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

% *Date of Decision: 11th November, 2021*

\+ LPA 427/2021

AVDHESH MITTAL & ORS. ..... Appellants
Through: Mr. Arun Batta and Mr.Abdul Vahid Advocates.

versus

RESERVE BANK OF INDIA & ANR. ..... Respondents
Through: None.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. 39809/2021(Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

LPA 427/2021 & CM APPL. 39808/2021 (Stay), **39810/2021** (Addl. Docs.)

1. Present Letters Patent Appeal has been preferred by the Appellants (Original Petitioners) against an interim order dated 01.10.2021 passed by the learned Single Judge in WP(C) 11234/2021 (Annexure A-1 to the memo of this appeal), whereby the learned Single Judge has issued notice to the Respondents, returnable on 26.11.2021 and has granted liberty to the Appellants to challenge any action that Respondent No.2/ Fullerton India

Credit Company Ltd. may take under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, referred to as 'SARFAESI Act'), on the grounds raised in the writ petition.

2. From the narrative of facts in the appeal, it appears that Respondent No.2 sanctioned the Credit Facility on 28.02.2018 in favour of the Appellants under the Heading 'Lease Rental Discounting Facility' upto Rs. 6.50 Crores being a Mortgage Loan Account at the interest rate mentioned therein against creation of first charge and equitable mortgage in respect of certain immovable properties. It is the case of the Appellants that on account of Pandemic Covid-19 and repeated lockdown, the business was seriously impacted, being a Hotel Industry and the tenant who was paying the lease rental of the Hotel vacated the premises. It is submitted by learned counsel that as on 31.08.2021, the outstanding amount is approximately Rs.6.80 Crores and the loan account of the Appellant has been declared as Non-Performing Asset ('NPA') as on 31.08.2021 by Respondent No. 2.

3. Learned counsel for the Appellants contends that realizing the factum of impact on the businesses and other ventures of Pandemic Covid-19, Respondent No.1/RBI had issued various circulars from time to time permitting the lending Institutions to grant moratoriums to the borrowers. Seeking to avail the benefits of the said circulars, Appellants had written to Respondent No.2 for restructuring of the Mortgage Loan account informing Respondent No.2 that their major source of income was the lease rent of the Hotel properties, etc., on the basis of which the loan was sanctioned. However, since the tenants have vacated the premises and the rentals are

unpaid, a moratorium of 24 months be allowed on the term loan by deferment of payment of EMIs including interest components, falling due from 01.04.2021 to 20.06.2023, but there was no positive response.

4. Appellants thereafter had no option but to file a writ petition and during the pendency, a notice dated 27.09.2021 was received from Respondent No.2 under Section 13(2) of the SARFAESI Act. The learned Single Judge instead of granting interim protection has only issued notice granting liberty to challenge action, if any, by Respondent No.2 before the DRT. Since the writ petition was pending, the learned Single Judge ought to have granted interim protection in the application filed by the Appellants being CM No.34584/2021 i.e. restraining the Respondents from taking any coercive action.

5. We have heard learned counsel appearing on behalf of the Appellants (Original Petitioners) and have looked into the facts and circumstances of the case. We see no reason to entertain the present Letters Patent Appeal for the reason that the writ petition is still pending before the learned Single Judge and is now listed on 26.11.2021. While issuing notice, the learned Single Judge has adequately protected the interest of the Appellants by leaving it open to the Appellants to challenge any coercive action that may be taken by Respondent No.2, by approaching the appropriate Forum i.e. Debts Recovery Tribunal under Section 17 of the SARFAESI Act, *inter alia*, on the grounds raised in the writ petition. For ready reference, paragraph 4 of the impugned order passed in the writ petition reads as under:

> *"4. In the event the respondent no.2 takes any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["the Act"], it will be*

open to the petitioners to challenge the same before the Debts Recovery Tribunal ["DRT"] under Section 17 of the Act, inter alia on the grounds raised in this writ petition. The pendency of this petition will not come in the way of any action taken under the Act or the petitioner's remedies available thereunder, which may be independently decided in accordance with law."

6. Therefore, in case Respondent No.2 initiates any coercive action, Appellants are not remediless and can approach the DRT under Section 17 of the SARFAESI Act. We see no reason to interfere with the impugned order at this stage and are of the considered opinion that no error has been committed by the learned Single Judge while passing the impugned order dated 01.10.2021 in WP(C) 11234/2021. We are in full Agreement with the order passed by the learned Single Judge.

7. There is no merit in the Appeal and the same is accordingly dismissed along with pending applications.

CHIEF JUSTICE

JYOTI SINGH, J

NOVEMBER 11, 2021/sn