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

Date of Decision: 24th May, 2021

+ O.M.P.(I) (COMM.) 370/2020

IIFL FINANCE LIMITED

..... Petitioner

Through: Mr. Anupam Lal Das, Senior Advocate with Mr. Raunak Dhillon, Mr. Aditya Marwah, Ms. Isha Malik, Mr. Anirudh Singh and Ms. Niharika Shukla, Advocates.

versus

MR. PRAFUL SATRA & ANR.

..... Respondents

Through: Mr. Saket Sikri, Mr. Malak Bhatt, Ms. Devanshi Singh and Mr. Rajat Bector, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

I.A. 6422/2021 (for exemption from filing attested/ signed/ affirmed affidavits)

1. The present application on behalf of the Petitioner seeks exemption from filing attested/ affirmed affidavit(s).

2. The application is allowed, subject to the Petitioner filing the exempted documents within two weeks from the day the lockdown restrictions

imposed by the Government of NCT of Delhi are lifted and the facility of attestation is resumed.

3. The application stands disposed of.

O.M.P.(I) (COMM.) 370/2020 & I.A. 5843/2021 (for directions on behalf of the R-1 – Mr. Praful Satra under Section 151 of the CPC, 1908)

4. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 [*hereinafter referred to as the ‘Act’*] seeks reliefs in the nature of directions to the Respondents to deposit the outstanding amount due and payable as on 7th October, 2020; disclose on affidavit the details of the assets/properties; order of restraint from selling, transferring, alienating, relinquishing or creating any third party interest in respect of the assets/properties etc.

5. Briefly stated, the facts as disclosed in the petition leading to the filing of the present petition are as follows: -

5.1 The Petitioner sanctioned term loan of Rs. 65 Crores to Satra Property Developers Private Limited [*hereinafter referred to as ‘SPDPL’*] under a Loan-cum-Mortgage Agreement dated 4th February, 2016 [*hereinafter referred to as the ‘Loan Agreement’*] read with a sanctioned letter dated 24th December, 2015 [*hereinafter referred to as the ‘Sanction Letter’*];

5.2 Respondent No. 1 - Mr. Praful Satra and Respondent No. 2 - Mrs. Minaxi Satra executed deeds of Personal Guarantees dated 30th December, 2015 irrevocably and unconditionally, jointly and severally,

securing the obligations of SPDPL under the Loan Agreement dated 4th February, 2016 [*hereinafter referred to as ‘the Deed’*]. The Deed contains the Arbitration Agreement in Clause 24 that is reproduced as under: -

“In the event of any dispute or difference arising under this Deed or relating hereto, such dispute or difference shall be referred to arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory reenactment or modification thereof for the time being in force. All arbitration proceedings shall take place at Delhi. The language used in the arbitral proceedings shall be in English. The Arbitral Tribunal shall be comprised of sole arbitrator appointed by the Lender. The award of such sole arbitrator shall be final and binding. Any dispute remaining unresolved relating to this Agreement shall be subject to jurisdiction of Courts at Delhi.”

5.3 SPDPL failed to perform its obligations under the Loan Agreement and the Petitioner was compelled to issue a letter dated 21st October, 2020 to Respondent Nos. 1 and 2 invoking Personal Guarantee [*hereinafter referred to as the ‘PG Invocation Notice’*], to forthwith, jointly and/or severally, pay the entire outstanding amounts due under the Loan Agreement and the amendment agreement dated 9th September, 2019.

5.4 By virtue of the order dated 10th August, 2020, SPDPL is presently under corporate insolvency resolution process before the National Company Law Tribunal at Mumbai.

6. The Petitioner has approached this Court apprehending that in order to defeat their claim, Respondent Nos. 1 and 2 through their family members, associates, affiliates and/or other entities of ‘Satra Group’, are likely to clandestinely and/or in collusion with each other take steps to dispose of/ illegally transfer their assets including those, over which, the Petitioner has a

security interest.

7. On 20th November, 2020, when this petition was taken up for hearing, Mr. Saket Sikri, learned counsel accepted the notice on behalf of the Respondents and on instructions stated that his clients undertake not to create any third-party interest in respect of any of their assets. This statement was taken on record by the Court and time was granted to the Respondents to file a reply. The said order is continuing.

