IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4158 OF 2022

Asset Reconstruction Company (India) Limited ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

Mr. Ziyad Madon a/w Mr. Vinod Kothari a/w Ms. Sonal Sanap i/b Apex Law Partners, *Advocates for the Petitioner.*

Ms. M.S. Bane , AGP *for Respondent No. 1-State.*

Mr. Shankar S. Deshmukh, *Advocate for Respondent No. 2.*

Mr. Viraj Parikh a/w Mr. Anup Khaitan and Co. *, Advocates for Respondent No. 5.*

CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.
DATE : OCTOBER 25, 2023

P. C.

1. Rule. With the consent of parties, rule made returnable forthwith and heard finally.

2. The Petitioner is a secured creditor of Respondent No. 3. Pursuant to a public auction held under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 **[“SARFAESI Act, 2002”]**, Respondent No. 5 purchased the leasehold rights to the secured asset, being leasehold rights over land bearing Plot No.97 and 98, Sector B, admeasuring 900 sq. mtrs. (about 9687.60 sq. feet) & building constructed thereon area about 6331.92 sq. feet situated at Parvati Co-operative Industrial Estate Limited, Village Yadrav, Taluka Shirol, Ichhalkaranji, District Kolhapur **[“Subject Property”]**. Pursuant thereto, Respondent No. 5 applied to Respondent No. 4 (being the lessor of the Subject Property) for transfer of the leasehold rights therein in its favour. However, at this time, Respondent No. 4 refused to transfer the same, stating that Respondent No. 2 (being the Western Maharashtra Development Corporation Limited) owed certain dues and that its no objection was a pre-requisite to the transfer. Aggrieved by the same, the Petitioner filed the present Writ Petition.

3. It is the case of the Petitioner and Respondent No. 5 that the dues, if any, owed to Respondent No. 2 cannot come in the way of completion of the transfer. However, the Writ Petition can be disposed of without having to decide this issue, in light of certain later developments, as set out hereinafter.

4. The brief facts of the matter are as follows:

In the year 1990, Respondent No.3 set up an industrial unit at the subject Property for which it applied for Special Capital and Sales Tax Incentives from Respondent No. 2 under a Scheme known as Package Scheme of Government Incentives, 1983 **[“Scheme”]** which were granted to the eligible units. The Respondent No. 3 Borrower obtained Eligibility Certificate on 29th December 1990 subject to the terms and conditions mentioned therein and resorted to the Scheme.

5. Respondent No.2 Corporation in its affidavit in reply have made a statement that Respondent No.3 Borrower had applied for Special Capital Incentives of Rs.7,22,965/- and Sales Tax Incentives of Rs.14,45,930/- and benefits were availed by the Respondent No.3 Borrower.

6. At the same time upon Application by Respondent No.3, the Original Lender viz., Punjab National Bank on or around 20th August 1997 vide Sanction Letter dated 20th September 1997 granted cash credit facilities as demonstrated below:

Nature of facilities	Limit Sanctioned

Cash Credit (Hypothecation)	Rs. 40 lakhs
Cash Credit (Book Debts)	Rs. 20 lakhs

Total	Rs. 60 lakhs
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7. As and by way of security for the above facilities granted, the Respondent No. 3 created equitable mortgage on 15th September 1997 by depositing the original title deeds in respect of the Subject Property.

8. Thereafter the said credit facilities were extended and enhanced from time to time and several contracts in relation thereto were executed in favour of the Original lender.

9. Vide an assignment agreement dated 25th February 2005, the Petitioner acquired rights, title and interest with respect to the financial assistance availed by the Respondent No. 3 Borrower from the Original Lender under provisions of Section 5 of the SARFAESI Act, 2002 along with the underlying security interest in the Subject Property.

10. Observing failure in maintaining financial discipline on part of Respondent No.3, on 31st March 2006 the Petitioner filed Original Application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 being Original Application No. 13 of 2007 before the Debts Recovery Tribunal-I, Mumbai against Respondent No. 3 Borrower and the order has been passed in favour of the Petitioner for Recovery of Rs.1,55,75,000/- (Rupees One Crore Fifty Five Lakhs and Seventy Five Thousand Only) with further interest @ 10% p.a. with simple interest from the date of application till realization. Judgement in favour of Petitioner was passed on 8th November 2010 facilitating recovery of the said amount.

11. Meanwhile, on 6th July 2009 Respondent No.2 Corporation addressed a letter to the Collector, District Kolhapur and copying the same to Respondent No.3 Borrower indicating failure on part of Respondent No.3 in honouring terms and conditions of the Eligibility Certificate causing steps to be taken for recovery of dues as arrears of land revenue from Respondent No.3- Borrower. The letter was also copied to Respondent No. 4- Lessor to take notice of the pending dues of Respondent No. 2 Corporation.

12. The Original Lender also resorted to the procedure laid down under the SARFAESI Act, 2002 and issued notice under Section 13(2) of the SARFAESI Act, 2002 on 12th June, 2003 demanding repayment from Respondent No. 3 Borrower and Guarantors of Rs.1,37,17,786/- (Rupees One Crore Thirty Seven Lakhs Seventeen Thousand Seven Hundred and Eighty Six only) as on 31st March, 2003 , together with further interest till the date of payment due to Original Lender from Respondent No. 3 Borrower and guarantors. By observing default in payment within 60 days from the date of the receipt of notice, the Petitioner took physical possession of the Subject Property on 22nd March 2010 under Section 13(4) of the SARFAESI Act, 2002 read with the Security Interest (Enforcement) Rules, 2002.

