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

% *Date of Decision: 1st November, 2023*

+ **CONT.CAS(C) 1402/2022 & CM APPL. 55395/2022 & CM APPL. 55396/2022**

MIS DECO INDUSTRIES INDIA Petitioner

Through: Mr. Sangram Patnaik, Mr.
Rajiv Gupta, Mr. Manish
Kumar Mathur & Mr.
Pushkar Anand, Advs.

versus

JM FINANCIAL ASSETS RECONSTRUCTION
COMPANY LTD THROUGH ITS AO KUMAR
GAURAV & ORS. Respondents

Through: Mr. Chitranshul A. Sinha
& Mr. Jaskaran S. Bhatia,
Advocates for R-1.

+ **W.P.(C) 12281/2019 & CM APPL. 4776/2020**

DECO INDUSTRIES (INDIA) Petitioner

Through: Mr. Sangram Patnaik, Mr.
Rajiv Gupta, Mr. Manish
Kumar Mathur & Mr.
Pushkar Anand, Advs.

versus

JM FINANCIAL ASSETS RECONSTRUCTION
COMPANY LTD & ORS Respondent

Through: Mr. Chitranshul A. Sinha
& Mr. Jaskaran S. Bhatia,
Advocates for R-1.



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

AMIT MAHAJAN, J.

1. The petitioner has filed the present petition being W.P.(C) 12281/2019 impugning an order dated 01.07.2019, passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereafter '**DRAT**') in Appeal No. 181/2018 & Misc Appeal No. 15/2019 (hereafter '**the impugned order**').
2. The contempt petition, being CONT. CAS (C) 1402/2022 is filed by the petitioner, alleging that the respondents had committed the contempt of the order dated 29.11.2019, passed by a coordinate Bench of this Court in the present writ petition.
3. The petitioner had obtained loan from Respondent No.3 (Karnataka Bank) and in order to secure the repayment of the said loan, it had created an equitable mortgage on two of its properties being Flat No.CIC-095, 9th Floor, Carlton Estate, DLF, Phase-V, Gurgaon, Haryana admeasuring 1342 sq. feet, and the other being the leasehold rights of factory land & building situated at A-99/5, Block A, Wazirpur, Industrial Area, Delhi-110052 (hereafter '**the mortgaged properties**').
4. The mortgage in respect of the said properties was created on 08.02.2010 and 07.09.2011. The petitioner had defaulted in its repayment obligations. Consequently, a demand notice was



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issued on 12.12.2012 by the Karnataka Bank demanding a sum of ₹2,30,50,363.89/- under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**SARFAESI Act**'). Thereafter, on 03.04.2013, possession notices under Section 13(4) of the SARFAESI Act, were issued in respect of the mortgaged properties.

5. A Securitisation Application, being S.A. No. 180/2013, was filed by the petitioner challenging the possession notices issued by the Karnataka Bank, before the learned Debts Recovery Tribunal-III, Delhi. The said Securitisation Application was subsequently transferred to DRT-III, Chandigarh (hereafter '**the DRT**'), and was registered as S.A. No.265/2017. In the meantime, the Karnataka Bank *vide* an agreement dated 15.12.2014, assigned the financial interest in relation to the petitioner to Respondent No.1 (JM Financial Assets Reconstruction Company Limited).

6. Another Securitisation Application, being SARR No. 1427/2016 (re-numbered as S.A. No. 263/2017) was filed by the petitioner, claiming that the Karnataka Bank has sold the mortgaged properties to JM Financial Assets Reconstruction Company Limited, in violation of the RBI Guidelines and Rule 8 & 9 of the Security Interest (Enforcement) Rules, 2002 (hereafter '**SIER Rules**'). The petitioner also filed another Securitisation Application, being S.A. No. 49/2017 (renumbered as S.A. No. 264/2017), being aggrieved by the auction notice issued by JM



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Financial Assets Reconstruction Company Limited in relation to the Gurgaon property.

