that there is no communication from the respondent No.1/Bank to the petitioner informing her that the properties offered by the petitioner as security, was only an interim arrangement.

13. The relevant extract of the internal communication dated 23.09.2013 between Sr. Regional Manager of the respondent No.1/Bank and the Assistant General Manager of the Parliament Street branch of the respondent No.1/Bank and relied on by the petitioner reads as under:-

> *Reg: Account M/s Luxury Trains Pvt. Ltd.*
> *Ref: Modification proposal submitted to zonal office on 23.09.2013*
> *With reference to above and on your recommendations and discussions took place at zonal office on 20.09.2013 and 23.09.2013 you are permitted for the following:-*
>
> 1. *To allow full sanctioned limits of Rs.20.6 crores pending security creation/perfection.*
> 2. *To allow time up to 30.11.2013 for security creation/perfection on the portion of land admeasuring 32400 sq. meters to ensure collateral coverage to an extent of 150% of the sanctioned limit. Security on balance portion of land shall also be created after conversion of land use in due course of time.*
> 3. *To allow inclusion of advances paid towards business related bookings for the purpose of arriving at DP besides book debts.*
>
> *The above approval is subject to compliance of following terms and conditions:*
>
> 1. *Branch Office to ensure creation of EM on the following properties after obtaining evaluation report before further disbursement:-*
>   - *Shop in the name of Mrs. Reena Ghambhir at A-3 Ground Floor, Block A situated at C C Colony opp. Rana Pratap Bagh Delhi reportedly valued at about Rs.1.5 crores.*
>   - *property at A-3 Mezzanine floor block A situated At CC colony opp Rana Pratap Bagh Delhi reportedly valued at about Rs.2.5 cores*

- *personal guarantee of Mrs. Reena Gambhir.*

2. *Credit Audit to be conducted in the account and its closure report to be submitted along with compliance certificate before allowing further disbursement.*
3. *B/o to obtain valuation reports of all existing collaterals and the property proposed to be mortgaged admeasuring 32,400 sq. meters at village Kirtarpur, Rajasthan and satisfy themselves regarding sufficiency of collaterals in the accounts to the extend to 150% of the sanctioned limit. In case of any shortfall B/o to obtain additional collateral/cash collaterals.*
4. *The properties kept as securities for the intervening period shall be released only after perfection of securities in respect of property situated at Kirtarpur, Rajasthan..................*

14. The relevant clause of the personal guarantee dated 16.09.2013 given by the petitioner reads as under:-

> *"1. In consideration of your at our request making advances or otherwise giving credit to M/s Luxury Trains Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having U93000DL2011PTC220381, Registration Number is 220381 and having its registered office at Ground Floor, Chanderlok Building 36, Janpath, New Delhi-110001, Delhi India hereinafter referred to as the principal in the manner and to the extend specified in the Scheduled hereunder I the Undersigned Mrs. Reena Ganbhir W/o Mr Sanjay Ghambhir a resident of N-56 Panchsheel Park, New Delhi 1100017 guarantee payment to the Bank of the amount of all such advances and credit and to interest commission costs charges and expenses chargeable by the bank in respect of such advances and credits provided that I shall in not even* ***be liable under this guarantee to pay***

to the bank a sum exceeding Rs.20.6 crores on account of the amount of such advances and credits in addition to being liable to pay maximum principal sum. I shall be liable to pay interest thereon at the rate chargeable by the bank to the principal as also of commission cost charges and expenses which may be recoverable by the bank from the principal in respect of the maximum principal sum.

2. It is also agreed that any admission or acknowledgement in writing by the principal debtor of the amount of indebtedness of the principal debtor or otherwise in relation to the subject matter of this guarantee or any judgment or award obtained by you against the principal debtor shall be binding on us and I accept the correctness of any statement of account served on the principal debtor which is duly certified by any manager or officer of the bank and the same shall be binding on us also and I further agree that in making an acknowledgement or making a payment he/she shall be treated as my duly authorized agent for purpose of Indian limitation Act 1963.