8. In the interregnum, the Respondent No. 1 filed I.A. No. 5843/2021, seeking directions for grant of permission to sell property being, Flat No. 1404, in Building known as LE 88 (now known as 81 Aureate), Mahim Bandra Reclamation, near MTNL Office, Bandra Reclamation, Bandra (W), Mumbai – 400050 [*hereinafter referred to as the ‘Scheduled property’*]. Along with the application, Respondent No. 1 has annexed: (i) a communication dated 3rd April, 2021, issued by the Union Bank of India, Peddar Road Branch, Mumbai [*hereinafter referred to as the ‘UBI’*] which is an Advance Recall Notice regarding a term loan [*hereinafter referred to as ‘Recall Notice’*]; and (ii) copy of the enforcement notice dated 7th April, 2021 [*hereinafter referred to as the ‘SARFAESI Notice’*] in respect of credit facilities enjoyed by Respondent No. 1. By this notice UBI has invoked Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [*hereinafter referred to as the ‘SARFAESI Act’*] and called upon Respondent No. 1 to pay an amount of Rs. 10,61,19,626.11/- together with contractual rate of interest, and monthly rest in accordance with the terms and conditions of the loan

documents within 60 days from the receipt of the notice, failing which, UBI has cautioned that they would be constrained to enforce the securities created by Respondent No. 1 in favour of UBI, by exercising all their rights under the SARFAESI Act in respect of the Scheduled property. The relevant portion of the SARFAESI Notice dated 7th April, reads as under: -

“Sir/Madam,

SUB: Enforcement of Security Interest Action Notice- In connection with the credit facilities enjoyed by you with us-Classified as NPA

We have to inform you that your account in the name of Mr. Praful N Satra, Mrs.Minaxi Praful Satra & Mr.Rushab Praful Satra with Peddar Road Branch has been classified as NPA account on 31.03.2021 pursuant to your default in making repayment of dues/interest. As on 31.03.2021, a sum of Rs.10,61,19,626.11 (Rupees Ten crores sixty one lakhs nineteen thousand six hundred twenty six & eleven paisa only) is outstanding in your account as shown below:

<i>Nature of limit</i>	<i>Amount (Rs. in lacs)</i>	<i>Outstanding amount as on 31-03-2021 (Rs.)</i>	<i>Rate of Interest</i>
Term Loan	Rs. 10.00Cr	Rs.10,61,19,626.11	@9.55%

In spite of our repeated demands you have not paid any amount towards the amount outstanding in your account you have not discharged your liabilities.

We do hereby call upon you in terms of section 13 (2) of the Securitisation and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 to pay a sum of Rs.10,61,19,626.11 (Rupees Ten crores sixty one lakhs nineteen thousand six hundred twenty six & eleven paisa only) together with contractual rate of interest from 01/04/2021 with monthly rest as per the terms and conditions of loan documents executed by you and discharge your liabilities in full within 60 days from the date of receipt of this notice, failing which, we shall be constrained to enforce the following securities created by you in favour of the bank by exercising any or all of the rights given under the said Act:

**Flat No.1404, 14th Floor, building LE 88 Mahim Bandra Reclamation
Near MTNL Office, Bandra Reclamation
Bandra(W) Mumbai-400050.**

Please note that if you fail to remit the dues within 60 days and if the Bank exercises all its rights under this Act and if the dues are not fully satisfied with the sale of the proceeds of the secured assets, we shall be constrained to take appropriate legal action against you in a court of law/Debt Recovery Tribunal for recovery of the balance amount from you.

You are further requested to note that as per Section 13(13) of the Act, on receipt of this notice you restrained/prevented from disposing of or dealing with the above securities except in the usual course of business without the consent of the bank Please also note that any violation of this section entails serious consequences.

The Borrower attention is invited to the provisions of Sub-section (8) of Section 13 of the Act, in respect of time available, to redeem the secured assets.

Yours Faithfully,

Authorised Officer”

9. On the basis of the afore-noted Notices, Respondent No. 1 has contended that the Scheduled property is mortgaged by Respondent No. 1 in lieu of term loan availed from UBI and therefore, UBI holds first charge over the said Scheduled property. As against the same, the Petitioner herein is only a purported unsecured creditor and does not have any charge or substantial interest over the Scheduled property. In these circumstances, Respondent No. 1 seeks permission of this Court to exclude the Scheduled property from the undertaking given by the Respondents as per order dated 20th November, 2020 and allow Respondent No. 1 to sell the Scheduled property so that the same can be used to pay the outstanding dues of UBI in fulfillment of Respondents' obligation under Recall Notice dated 3rd April, 2021 and SARFAESI Notice dated 7th April, 2021.

