2023:DHC:6901-DB

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

% *Date of Decision*: 15.09.2023

+ **W.P.(C) 5031/2023**

MANISH SHARMA & ORS. ..... Petitioners
Through: Mr. Pranav Rishi & Mr. Himanshu Gupta, Advs.

versus

EDELWEISS ASSET RECONSTRUCTION COMPANY LTD & ANR. ..... Respondents
Through: Mr. Rajat Katyal & Mr. Rahul Sambher, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**
**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**VIBHU BAKHRU, J.**

**REVIEW PET. 214/2023 in W.P.(C)-5031/2023**

1. The respondents have filed the present review petition seeking review of the order dated 07.07.2023 passed by the Coordinate Bench of this Court in the above-captioned writ petition.

2. The petitioners had filed the above-captioned writ petition impugning an order dated 19.07.2022 (hereafter '**the impugned order**') passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereafter '**DRAT**') in Appeal No.159/2022 staying the operation

of an order dated 16.07.2022 passed by the Debts Recovery Tribunal-III (hereafter '**DRT-III**') in Securitisation Application (SA) No.264/2022 captioned ***Manish Sharma & Ors. v. Edelweiss Assets Reconstruction Company Ltd.***

3. The petitioners had filed the aforesaid application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**the SARFAESI Act**'), *inter alia*, impugning the steps taken by respondent no.1 for enforcement of its security interest in respect of the property described as B-36, Sector-12, THA Residential Colony, Chander Nagar, Tehsil & District Ghaziabad, U.P (hereafter '**the subject property**').

4. The learned DRT-III had, by an order dated 16.07.2022, restrained respondent no.1 (Edelweiss Assets Reconstruction Company Ltd.) from proceeding with enforcement of the security interest in respect of the subject property.

5. It was stated that the petitioners had availed financial assistance from L&T Housing Finance Ltd. to the extent of ₹99,57,633/- and had defaulted in their repayment obligations. L&T Housing Finance had assigned its assets to respondent. No.1. Aggrieved by the order dated 16.07.2022 passed by the learned DRT-III, the respondents had preferred an appeal (being Miscellaneous Appeal No.159/2022) before the DRAT. By virtue of the order dated 19.07.2022, which was impugned in the above captioned petition, the said order was stayed.

6. The petitioners are essentially aggrieved by the proceedings

initiated by the respondents in respect of the subject property.

7. On 27.04.2023, the learned counsel for the petitioners had made a statement that the petitioners were ready and willing to pay an amount of ₹50,00,000/- to the respondents out of which a sum of ₹25,00,000/- would be deposited within two days from the said date. At the material time, the auction in respect of the subject property was conducted but the sale had not been confirmed. In view of the above, the learned counsel appearing for the respondents made a statement that *status quo* in respect of the auction will be maintained for a period of two weeks.

8. In view of the above, this Court had directed that '*on the monies deposited by the petitioners, there shall be no lien/claim by the respondents*'.

9. The matter was re-listed on 26.05.2023 and it was reported that the petitioners had paid a sum of ₹50,00,000/- lacs *albeit*, after a delay of two days and that the petitioners were ready and willing to pay a further amount of ₹60,20,000/- in three instalments.

10. The learned counsel appearing for the respondents accepted the schedule of repayment and made a statement that no precipitate action would be taken in respect of the subject property. The order passed on 26.05.2023 reads as under: -

> 1. The learned counsel for the petitioners submits that in terms of the previous order dated 27.04.2023, he has paid Rs.50,00,000/- but there was delay of 2 days at the time of first transaction. He says that he is ready and willing to pay another amount of Rs.60,20,000/-.

2. The amount will be paid in three installments which are as follows:
i. Rs.25,00,000/- shall be paid on or before 20.06.2023;
ii. Another amount of Rs.25,00,000/- shall be paid on or before 30.06.2023; and
iii. Rs.10,20,000/- shall be paid before the next date.
3. The learned counsel for the respondents accepts the above schedule and states upon instructions that no precipitate action shall be taken apropos the property till then. He also submits that due to an incorrect interpretation of the previous order, the auction sale was erroneously confirmed. He expresses regret on behalf of the respondents.
4. The monies shall be accepted by the respondent, without prejudice to the rights and contentions of the parties.
5. List on 07.07.2023."

11. Despite the *status quo* order, the respondent no.1 accepted funds from a third-party auction purchaser, however, it was agreed on 07.07.2023 that the same would be refunded to the third-party auction purchaser. The petitioners had also agreed that over and above the payments, the petitioners would pay a sum of ₹5,00,000/- to the respondents within a period of two weeks out of which ₹2,00,000/- would be deposited during the course of the day. The order dated 07.07.2023 reads as under:-

"1. The learned counsel for the petitioners submits that the petitioners, as bidders, have paid the same amount for which the bid has been made by the third party bidder/auction purchaser.

2. In view of the above, the bank is ready to accept this amount and refund Rs.40 lacs received from the third-party along with interest @ 9% p.a. within one month. Over and above, the petitioners shall pay an amount of Rs.5 lacs to the bank, within a period of one week, Rs.2 lacs shall be deposited during the course of the day and the remaining amount of Rs.3 lacs shall be paid within one month. On receipt of the balance amount,

the original papers of the property shall be released to the petitioners by the bank and the account shall be treated as settled and closed.

3. The petition along with pending application stands disposed-off in terms of the above."

12. The petitioners understood that the repayments made by them are in full and final settlement of the claims by the respondents. However, respondent no.1 does not accept the same. According to respondent no.1, the payments were only for refraining from auctioning the subject property. Whilst, there may be some controversy whether the payment made by the petitioners was in full and final settlement of all the dues claimed by the respondents, there can be no cavil that the respondents had agreed to release the subject property to the petitioners on receipt of the amounts as stated. This is clearly recorded in the last sentence of the paragraph no.2 of the order dated 07.07.2023 and there is no ambiguity in this regard.

13. It is also apparent from the above that the petitioners had more than matched the bid amount of the third-party auction purchaser. Thus, in any event the respondents had received the consideration that they expected from auction of the subject property. Respondent no.1 is required to release its security interest in respect of the subject property as the same stands discharged. We have no doubt that respondent no.1 had made the concession regarding the release of the subject property to the petitioners in the aforesaid context.

14. After some arguments, the parties agree that the respondent no.1 would return the title deeds of the subject property to the petitioners

while reserving its rights to claim the balance amount as may be due from the petitioners.

15. In view of the above, the order dated 07.07.2023 shall not be read as absolving the petitioners from their liability in respect of the balance amount that may be remaining due and payable by them to the respondents. However, the respondents shall hand over the title documents and papers relating to the subject property, to the petitioners within a period of one week in terms of the order dated 07.07.2023.

16. This order has been passed with the consent of the parties.

17. The review petition is disposed of.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**SEPTEMBER 15, 2023**
**Ch**