

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6296 OF 2021

Delicare Lifesciences Pvt. Limited } Petitioner
Versus
Omkar Speciality Chemicals Ltd. } Respondents
and Anr. } Respondents

Mr. Shailesh Shah-Senior Advocate i/b. Mr. Neel
Anil Gala for the petitioner.

Ms. Madhavi Nalluri i/b. Ms. Nidhi Bajpai for
respondent no. 1.

Mr. A. R. Bamne i/b. M/s. A. R. Bamne and co.
for respondent no. 2.

**CORAM :- DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE :- OCTOBER 5, 2021

PC :-

1. The auction purchaser of a secured asset is the petitioner in this writ petition under Article 226 of the Constitution of India. It challenges an order dated 7th June 2021 passed by the Presiding Officer of Debts Recovery Tribunal-III, Mumbai on SA No. 130 of 2020.

2. It is not in dispute that the secured creditor having moved an application under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "the SARFAESI Act" for

short), the District Magistrate, Thane passed an order dated 9th March 2021 directing the Tahsildar, Ambarnath to take possession of the secured asset. Pursuant to the said order of the District Magistrate, the Tahsildar, by his communication dated 27th May 2021, called upon the Mandal Adhikari, Kulgaon to take possession of the secured asset in terms of the said order. The Mandal Adhikari, by its communication dated 28th May 2021, conveyed to the secured creditor that he would take possession of the secured asset on 7th June 2021.

3. The Presiding Officer, upon consideration of the order of the Full Bench of this Court dated 16th April 2021 in Suo Motu Public Interest Litigation No.1 of 2021, was of the opinion that the interim protection granted thereby should also be extended to the borrower considering that the Tahsildar had issued the communication dated 27th May 2021 requiring the Mandal Adhikari to take possession post 7th April 2021.

4. Mr. Shah, learned senior counsel for the petitioning auction purchaser has assiduously contended that the order of the Presiding Officer is patently bad and erroneous since it overlooks that the order of the District magistrate is dated 9th March, 2021, i.e., prior to 7th April, 2021 for which interim protection has not been made available by the Full Bench, and that the subsequent orders of the Tahsildar and the Mandal Adhikari are really in the nature of ministerial acts to give effect to the order 9th March, 2021.

5. Having heard Mr. Shah and Ms. Madhavi Nalluri, learned advocate for the borrower, we are not inclined to entertain the

writ petition at this stage. It is not in dispute that the borrower's application under section 17 of the SARFAESI Act is still pending before the Presiding Officer.

6. The first ground for our disinclination to exercise discretion is that it is open to the petitioning auction purchaser to approach the Presiding Officer by filing an application for intervention and to seek vacation of the order dated 7th June 2021. Secondly, a remedy of appeal is available to the petitioning auction purchaser under section 18 of the SARFAESI Act which it has not explored. Thirdly, the interim protective order of the Full Bench, currently, is in force till 8th October, 2021. It may or may not be extended. If not, the Tribunal has to give fresh reasons for staying enforcement of the order of the District Magistrate. The petitioning auction purchaser may appear before the Tribunal and persuade it not to grant any interim relief.

7. Keeping all contentions raised in this writ petition open, we dispose of the same granting liberty to the petitioning auction purchaser to explore its remedy in accordance with law. No costs.

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2021.10.06
11:34:14 +0530

(M. S. KARNIK, J.)

(CHIEF JUSTICE)