10. On an objection being raised by Mr. Anupam Lal Das, learned Senior

Counsel for the Petitioner that the application does not disclose the date of creation of charge of the property, the Court *vide* order dated 26th April 2021 directed Respondent No. 1 to file an additional Affidavit giving details of the mortgage. Pursuant to the said directions, Respondent No. 1 has filed an additional Affidavit stating that, the Scheduled property was purchased on 29th June, 2016 for residential purposes by obtaining a home loan from UBI. In accordance with the terms and conditions of the home loan, the title deeds of the Scheduled property were deposited with UBI, and a memorandum was executed for the said purpose on 30th June, 2016. The charge has been registered on 22nd July, 2016. A copy of the memorandum relating to deposit of title deeds is annexed with the said additional Affidavit.

11. In light of the disclosure made in the additional Affidavit, Mr. Das, relying upon Clauses 21 and 22 of the Deed, contends that the relief sought by Respondent No. 1 cannot be granted. The said Clauses read as under: -

“21) The Guarantors do hereby further undertake not to sell, transfer, encumber, charge, pledge, hypothecation, mortgage or creation of any lien on all or any of its movable and immovable properties without the prior written permission of the Lender.

22) The Guarantors hereby declares that this guarantee will be enforceable against his present as well as future assets that may be acquired by them hereafter and undertakes not to deal with or dispose of his assets both present and future without the prior written consent of IIFL. The Guarantors further agrees and undertakes to submit to IIFL every year, latest by 30th September, a statement of his net worth. Non-submission of such a statement every year shall be considered as non-compliance of terms and sanction of the said Loan by IIFL.”

Mr. Das contends that, as a result of the aforesaid Clauses, since the mortgage created by Respondent No. 1, in favour of UBI was subsequent to the execution of the Deed, the same is invalid, illegal, and of no

consequence. Both the application as well as additional Affidavit are silent on whether the Respondent No. 1 had informed UBI regarding the existence and validity of the Deed dated 30th December, 2015, and the liability of the Respondent No. 1 towards the Petitioner herein. Respondent No. 1 is thus, clearly and unequivocally in flagrant breach of the Deed, as Respondents are not permitted to sell, transfer, encumber, charge, pledge, mortgage, hypothecate or create any lien on any assets without the prior permission of the Petitioner. The Deed further provides that the guarantee is a continuing one for all amounts, and it is enforceable against current, as well as future assets that may be acquired by the Respondents and the same cannot be dealt with without the prior written consent of the Petitioner. The Deed itself states that the future assets of the Respondents [such as the Scheduled property herein] cannot be dealt with and/or encumbered, without the prior consent of the Petitioner. Consequently, the memorandum relating to deposit of title deeds dated 30th June, 2016 is null and void.

12. Mr. Sikri, learned counsel for the Respondents, on the other hand, controverts the contentions of Mr. Das and raises several objections and submits that, the afore-noted Clauses, do not constitute a charge on the property. He has cited several judgments to contend that the rights of the secured creditor cannot be interdicted by way of order(s) passed in a petition under the Act where the secured creditor is not even a party. The Scheduled property was not in existence at the time when the negative covenant was created on the existing assets of the Respondents. Even otherwise, this is not a situation where the property was bought by the Respondents and subsequently, a charge was created to avail loan from UBI. On the contrary,

the Scheduled property has itself been bought by the Respondents by a creation of charge on it, under a home loan, availed by mortgaging the Scheduled property. In fact, it is a standard practice that when a home loan is availed by a person, a charge is created on such home/property in lieu of that loan. In such circumstances, there arises no question of the Petitioner having any charge or interest in the Scheduled property.

13. Both the learned counsel have cited several case laws and raised contentions dealing with the law on the subject. The Court has considered the contentions of the parties. In the opinion of the Court, the relief as sought by Respondent No. 1 in the application, for permission to sell the Scheduled property can certainly not be granted, as admittedly the same is presently a subject-matter of a mortgage with UBI and the title deeds, thereof, are deposited with the said bank.

