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

Date of decision: 25th September, 2020

\+ **W.P.(C) 3686/2020 & CM APPLs. 13197/2020, 13198/2020, 13199/2020, 13200/2020, 13201/2020, 23856/2020, 23857/2020**

M/S ART HOUSING FINANCE (INDIA) LIMITED ..... Petitioner

Through: Mr. Siddharth Aggarwal, Ms. Neeha Nagpal, Ms. Stuti Gujral & Mr. Vishvendra Tomar, Advocates (M-9810030834)

versus

DIRECTORATE OF ENFORCEMENT AND ORS ..... Respondents

Through: Mr. Amit Mahajan, CGSC with Mr. Zoheb Hussein, SPP, Ms. Mallika Hiremath, Advocate for R-1&2 along with Mr. Kuldeep Singh, AD, Directorate of Enforcement.
Mr. Amol Sharma & Ms. Jagriti Ahuja, Advocates for HDFC Bank (M-9958608042).
Ms. Shobhana Takiar, Advocate for R-3.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been held through video conferencing.

2. The present petition seeks quashing of the Provisional Attachment Order No.3/2020 dated 19th May, 2020 in ECIR-MBZO-1/03/2020 to the extent that it relates to the Petitioner Company. The assets in respect of which the said attachment order has been passed are certain fixed deposits to the tune of Rs.51,85,94,086.78/-. Initially, notice was issued in this petition on 23rd June, 2020 as it was noticed that a substantial part of the said amount i.e., Rs.42,85,32,698.63/- has to be paid back by the Petitioner to the National

Housing Bank (*hereinafter 'NHB'*), which is a government bank. The said fixed deposits are currently lying with the HDFC Bank.

3. The Directorate of Enforcement (*hereinafter 'ED'*) appearing through Mr. Amit Mahajan, ld. CGSC had taken a preliminary objection to the effect that the writ itself is not maintainable in view of the orders passed by the Coordinate Bench dated 1st June, 2020 and 10th June, 2020 in a bunch of writ petitions which also involved the Petitioner. He further submits that the question as to whether the amount belongs to the NHB and whether it is to be released to the NHB, ought to be decided by the Adjudicating Authority under the PMLA and not by this Court.

4. On the other hand, Mr. Siddharth Aggarwal, ld. counsel for the Petitioner submits that admittedly, as per the letter of the NHB, the amount belongs to the NHB and the Petitioner does not question this position at all. The amount being payable to the NHB, the amounts ought to be transferred to the NHB inasmuch as a simple attachment of the amount would increase the liabilities of the Petitioner unnecessarily. Insofar as the remaining amounts are concerned, the quashing of the attachment is prayed for.

5. Ms. Shobhana Takiar, ld. counsel appearing for the NHB submits that as per the affidavit filed by the NHB, the Petitioner had drawn refinance of Rs.60 crores and since it could not utilise the same, it had sought permission from NHB to pre-pay the unutilized amount of Rs.42,85,32,698.63/-. A demand letter had also been issued by the NHB on 27th April, 2020. It was further stated that the amount should be refunded to NHB so that it could use the same for further funding to housing sector and to provide liquidity for affordable housing purposes.

6. After hearing the counsel for the parties, it is clear that at this stage, the amount lying with HDFC Bank is sought to be attached by the ED. The ED's

preliminary objection concerning the maintainability of this petition in view of the orders passed by the Coordinate Bench has already been dealt with vide order dated 10th July, 2020 wherein it has been clarified that the provisional attachment order dated 19th May, 2020 was not under challenge in W.P. (C) 3083/2020 and, in fact, liberty was specifically reserved for the Petitioner to avail of his remedies in accordance with law. Insofar as the quashing of the said attachment order is concerned, this Court is inclined to pass a similar order as order dated 10th June, 2020 in similar writ petitions being W.P. (C) 3083/2020 and connected matters involving the Petitioner, however, with one distinction. Insofar as the amount of Rs.42,85,32,698.63/- belonging to the NHB is concerned, simply attaching the said amount and not putting it to any utility would not be prudent, since the NHB is a bank which belongs to the Central Government and the amount can be put to good use. The Petitioner having admitted the fact that the amount belongs to the NHB also agrees to the said amount being transferred to the NHB so that the liabilities of the Petitioner *qua* the NHB do not increase any further.

7. In the peculiar facts and circumstances of this case where the amount, if frozen or attached, would continue to remain under the custody of the ED, this Court deems it appropriate to direct the said amount of Rs.42,85,32,698.63/- from the provisionally attached bank account to be transferred to the account of the NHB by the HDFC Bank.

8. Insofar as the remaining amounts are concerned, the provisional attachment order shall continue and the Petitioner would be free to agitate its pleas before the Adjudicating Authority under the PMLA. The payment to the NHB shall be a pro-tem measure in the peculiar facts and shall abide by the final orders of the Adjudicating Authority. If the Adjudicating Authority finally

determines that the said amount ought to be paid back to the ED, the NHB shall abide by the said order and shall re-deposit the said amount within a period of six weeks after the passing of the order by the Adjudicating Authority, subject to any orders passed by a superior court/tribunal. If refund is ordered by the adjudicating authority, no interest shall be payable by the NHB. Only the principal amount which is being transferred from the HDFC Bank to the NHB would be liable to be put back into the ED's account.

9. The amount received from the HDFC Bank shall be credited by the NHB in the account of the Petitioner and if the Adjudicating Authority passes an order for re-deposit of the amount, the same shall be debited from the Petitioner's account.

10. Ms. Takiar, ld. counsel for the NHB shall communicate the details of NHB's bank account today itself to Mr. Amol Sharma, ld. counsel for the HDFC Bank. HDFC Bank shall ensure that the amount of Rs.42,85,32,698.63/- is transferred to the NHB on or before 28th September, 2020.

11. Before the Adjudicating Authority, the Petitioner shall be impleaded in the attachment proceedings and shall be heard before any order is passed.

12. It is made clear that this Court has not gone into the merits of the attachment order or the merits of any of the disputes between the Petitioner and the NHB. All rights and remedies of parties are left open.

13. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J

SEPTEMBER 25, 2020/*Rahul/ T*