7. Thereafter, another Securitisation Application, being S.A. No. 402/2018, was filed by the petitioner, being aggrieved by the order dated 30.10.2018, passed by the CMM, Northwest, Rohini Court, appointing a Receiver for taking physical possession of the mortgaged property at Wazirpur, Delhi. Another Securitisation Application, being S.A. No. 361/2018, was filed by the petitioner seeking to restrain the respondents from taking physical possession of the mortgaged property situated at Wazirpur, Delhi.

8. It is informed that JM Financial Assets Reconstruction Company Limited, in the meanwhile, filed an original application, being OA No. 744/2017, for recovery of its dues. By an order dated 20.03.2018, the learned DRT, allowed the OA No.744/2017 for the recovery of ₹3,06,65,999.50/- with interest @ 12 % per annum from 17.10.2015. A Recovery Certificate to that effect in favour of JM Financial Assets Reconstruction Company Limited, was also issued.

9. The learned DRT by an order dated 13.03.2018, dismissed the three SAs bearing S.A. Nos. 263/2017, 264/2017 & 265/2017, observing that the auction proceedings with regard to the Gurgaon Property was legally correct as the interim stay was vacated on 10.07.2017. The learned DRT further noted that the provisions of Section 13(2) and 13(4) of the SARFAESI Act were duly complied with, with regards to the mortgaged property



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at Delhi.

10. The learned DRAT by way of the impugned order noted that the learned DRT has not dealt with the controversy as to whether the transaction between the Karnataka Bank and JM Financial Assets Reconstruction Company Limited was a transaction of outright sale of the properties of the petitioner or was in the nature of an assignment of debt as provided under Section 5 of the SARFAESI Act.

11. The learned DRAT, on this ground, allowed the appeal filed by the petitioner and remanded the matter to the learned DRT for fresh consideration. The learned DRAT also observed that the dispute has been continuing since the year 2013 and, therefore, the learned DRT should make all efforts to decide the Securitisation Applications within two months. In relation to the prayer made on behalf of the petitioner for continuation of the interim relief, the learned DRAT observed that the said prayer could be made before the learned DRT, which shall consider the same in accordance with law.

12. Being aggrieved by the order of remand, the present petitions were filed essentially on two counts. Firstly, that the appeal instead of being remanded should have been allowed on the ground that the transaction between the Karnataka Bank and JM Financial Assets Reconstruction Company Limited was a transaction of outright sale of the mortgaged properties of the petitioner, and was not in the nature of the assignment of debt as provided under Section 5 of the SARFAESI Act. It is the case of



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the petitioner that in case of the outright sale of a property, the mandatory RBI guidelines and Rules 8 & 9 of the SIER Rules, were required to be followed, but were not complied with.

13. Secondly, that the learned DRAT, during the pendency of appeal, granted interim protection in respect of the mortgaged properties, which ought to have been directed to continue in case the matter was remanded for fresh consideration by the learned DRT.

14. The above captioned Contempt Petition was filed by the petitioner alleging willful disobedience of the order dated 29.11.2019 in W.P.(C) 12281/2019, whereby this Court had directed no coercive steps to be taken with regards to the Gurgaon Property, and also extended the stay granted by the learned DRAT earlier with regards to the mortgaged property situated at Wazirpur, Delhi, till the next date of hearing.

15. The petitioner contended that despite being aware of the same, JM Financial Assets Reconstruction Company Limited issued a sale certificate qua the Gurgaon Property in favour of M/s Meghalaya Travels Pvt. Ltd. on 29.11.2019, and decapitated the asset being the factory land situated at Wazirpur, Delhi.

16. We are informed that even though this Court had not interdicted the learned DRT from considering the matter after being remanded by the learned DRAT, the matter has not proceeded. The learned counsel for the respondents has pointed out that the petitioner has been taking adjournments on the ground that the matter was pending in this Court and that this



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Court has granted stay.

17. The principal controversy to be decided, therefore is, whether the learned DRAT was correct in remanding the matter to the learned DRT for consideration of the issue raised by the petitioner, that is, the transaction between the Karnataka Bank and the respondent was not a transaction of assignment of debt under Section 5 of SARFAESI Act, but a transaction of outright sale of properties and Rules 8 and 9 of the SIER Rules, which were required to be complied with were not followed. The other issue to be considered is whether the learned DRAT was correct in not extending the interim relief granted to the petitioner during the pendency of the appeal.