13. The Subject Property was put up for public auction by the Petitioners on 23rd September 2020. Respondent No. 5 was the highest bidder, having bid Rs. 40,11,000/- (Rupees Forty Lakh Eleven Thousand Only). Accordingly, the Petitioner issued a Sale Certificate format in favour of Respondent No. 5.

14. Respondent No. 5 thereafter approached the officials of Respondent No. 4 seeking their no objection certificate for transfer of the leasehold interest in the Subject Property in its favour. Respondent No. 4's officials orally informed Respondent No. 5's representative about Respondent No. 2's pending claim. Accordingly, Respondent No. 5 addressed a letter dated 10th December 2020 to Respondent No. 2 requesting that it issue a No Objection Certificate for transfer of leasehold rights over the Subject Property.

15. By letter dated 29th January 2021, Respondent No. 2 informed Respondent No. 3 that Respondent No. 5 had sought its No Objection Certificate for transfer of the leasehold rights over the Subject Property, and that the same could not be granted unless it cleared all dues owed to it.

16. Thereafter, by a letter dated 2nd July 2021, Respondent No. 4 informed Respondent No. 5 that it would only transfer leasehold rights over the Subject Property in its favour after receiving Respondent No. 2's No Objection Certificate.

17. Aggrieved by Respondent No. 4's failure to transfer the leasehold rights over the Subject Property in Respondent No. 5's favour, the Petitioner filed the present Writ Petition.

18. Respondent No. 2 filed an affidavit in reply to the Writ Petition dated 19th September 2023 through Mr. Sadashiv S. Survase (Managing Director of Respondent No.2 Corporation). In this affidavit, Respondent No. 2 stated that its claim stood at (i) Special Capital Incentive of Rs. 7,22,965/- (Rupees Seven Lakhs Twenty Two Thousand Nine Hundred and Sixty-Five only) and (ii) Sales Tax Incentive of Rs. 23,82,178/- (Rupees Twenty Three Lakh Eighty Two Thousand One Hundred Seventy Eight Only). Respondent No. 2 further stated that in this affidavit that, with respect to the Special Capital Incentive disbursed by it, the State of Maharashtra had launched a special amnesty scheme vide Government Resolution dated 18th August 2021 for such closed industrial unit for those who had availed benefits under the PSI scheme were to pay the principal amount only availed by the closed unit or on behalf of the said closed unit if all the conditions set out in the said G.R. were satisfied.

19. By a letter dated 11th October 2023, Respondent No. 2 enquired from the Sales Tax Department as to the dues owed to it by Respondent No. 3.

20. By a letter dated 16th October 2023, the Sales Tax Department informed Respondent No. 2 that it had no record of Respondent No. 3 having availed any sales tax incentive benefits under the Scheme.

21. Respondent No. 2 thereafter filed an Additional Affidavit dated 21st October 2023 placing on record the abovementioned correspondence and stating that it would issue its no objection to the transfer of the subject property if Respondent No. 5 paid to it the sum of Rs. 7,22,965/-.

22. Mr. Viraj Parikh, the learned Counsel appearing on behalf of Respondent No. 5, has fairly stated on instructions that, although Respondent No. 5 disputed its liability to make any payments to Respondent No. 2 or any other person / authority towards debts which may have been owed by Respondent No. 3, it would be willing to pay the sum of Rs. 7,22,965/- (Rupees Seven Lakhs Twenty Two Thousand Nine Hundred and Sixty-Five only) to Respondent No. 2 on the condition that it thereafter issued its no objection to the transfer of the leasehold rights to the Subject Property.

23. Respondent No.2 has confirmed that apart from the amount of Rs. 7,22,965/-, no further dues are owed to it by Respondent No.3. It has therefore confirmed that, if Respondent No.5 availed the aforesaid amnesty scheme by paying to it the sum of Rs. 7,22,965/- (Rupees Seven Lakhs Twenty Two Thousand Nine Hundred and Sixty-Five only), and on Respondent No.5 making an appropriate application to it in the requisite form, it will issue its no objection for the transfer, which no objection shall not unreasonably be withheld.

24. It is thus clear that the only debt due to the Government on account of the Subject Property is the aforesaid amount, for which

Respondent No.5 will be availing of the Amnesty Scheme by paying a sum of Rs.7,22,965/-.

25. In light of the fair stand taken by Respondent No.2 and Respondent No.5, the Writ Petition is disposed off on the following terms:

a. Within one week from today Respondent No.2 shall provide to Respondent No.5 with the requisite forms to be submitted to it seeking issuance of its no objection for the transfer of the leasehold rights in the Subject Property.

b. Respondent No.5 shall thereafter apply to Respondent No.2 for transfer of the leasehold rights in the Subject Property, by submitting the requisite forms as intimated by Respondent No.2, alongwith proof of payment of the sum of Rs. 7,22,965/- (Rupees Seven Lakhs Twenty Two Thousand Nine Hundred and Sixty-Five only).

c. Within 2 weeks of Respondent No. 5 submitting an application for no objection, Respondent No. 2 (i) issue to Respondent No. 5 a No Dues Certificate and (ii) issue to Respondent No. 4 its No Objection Certificate for transfer of the leasehold rights in the Subject Property.

d. Within 2 weeks thereafter, Respondent No. 4 will record transfer of the leasehold rights in the Subject Property in favour of Respondent No. 5;

e. Within 2 weeks thereafter, the Petitioner will register the Sale Certificate in favour of Respondent No. 5 with

Respondent No. 6, *i.e.*, the Sub-Registrar of Assurances, Taluka Ichalkaranji, District Kolhapur.

26. Rule is made absolute in the aforesaid terms and the Writ Petition is accordingly disposed off in terms thereof. No order as to costs.

27. In case of any difficulty, liberty to apply.

28. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.] **[B. P. COLABAWALLA, J.]**