14. The case laws and the provisions of law cited by both the parties are not required to be examined by this Court in the present proceedings, as the effect and legality of the mortgage in favour of UBI in light of the Clauses of the Deed relied upon by the Petitioner, is a question which has to be agitated before an appropriate forum, where UBI is a party. This Court, while exercising jurisdiction under Section 9 of the Act, cannot give any finding with respect to the mortgage created by Respondent No. 1, *qua* the Scheduled property, in favour of UBI. However, the fact remains that, by virtue of the statement made by Mr. Sikri, Respondent No. 1 is bound by the same and in effect, there is an injunction operating against Respondent No. 1 from selling, alienating and/or creating any third-party interest in respect of

any of his assets including the Scheduled property. Therefore, in light of the facts noted above, a clarification is necessary insofar as the Scheduled property is concerned. In the opinion of the Court, in the present petition, UBI cannot be restrained from enforcing its rights under the Notices dated 3rd April, 2021 and 7th April, 2021. Even otherwise, the Petitioner's prayer for injunction is only *qua* the present Respondents. Therefore, the Court clarifies that the order dated 20th November, 2020, recording the undertaking given by Mr. Saket Sikri, would not come in the way of UBI, taking recourse against the mortgaged Scheduled property in terms of the Notices dated 3rd April, 2021 and 7th April, 2021, in accordance with law.

15. It is further clarified that all the rights and contentions of the Petitioner as well as the Respondents on the above issue are left open. The Petitioner would be at liberty to raise objections, or avail appropriate remedies in respect of its right(s) under the Deed *vis-à-vis* the mortgage created in favour of UBI, before the appropriate forum/ Court. With the above clarification, I.A. No. 5843/2021 stands disposed of.

16. At this stage both the learned counsel, on instructions, state that since the existence of the Arbitration Agreement is not in dispute, the Court may consider it appropriate to appoint an Arbitrator to adjudicate the disputes that have arisen between the parties. At the same time, Mr. Das also submits that, having regard to the fact that the mortgage was created by Respondent No. 1, in breach of the terms of the Deed, the Respondents be directed to disclose their list of assets, so that the Petitioner would know the current status of the same.

17. There is a consensus between the parties regarding the existence of the Arbitration Agreement and disputes having arisen between the parties and that the same have to be adjudicated in terms of the dispute resolution mechanism agreed upon. Accordingly, Hon'ble Mr. Justice D.K. Jain (Retd.), former Judge, Supreme Court of India [Contact No: 9999922288] is appointed as the common Sole Arbitrator to adjudicate upon the disputes between the parties arising out of the Deeds of Personal Guarantee both dated 30th December, 2015 executed between Petitioner and Respondent Nos. 1 and 2, respectively.

18. Since the Arbitrator has been appointed, the learned counsel for the parties jointly pray that the present petition be directed to be considered by the learned Arbitrator as an application under Section 17 of the Act. The said request is accepted and accordingly, the present petition is disposed of, with a direction that same shall be treated as an application under Section 17 of the Act, which shall be considered and decided by the learned Arbitrator in accordance with law. Till such time, the statement made by Mr. Sikri, as recorded in the order dated 20th November, 2020, with the clarification as observed today, shall continue to bind the Respondents. It is further directed that the Respondents shall file an affidavit in terms of the decision of this Court in ***Bhandari Engineers & Builders Pvt. Ltd. v. Maharia Raj Joint Ventures & Ors.***¹, disclosing a list of their assets, within a period of four weeks from today. Since the present petition is being disposed of, the affidavits shall be filed before the learned Arbitrator within the timelines

stipulated.

19. It is further clarified that any observations made hereinabove, and in the previous orders are only on a *prima facie* basis and not a final expression on the merits of the case. Needless to say, the same shall not come in the way of the learned Arbitrator while deciding the application under Section 17 of the Act and/or the disputes between the parties. All rights and contentions of the parties are left open.

20. The parties are directed to appear before the learned Sole Arbitrator as and when notified. This is subject to the Arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

21. The learned Arbitrator shall be entitled to charge fee in terms of the provisions of the Fourth Schedule appended to the Act.

22. In view of the aforesaid, the petition is disposed of in the above terms.

SANJEEV NARULA, J

MAY 24, 2021

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¹ MANU/DE/1497/2020