rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.30565 OF 2022

IN

COMMERCIAL ARBITRATION PETITION NO.64 OF 2021

IDFC First Bank] .. Intervener/Secured Creditors

IN THE MATTER OF

Tata Capital Financial Services Ltd.] .. Applicant

vs.

Natraj Construction Co. & Ors.] .. Respondents

AND

D.N. Kher] .. Court proposed

WITH

INTERIM APPLICATION NO.3302 OF 2022

IN

COMMERCIAL ARBITRATION PETITION NO.103 OF 2021

IDFC First Bank] .. Intervener/Secured Creditors

IN THE MATTER OF

Tata Capital Financial Services Ltd.] .. Applicant

vs.

Natraj Construction Co. & Ors.] .. Respondents

AND

D.N. Kher] .. Court proposed

WITH

INTERIM APPLICATION (L) NO.30569 OF 2022

IN

COMMERCIAL ARBITRATION PETITION NO.99 OF 2021

IDFC First Bank] .. Intervener/Secured Creditors
IN THE MATTER OF
Tata Capital Financial Services Ltd.] .. Applicant
vs.
Natraj Construction Co. & Ors.] .. Respondents
AND
D.N. Kher] .. Court proposed

Mr.Ranjeev Carvalho a/w Kaustubh Gupte, Poonam Ashar i/b RMS Law Firm for the Applicant.

Mr.Aseem Naphade i/b A.P. Singh for Respondent Nos.1 to 3.

Mr.Nikhil Mehta i/b KMC Legal for Petitioner.

Ms.Rekha Rane, IInd Assistant to Court Receiver present.

CORAM : BHARATI DANGRE, J

DATE : 19th DECEMBER, 2022.

P.C.

1] By order dated 17.07.2021 passed in Commercial Arbitration Petition No.64/2021, at the instance of the Petitioner -Tata Capital Financial Services Ltd. in three Commercial Arbitration Petitions, the Court Receiver, High Court, Bombay, was appointed to take physical possession of the hypothicated goods and prayer clause (d) was also granted, which had sought directions to the Respondent to hand over physical, peaceful and vacant possession of the properties described in Exhibit B.

The Court Receiver was also directed to hand over the properties to the Petitioner with liberty, to dispose of the same by private treaty and to adjust the sale proceeds towards the outstanding dues, due and payable to it from the Respondent. Exhibit B covered 3 properties belonging to Respondent No.1 and Respondent Nos.2 and 3, the co-borrowers, respectively.

The said order was stand complied by the Court Receiver.

2] During interagnum, the IDFC First Bank Limited took out Intervention Applications, on the premise that it being the secured creditor and having initiated action under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, against the Respondent and they having secured an order under Section 14, as against second property mentioned in Exhibit B being Bungalow No.14, “Aditya Bungalow”, Mouje Thaltej, Taluka Ghatlodia, District-Ahmedabad, Gujarat, which was subjected to attachment under the distinct order of the Collector..

3] IDFC First Bank, by the Interim Applications prayed that the Court Receiver shall be restrained from attaching the said property in the wake of valid subsisting mortgage already created in its favour and as a secured creditor, having a valid charge over the said property.

The Intervenor/Applicant, therefore, sought directions to be issued to the Court Receiver to lift the attachment and restrain Tata Capital Financial Services Ltd from creating any third party rights, against the said property.

4] With this prevailing scenario, on 23.11.2022, the estimated value of the property was sought for so as to determine the prospects of satisfying claim of the secured creditor as well as Tata Capital Financial Services Ltd. On 06.12.2022, a valuation report was produced by the IDFC First Bank.

5] The learned counsel Mr.Nikhil Mehta representing the Petitioners had sought time to assess the valuation of the property from its own valuer so as to make appropriate statement and today on instructions Mr.Mehta make a specific statement that since the amount due and payable to the secured creditor exceed, the estimated value of the property, he shall surrender his claim in favour of IDFC First Bank Limited, on realising the futility of the exercise. He seek discharge of the Court Receiver, as against the property, 14, Aditya Bungalow, as the Court Receiver was appointed at the Petitioner's request through his Application.

Mr. Mehta undertake that the charges of the Court Receiver shall be cleared by him till the date of her discharge till today and the same shall be deposited within a period of two weeks from the date of communication of the necessary details by the Court Receiver.

6] As far as Intervenor IDFC First Bank is concerned, it is at liberty to adopt such remedies which are available to it, against the property which stand discharged from the clutches of the Court Receiver by an order of discharge passed today.

Reserving the liberty with the IDFC First Bank to prosecute whatever remedies available to it to secure its debts from Respondent No.1, the Interim Applications are disposed off.

[BHARATI DANGRE, J]