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

\+ W.P.(C) 3663/2020

ANJU MALHAN ..... Petitioner

Through Ms.Deepa Sharma, Adv.

versus

TATA CAPITAL FINANCIAL SERVICES PVT LTD ..... Respondent

Through Mr.Rajat Katyal, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>O R D E R</u>

% 22.06.2020

This hearing is conducted through video-conferencing.

<u>CM.APPL. No.13082/2020</u>*(exemption)*

Allowed subject to all just exceptions.

<u>CM.APPL. No.13081/2020</u>*(exemption)*

For the reasons stated in the application, the same is allowed.

<u>W.P.(C) 3663/2020 & CM.APPL. No.13080/2020</u>

1. This writ petition is filed by the petitioner seeking following reliefs:

> "A. Set aside/quash the threatening action contained in respondent's demand notice dated 13th March, 2020 under Section 13 (2) of the SARFAESI ACT, 2002 to take recourse to all or any measures prescribed under sub-section (4) of Section 13 of the SARFAESI Act on the property of the petitioner for recovering the loan amount and the respondent be restrained to give effect to the said notices or otherwise to take any steps further for taking possession of the secured asset by way receiver or police aid and not to take any coercive action or otherwise or take sell/auction the i.e. immovable property

> bearing Plot No. 93, Block- Cassia Fistula Estate, CHI-04, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201308 or to take any action under the Securitization and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002;
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> B. Set aside/quash the declaration of account bearing – "21007933" as non performing asset on 08.03.2020, in the light of Covid 19 - Regulatory Package and *"Prudential norms on income recognition, asset classification and asset pertaining to advances"* announced by the Reserve Bank of India;
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> C. To direct the respondent bank not to create any third party interest on the property."

2. The case of the petitioner is that a term loan was granted to one 'Range Tele Services & Ors.' on 29.07.2018 by the respondent. The petitioner stood as a guarantor and vide Memorandum of Entry (*in short the 'MOE'*) the respondent created security interest in respect of the property of the petitioner bearing Plot No.93, Block-Cassia Fistula Estate, CHI-04, Greater Noida, Gautam Budh Nagar, U.P.-201308.

3. The account on 08.03.2020 was classified as Non-Performing Asset (*in short the 'NPA'*) by the respondent. On 13.03.2020, the respondent issued a notice under section 13(2) of the SARFAESI Act, 2002 against the petitioner alongwith other persons.

4. It is pleaded that on 27.03.2020 on account of the current pandemic, RBI issued a circular for re-scheduling of payments, permitting the banks and the financial institutions to grant a moratorium of three months.

5. Learned counsel for the petitioner pleads that in view of the present condition, the notice under section 13(2) of the SARFAESI Act, 2002 is

illegal. She further states that the petitioner apprehends that the respondent may forcibly take over possession of the mortgaged/secured property.

6. Learned counsel for the respondent who has entered appearance on advance notice submits that the principal borrower has availed of a moratorium facility in terms of the guidelines of the RBI dated 27.03.2020. He pleads that accordingly, the notice issued under section 13(2) of the SARFAESI Act, 2002 abates. Further he states that, in case, any further steps are taken by the respondent, the same shall be as per law.

7. Binding the respondent to the above submission, the present petition is disposed of. All pending applications, if any, are also disposed of.

8. Needless to add that this order is without prejudice to the rights and contentions of the parties.

JAYANT NATH, J.

JUNE 22, 2020/v