3. I agree that the amount hereby guaranteed shall be due and payable to you on your serving us with notice, requiring payment of amount and such notice shall be deemed to have been served on us either by actual delivery thereof to us or by dispatch thereof to us by registered post at our address n India to which I may be written intimation given to the bank request notices addressed to us to be dispatched. Any notice dispatched by the Bank by the registered post to us at the address to which it is required to be dispatched by this clause shall be deemed to have been duly served on me at the time when the notice would in the ordinary course of post be delivered at the address not withstanding that the notice may not in fact have been delivered to us or that the address to which it is dispatched may have caused to be our address.

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5. This guarantee shall not be revoked by us and shall remain in force till all the amount due and payable to you by the principal are paid up in full inclusive of interest charges etc. I further specifically agree that this guarantee shall continue to remain in force and I shall continue to be liable there under for all the amounts due and payable to you by the principal even thought the principal has not renewed the documents and when though the amounts due from the principal gets time barred and you cannot recover the same from the principal by filling a suit or any legal proceedings against the principal.

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8. Though as between the principal and ourselves sureties only, I agree that as between yourselves and I, I am principal debtor/debtors jointly with them and accordingly, I shall not be entitled to any of the rights conferred on sureties by Sections 133, 134, 135, 139 and 141 of the Contract Act."

15. It is evident from the above that there is nothing in the guarantee given by the petitioner which indicates that it was offered only as an interim arrangement. Admittedly, the account of the petitioner was declared as an NPA on 17.02.2014. Since the amounts were not paid, the respondent No.1/Bank issued a notice under Section 13(2) of the SARFAESI Act on 10.10.2014, calling upon all the guarantors including the petitioner herein to pay the sum of Rs.24,59,85,781/- which was due on 10.10.2014, on failure to return the money. The notice under Section 13(4) was issued on 08.01.2015 and symbolic possession of the mortgaged properties was taken over. Proceedings under Section 14 were initiated and a Receiver was appointed by the learned CMM, Rohini Court for taking over physical

possession of the petitioner's property. The petitioner filed O.A. No.296/2015 before DRT-III, Delhi challenging the notice issued under Section 13(2), 13(4) and the possession notice issued by the Receiver, which was dismissed vide order dated 15.05.2018. The said order has not been stayed or reversed. When the respondent No.1/Bank issued a notice for auction of the properties, S.A. No.207/2018 was filed by the petitioner before DRT-II challenging the notices issued under Section 13(2) and 13(4), possession notice of the Co-Receivers and the sale notice.

16. All the contentions which are now sought to be raised in the present proceedings, were raised by the petitioner in S.A. No.296/2015. Once the findings in S.A. No.296/2015 were rendered by DRT-III, DRT-II could not have entertained the very same arguments all over again to come to a different conclusion. The DRT laid emphasis on the fact that the defect in the securities regarding the property at Kirtarpur had been removed and therefore, it permitted the auction to take place. However, the respondent No.1/Bank has been restrained from confirming the same till disposal of S.A. No. 296/2015. We are informed by learned counsel for the petitioner that pursuant to conducting the auction, the property has been sold, Sale Certificate has been issued on 11.11.2020 and possession has been handed over to the successful bidder on 13.11.2020.

17. Respondents No. 2 and 3 were required to rectify the defects and perfect the securities on or before 30.11.2013. However, the same was not done. Though the loan was for a sum of Rs.20 crores, when notice was issued by the respondent No.1/Bank under Section 13(2) of the SARFAESI Act, the loan amount had mounted to Rs.24 crores. Notice under Section 13(2) was given but the respondents No.2 and 3 did not clear the dues of the

respondent No.1/Bank. Resultantly, possession notice under Section 13 was issued and possession of the petitioners' property was taken over. The respondent No.1/Bank therefore cannot be faulted for taking over possession of the petitioner's properties. The fact that the security was perfected after proceedings were initiated before DRT-III, cannot absolve the petitioner of her liability. There is nothing on record to show that after the defects in the security regarding the property at Kiratpur owned by the respondent No.5 in W.P.(C) 10325/2020, has been removed, the petitioner's property stood released.