18. It is contended by the learned counsel for the respondents that the agreement entered into between the Karnataka Bank and JM Financial Assets Reconstruction Company Limited was not of outright sale but of assignment in terms of Section 5 of the SARFAESI Act. He relies upon the assignment deed dated 15.12.2014.

19. We have perused the Assignment Deed. The relevant clauses are set out below:

“2. ASSIGNMENT OF LOANS

2.1 Assignment

2.1.1 The Parties hereto acknowledge that provisions of SARFAESI including but not limited to section 5(3) will be applicable thereto and the conditions precedent set forth in Clause 3 of this Agreement (Conditions Precedent) have been fulfilled or waived by the Assignee, as the case may be, and in consideration of the Assignee, paying the Purchase Consideration in the Assignor, and upon the terms and conditions set forth herein and in the relevant Transaction



Documents, the Assignor as the true, legal and beneficial owner of the Loans, in the ordinary course of its business, hereby unconditionally and Irrevocably sells, assigns, transfers and releases to and unto the Assignee all the Loans forever, pursuant to Section 5(1)(b) of the SARFAESI TO HOLD the same absolutely IN TRUST for the benefit of the holders of the Security Receipts issued by the Assignee pursuant to the JMFARC – Karnataka Bank December, 2014, Trust and the Trust Deed TO THE END AND INTENT THAT the Assignee shall hereafter be deemed to be the full and absolute legal owner and the only person legally entitled to the Loans or any part thereof, free from any or all encumbrances, and to recover and receive all Amounts Due, including the right to file a suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of the Loans in its own name and right and as an assignee and not as a representative or agent of the Assignor and to exercise all other rights of the Assignor in relation thereto.

2.1.2 The Assignor hereby further assigns in favour of the Assignee, all its rights, title and Interest in the Financing Documents, all agreements, deeds and documents related thereto and all collateral and underlying Security Interests and / or pledges created to secure, and/or guarantees issued in respect of the repayment of the Loans which the Assignor is entitled to: The Assignee shall have the right to enforce such Security Interests, pledges and / or guarantee and appropriate the amounts realized therefrom towards the repayment of the Loans and to exercise all other rights of the Assignor in relation to such Security Interests, pledges and / or guarantees. The Assignor shall transfer/deliver or cause to be transferred/delivered or hold for and on behalf of the Assignee, all such original documents, deeds and/or writings, including but not limited to the Financing Documents, and produce the same promptly upon any request by the Assignee.

2.1.3 The Assignor hereby agree with the Assignee, that it shall execute all documents as may be necessary or required under Applicable Law for the purpose of perfecting the Assignee's right, title and interest in the Loans, the Financing Documents, and/or any underlying Security Interests, pledges and/or guarantees as the case may be, unto and to the use of the



Assignee in the manner aforesaid and do all acts, deeds and things as may be necessary in this regard; at the cost of the Assignee.

2.1.4 Upon execution of these presents, the Purchase Consideration shall be paid by the Assignee to the Assignor by way of electronic funds transfer or remittance of funds, by any other means crediting the Account No. 0013500200003701 of the Assignor.

2.1.5 The Assignor shall, upon receipt of the Purchase Consideration, issue a receipt to the Assignee duly acknowledging the payment of the Purchase Consideration. The payment of the Purchase Consideration to the Assignors shall constitute full, final and complete discharge of the obligation of the Assignee with respect to payment of consideration for the Loans and the Assignment stated herein taking effect. The Assignor hereby admits and acknowledges the sufficiency of the Purchase Consideration.

2.2 Further Actions

2.2.1 Any payment by the Borrower or on behalf of the Borrower in discharge of the Loans, to the Assignee or into the hands of the duly authorised agent of the Assignee, shall constitute a discharge of the obligations of the Borrower to the Assignor and the Assignee, to make such payments.

2.2.2 In the event that either the Assignor or Assignee receives payment from a Borrower in connection with the Financial Assistance availed by such Borrower from the Assignor (including, but not limited to the Loans) without specific reference to the Financial Assistance in respect to which such payments relate, then the Assignor or the Assignee, as the case may be, shall ascertain from such Borrower, the specific Financial Assistance in respect of which such payment has been made by such Borrower.

