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

% ***Date of Decision: 2nd August, 2023***

\+ **W.P.(C) 5687/2023 & CM APPL. 22241/2023, CM APPL. 31651/2023**

DHEERAJ POPLI ..... Petitioner

Through: Mr. Sanjeev Bhandari, Mr. Kunal Mittal, Mr. Tarun Kumar and Mr. Saurabh Tanwar, Advs.

versus

UNION BANK OF INDIA ..... Respondent

Through: Mr. Janendra Lal and Ms. Yasmin Tarapore, Advs. for R-UBI.
Mr. Amit Dhall, Adv. for R-2 and 3.

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

VIBHU BAKHRU, J.

1. The petitioner, has filed the present petition, impugning an order dated 20.12.2022, passed by the learned Debts Recovery Appellate Tribunal (hereafter '**DRAT**') in Misc Appeal No. 256/2022.

2. The respondent bank (Union Bank of India) had preferred the said appeal against the order dated 19.10.2022, passed by the learned Debts Recovery Tribunal – II (hereafter '**DRT**'), whereby the petitioner was permitted to participate in the auction proceedings scheduled on 20.10.2022, on the basis of the earnest money deposited (hereafter '**EMD**') in an earlier auction.

3. The respondent bank had issued a sale notice dated 06.04.2022

for sale of the property described as "*All that piece and parcel of Residential House at Plot no.60, Block-E, Bali Nagar, Najafgarh Road, New Delhi admeasuring 271 sq yds in the name of Mr Prem Khurana & Mrs Satya Rani Khurana*" (hereafter '**mortgaged property**'). The mortgaged property is owned by respondent No. 2 and 3 and was mortgaged with the respondent bank against facilities extended to M/s Chawla Agencies Pvt. Ltd. (hereafter '**borrower**').

4. The petitioner participated in the said auction and bid a sum of ₹741 lakhs for purchase of the mortgaged property. The said bid was accepted. In terms of the auction notice, the petitioner also deposited 25% of the bid amount aggregating a sum of ₹1,85,25,000/-. However, he failed to deposit the balance 75% of the bid amount, within the time as stipulated.

5. The petitioner sought extension of ninety days for depositing the balance bid amount. The respondent bank initially granted an extension of sixty days, and thereafter, granted further time upto ninety days, which according to the respondent bank, was the maximum extension permissible.

6. The petitioner failed to deposit the balance consideration within the said extended period. It is the respondent bank's case that it is now entitled to forfeit the EMD of 25%.

7. The petitioner disputes that the respondent bank is entitled to forfeit part of the bid amount and the said controversy is pending before the learned DRT. However, in the meanwhile, notice for fresh

auction was issued, but the same did not fructify.

8. The respondent bank now proposes to issue fresh sale notices. Since the controversy regarding the first auction is pending consideration before the learned DRT, the learned DRT passed an order dated 20.12.2022, permitting the petitioner to participate in the said auction without payment of any further EMD.

9. The said order was modified by the learned DRAT in an appeal preferred by the respondent bank. The petitioner is now entitled to participate in the future auction, but would require to deposit fresh EMD.

10. The present petition was listed before this Court on 02.05.2023. On that date, the petitioner paid further sum of ₹1,80,00,000/- by way of two separate demand drafts, which were handed to the respondent bank. The petitioner also agreed that the balance amount would be paid within a period of thirty days. In addition, the petitioner also agreed to pay a sum of ₹2.5 lakhs as litigation costs. The said amount has also been paid.

11. It was expected that the said payments would placate the respondent bank and put a quietus to the controversy. The borrower is also agreeable to the petitioner making the balance payment as that would reduce its outstanding. However, notwithstanding that the petitioner is also willing to pay further interest, the respondent bank is not willing to accept the said payments as the sale consideration for the mortgaged property.

12. We are of the view that it would not be apposite to put the mortgaged property to auction while the entire issue whether the petitioner is entitled to purchase the same is pending consideration before the learned DRT. As the ensuing auction, would necessarily be, subject to the rights of the petitioner in the proceedings that are pending before the learned DRT.

13. In the circumstances, this Court considers it apposite to request the learned DRT to dispose of the petitioner's pending application, TSA no. 45/2022, as expeditiously as possible and, in any event, within a period of ten weeks from today.

14. In the meanwhile, the respondent bank shall refrain from taking any steps for sale of the mortgaged property.

15. The respondent bank shall forthwith return the amount deposited by the petitioner, pursuant to the order passed by this Court on 02.05.2023, including the litigation costs.

16. Needless to state that it will always be open for the petitioner to approach the respondent bank for an amicable resolution.

17. The petition is disposed of in the aforesaid terms. Pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 2, 2023 / *'KDK'*