18. In any event, the petitioner has stood guarantee for repayment of loans and as observed earlier, there is nothing in the guarantee agreement entered into by her and the respondent No.1/Bank to demonstrate that the said guarantee was only a stopgap arrangement. It was a guarantee given by the petitioner to repay the amount of Rs.20 crores advanced to the respondents No. 2 and 3 by the respondent No.1/Bank. Since the amount due and payable to the respondent No.1/Bank has increased to Rs.26 crores and the petitioner had stood guarantee to pay the amount due to the Bank and in the absence of any material to show that the Bank had given any assurance to the petitioner that the properties given by her were only a stopgap arrangement, it cannot be said that the properties of the petitioner stood automatically released on perfecting the securities.

19. The DRAT is therefore justified in chastising the petitioner for indulging in forum shopping by filing a second S.A. before DRT-II, after dismissal of S.A. No.296/2015 before DRT-III.

20. The purpose of legislating the SARFAESI Act was to enable Banks and Financial Institutions to recover the money due to them by exercising

the powers to take over possession of securities, sell them and reduce the NPAs by adopting measures for recovery and reconstruction.

21. As stated earlier, once the respondents No. 2 and 3 had failed to perfect the title of the property at Kirtarpur before the respondent No.1/Bank had taken steps under the SARFAESI Act and symbolic possession had been taken under Section 13(4) of the SARFAESI Act, the respondent No.1/Bank cannot be faulted for taking further steps to auction the property given by the petitioner as a security. In any event, the petitioner has given an unqualified guarantee to repay the amount taken by the respondents No.2 and 3 and the said guarantee is co-extensive to the liability of the principal borrower.

22. In view of the above discussion, the order dated 17.12.2018 completely exonerating the petitioner and absolving her of all the liabilities, is unsustainable. The intra departmental communication dated 23.09.2013, a copy whereof was never furnished to the petitioner, can hardly be relied on by her to contend that the security offered by her was only a stopgap arrangement, more so in the light of the special condition in the intra departmental communication which gave time to the respondents No. 2 and 3 to perfect the title by 30.11.2013. Once the respondents No. 2 and 3 could not perfect the title by 30.11.2013, it cannot be said that the securities offered by the petitioner continued only as a stopgap arrangement and as and when the securities would be perfected, the property of the petitioner would be automatically released. The same analogy would apply to the order dated 12.10.2018 which cannot be sustained.

23. By the order impugned herein, the DRAT was justified in reversing the orders of the DRT. It cannot be said that the orders of the DRAT is so perverse that it would warrant interference under Article 227 of the

Constitution of India. There is no *prima facie* case in favour of the petitioner herein and the interim order of the DRT II of permitting the sale to continue but restraining the respondent No.1/Bank from confirming the sale subject to the result of S.A. 207/2018, cannot be sustained. The sale has been confirmed on 11.11.2020 and possession has been handed over to the auction purchaser on 13.11.2020.

24. We may conclude by observing that it is well settled that the supervisory jurisdiction under Article 227 of Constitution of India is exercised to keep the subordinate courts within the bounds of the jurisdiction. Supervisory jurisdiction under Article 227 is not available to correct errors of facts or law unless it can be shown that the error is manifest and apparent on the face of the proceedings. It is equally settled that the High Court in exercise of its supervisory jurisdiction under Article 227, cannot convert itself into a court of appeal and indulge in re-appreciation or re-evaluation of the evidence or correct the errors in drawing inferences. Therefore, we do not see any perversity in the impugned order warranting interference under Article 227 of the Constitution of India.

25. In view of the above facts and circumstances, both the writ petitions are dismissed along with the pending applications, while leaving the parties to bear their own costs.

SUBRAMONIUM PRASAD, J

HIMA KOHLI, J

DECEMBER 22, 2020
rs/hsk