Each of the Party hereby agrees that in the event that it receives any amounts pertaining to the Financial Assistance held by the other Party, or any part thereof, after the cut-off date pending execution of this Agreement. It shall hold such amounts, or part thereof, as the case may be, free of any set off or counterclaim, in trust for the benefit of the other Party and shall forthwith,



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upon receipt thereof, hand such amounts over to the other Party or its duly authorised agent.

2.2.3 Each of the Party hereby agrees that all payments that are required to be made by it to the other Party under this Agreement shall be made in full without exercising any right of set-off.

2.2.4 Save and except as provided for under this Agreement, the Assignor shall not have and hereby irrevocably waives any separate claim against the Borrower, in respect of the Loans.

2.2.5 The Assignor hereby undertakes that it shall, if so required by the Assignee and at the cost of Assignee, notify any or all the Borrowers, Guarantors, Advocates, other Lenders, Statutory Authorities, DRT/DRAT/High Court/BIFR/AIFR, Official Liquidator, High Court/DRT Receiver, Insurance Company, Security Agency and any other entity related to the Borrower of the assignment of the Loans the underlying Security Interests, pledges and / or guarantees and all its right, title and interest in the Financing Documents to the Assignee.

2.2.6 In the event of delay on the part of a Party in making payments to the other Party as contemplated in this Agreement (including by way of indemnity), such Party shall without prejudice to the rights of the other Party under this Agreement pay the defaulted amounts together with simple interest thereon at the rate of 12% per annum computed from the date on which such amounts become due and payable till the date of actual payment.

2.3 Assets Assigned

2.3.1 Nothing other than a "financial asset" as defined in the SARFAESI Act is acquired by the Assignee from the Assignor as per this Agreement.

2.3.2 The financial assets are assigned by the Assignor to the Assignee "as is where is", "as is what is" and "without recourse" basis.

20. From the bare perusal of the terms of the Assignment Deed as set out above, *prima facie*, it cannot be said that the agreement entered into between the Karnataka Bank and JM



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Financial Assets Reconstruction Company Limited was for an outright sale of the immovable secured assets. The Assignment Deed specifically provides that the Karnataka Bank has assigned the debt in relation to the petitioner company to JM Financial Assets Reconstruction Company Limited.

21. We do not consider it apposite to dwell further into that aspect since the learned DRAT had remanded the matter to the learned DRT for consideration of the said contention, and any further observations made by this Court would render the proceedings before the learned DRT infructuous.

22. The other aspect to be considered is whether the learned DRAT, while remanding the matter, should have extended the interim order. The contention raised by the learned counsel for the petitioner is that, since the interim order was granted by the learned DRAT during the pendency of the appeal, the same ought to have been extended in case of a remand. The said contention is meritless. If the same is accepted, then in every case where the Court decides to remand the matter to the Court of first instance or any Adjudicating Authority for consideration - till such time the matter is considered - the same would require continuation of the interim orders, even if, *prima facie*, a case for such orders has not been established.

23. It is significant to note that the matter was not remanded because the learned DRAT was, *prima facie*, of the view that the transaction between Respondent No.1 and 3 (JM Financial Assets Reconstruction Company Limited and Karnataka Bank),



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pertains to the sale of the mortgaged properties. The Learned DRAT had remanded the matter because the said issue was not considered by the learned DRT. Therefore, we agree that no interim order or directions was warranted without a, *prima facie*, finding in favour of the Petitioner, in respect of the said issue.

24. As observed above, the Assignment Deed which the petitioner contends to be of an outright sale of the mortgaged properties, *prima facie*, appears to be of an assignment of the financial asset in terms of Section 5 of the SARFAESI Act.

25. Moreover, the learned DRAT has given an opportunity to the petitioner to file an appropriate application before the learned DRT seeking interim relief.

26. In view of the above, we find no merit in the present writ petition and the same is, accordingly, dismissed.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

NOVEMBER 1, 2023

“SK”/ “SS”