

\$~A-8

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

+ W.P.(C) 6194/2020

SAMYAK PROJECTS PVT. LTD. & ANR Petitioners

Through Mr.Vivek Kohli, Ms.Yeshi Rinchen,
Mr.Sanchit Gawri and Mr.Mudit
Gupta, Advs.

versus

KOTAK MAHINDRA BANK LTD. & ANR Respondents

Through Mr.Abhishek Kumar, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

10.09.2020

This hearing is conducted through video conferencing.

CM. APPL. No.22194/2020(exemption)

Allowed subject to all just exceptions.

W.P.(C) 6194/2020 & CM. APPL. No.22193/2020

1. This writ petition is filed by the petitioners seeking a declaration that the orders dated 19.08.2020 and 20.08.2020 passed by the learned Chief Metropolitan Magistrate, South District, Saket District Courts, New Delhi be declared as *null* and *void*. Other connected reliefs are also sought.

2. The case of the petitioner is that in 2017 he took an overdraft limit and drop-down limit facilities from respondent No.1 bank for a total of Rs.7,50,00,000/-. On 29.01.2020, the account of the petitioner was declared as NPA. On 09.03.2020, a notice under section 13(2) of the SARFAESI Act, 2002 was issued.

3. Learned counsel for the petitioners states that they have a clear intention to repay the loan and are only seeking the benefits of the

moratorium extended by respondent No.2. It is stated that they have also to show their *bona fide* submitted an OTS offer on 11.08.2020 and sought some time from respondent No.1 to repay the loan. However, it is the grievance of the petitioners that respondent No.1 has without giving any reason refused to accept the OTS offer of the petitioners.

4. In the meantime, on 19.08.2020, respondent No.1 filed an appropriate application under section 14 of the SARFAESI Act, 2002 requesting for appointment of a court receiver. I am informed that on 07.09.2020, the receiver has been appointed by the concerned court under section 14 of the SARFAESI Act, 2002.

5. Learned counsel for the petitioners has vehemently urged that the petitioner is a senior citizen and would like to settle the matter. The property in question which has been charged to respondent No.1 is worth much more than the claimed outstanding amount. He states that OTS offer has been given to respondent No.1 for which there has been no response.

6. Learned counsel for respondent No.1 has refuted the said contentions of the petitioners. A preliminary objection is taken that the writ petition would not lie as the petitioners have an alternative remedy before DRT. It is also pleaded that to regularise the account, the petitioners owe a sum of Rs.1,99,72,955/- as on 31.08.2020. He also states that the OTS proposals given by the petitioners have already been rejected.

7. Keeping into account the fact that the petitioner intends to try and settle the matter, subject to the petitioners depositing a sum of Rs.25 lacs within two weeks from today and another sum of Rs.25 lacs within four weeks from today with respondent No.1 bank (total Rs.50 lacs), liberty is granted to the petitioners to file a fresh OTS proposal with respondent No.1

bank within two weeks from today. Liberty is also granted to the petitioners to meet the concerned officer of respondent No.1 bank to try and finalise the OTS proposal as per law.

8. Respondent No.1 bank will deal with the said OTS proposal of the petitioners expeditiously and an attempt to try and settle the matter. No coercive action shall be taken against the petitioners for a period of two months from today to enable the petitioners to pursue said OTS proposal with respondent No.1. The petitioners will not in any manner change the status of the encumbered property which is Plot No.29, 1st Floor, Panchsheel Park, New Delhi- 110 017.

9. In case, the stated instalments of Rs.25 lacs are not paid, the interim order shall automatically stand vacated.

10. This order is passed without prejudice to the rights and contentions of the parties.

11. With the above direction, the present petition is disposed of. All pending applications, if any, are also disposed of.

JAYANT NATH, J.

SEPTEMBER 10, 2020/v