IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1073 OF 2022
IN
COMPANY PETITION NO.756 OF 2014

State Bank of India ...Applicant
In the matter between
Export Import Bank of India and Another ...Petitioner
vs.
The Official Liquidator, High Court, Bombay ...Respondent

Dr. Abhinav Chandrachud a/w. Mr. Saurabh Utangale i/b.Utangale & Co., for the Applicant.
Mr. Pimple, for the Official Liquidator.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 29, 2022

P.C.:

1. The applicant-bank, a secured creditor, has preferred this application seeking permission to sell the security interest of the mortgaged property through ARC/NBFC mode as per the procedure prescribed in the provisions of SARFAESI Act, 2002 and also to allow and permit the applicant to accept the bid to be submitted by M/s. Raj Radhe Finance Ltd., or any successful ARC of ARC sale open auction process and to appropriate the accepted offer amount by assignment of the debt to ARC/NBFC towards satisfaction of its dues payable by the company in liquidation.

2. The applicant claims to have been constrained to prefer this

application as in terms of the order dated 7th March, 2019, the applicant made earnest efforts to sell the mortgaged property bearing C.S.No.1/1494 known as Energy House situated at 81, Palton Road, Mumbai- 400 001 with building/structure standing thereon, by e-auction, on as many as six occasions. However, despite numerous efforts the said property could not be sold by e-auction mode. Thus, the applicant is constrained to explore the possibility to sell the financial assets to ARC/NBFC and pass all the security interest rights on the said property to ARC/NBFC by way of assignment of its entire debt.

3. Heard Mr. Chandrachud, learned counsel for the applicant and Mr. Pimple, learned counsel for the Official Liquidator.

4. By an order dated 7th March, 2019 in Company Application (L) No. 77 of 2019 in Company Petition No. 756 of 2014 this Court had directed the applicant-bank to sell the mortgaged property by e-auction in consultation with Official Liquidator. The averments in the application that the applicant made diligent efforts to sell the property through e-auction find support in the documents annexed to the application.

5. The Official Liquidator has filed an affidavit in reply and submitted that the Official Liquidator has no objection if the applicant assigns the security interest to ARC/NBFC in conformity with the provisions of SARFAESI Act, 2002 and the Rules thereunder and the conditions referred to in paragraph 6, of the affidavit in reply which reads as under:

> 6. The Official Liquidator has no objection if the applicant assigns the security interest to the ARC/NBFC as per the provisions of SARFAESI Act, 2002 subject to the applicant ensuring that ARC/NBFC shall, at the time of the execution of the assignment documents for the security interest, execute a necessary undertaking that such ARC/NBFC shall comply with the order dated 7th March, 2019. Further, such undertaking shall also include an undertaking that the ARC/NBFC shall strictly comply with the provisions of the SARFAESI Act and shall also give required notices under the SARFAESI Act required to be given to the borrower to the Official Liquidator.

6. The learned counsel for the applicant submits that the applicant would assign the interest to ARC/NBFC in conformity with the provisions of SARFAESI. Act, 2002 and the Rules thereunder.

7. Evidently, endevour on the part of the applicant to sell the mortgaged property by resorting to e-auction has not materialized, despite repeated efforts. In the circumstances, there does not seem any legal impediment in allowing the applicant to resort to the mode

of assignment of security interest to ARC/NBFC. However, the assignment of the interest and the subsequent sale of the secured assets shall be in strict compliance with the provisions contained in SARFAESI. Act, 2002 and the Rules thereunder as well as the order passed by this Court on 7th March, 2019.

8. In view of the above, application stands allowed in terms of prayer clause (a) and (b) subject to the condition that the assignment of security interest as well as the sell of the secured assets shall be in conformity with the provisions contained in SARFAESI Act, 2002 and the Rules thereunder and the order passed by this Court on 7th March, 2019 to the extent it governs the situation.

9. All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)