



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1148 OF 2024

Madhavi Goenka

...Petitioner

Versus

India SME Assets Reconstruction Co. Ltd.

...Respondent

Mr. Prateek Seksaria, Senior Counsel, a/w Anshul Anjarlekar, Nishant Chotani & Rohit Agarwal, i/b Raval Shah & Co., Advocates for the Petitioner.

Mr. Anup Khaitan, i/b Anup Khaitan & Co., Advocates for Respondent-Canara Bank.

Mr. Venkatesh Dhond, Senior Advocate, Sidharth Samantaray, Pratik Pansare & Arati Roy, i/b Vivek Sawant, Advocates for Respondent.

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : FEBRUARY 21, 2024

PC :

1. The above Writ Petition is filed seeking to set aside the impugned order dated 17th January, 2024 passed by the learned DRAT in Interim Application (D) No. 36 of 2024 in Appeal (D) No. 37 of 2024. The above Interim Application was filed for waiver of deposit under Section 18 of the SARFAESI Act, 2002, in which the Petitioner herein was directed to deposit a sum of Rs.21.66 Crores. It was the case of the

Petitioner that the disputes between the Petitioner [in her capacity as a guarantor and mortgagor] and the Respondent-ARC were settled by virtue of a One Time Settlement (**OTS**) issued by the Respondent-ARC dated 3rd October, 2023. Before the period to comply with the directions in the said OTS expired, the OTS was unilaterally withdrawn by the Respondent-ARC vide letter dated 22nd November, 2023. In the withdrawal letter, no reasons whatsoever were given.

2. We had partly heard the above matter on 29th January, 2024 and thereafter kept it on 30th January, 2024 to enable the Respondent-ARC to take instructions in the above matter. Thereafter, on 30th January, 2024 a further period of 10 days was taken by the Respondent-ARC to take the necessary instructions. This was necessary, because according to the Respondent-ARC, 95% of the security receipts of the trust which relates to the debt assigned to the Respondent-ARC are held by Canara Bank, and the said Bank was not agreeable to the aforesaid OTS.

3. Today when the matter is called out, Canara Bank is represented through an Advocate, Mr. Khaitan, who on instructions, has stated that if the Petitioner is agreeable to pay an amount of

Rs.6,89,00,000/- (Rupees Six Crores Eighty Nine Lakhs) on or before 31st March, 2024, then the Respondent-ARC can release the personal guarantee as well as the mortgaged property of the Petitioner. He however submitted that it should be clarified that this does not mean that the entire debt owed by others to the Respondent-ARC would stand discharged.

4. Mr. Dhond, the learned Senior Counsel appearing on behalf of the Respondent-ARC, fairly stated that if Canara Bank is agreeable for the Respondent-ARC to release the guarantee as well as the mortgaged property of the Petitioner on payment of Rs.6,89,00,000/- (Rupees Six Crores Eighty Nine Lakhs), the Respondent-ARC would abide by the same.

5. Considering the fair stand taken by Canara bank as well as the Respondent-ARC, we dispose of the above Writ Petition by directing that the Petitioner shall pay to the Respondent-ARC a sum of Rs. 6,89,00,000/- (Rupees Six Crores Eighty Nine Lakhs) on or before 31st March, 2024. If this payment is made within the time stipulated, then, the Respondent-ARC shall release the personal guarantee given by the Petitioner as well as the mortgaged property, namely, Third Floor,

Residential Premises on Old Bungalow Plot, Saraswati Bhavan (Goenka Bhavan), Plot No.6, Hanuman Road, Near Parle Tilak Vidhalaya English Medium School, Vile Parle (East), Taluka: Andheri, Mumbai 400 057. A release letter in favour of the Petitioner shall be issued once the entire payment of Rs. 6,89,00,000/- (Rupees Six Crores Eighty Nine Lakhs) is made on or before 31st March, 2024. It is further directed that on the aforesaid payment being made on or before 31st March, 2024, all legal proceedings/actions taken by the Respondent-ARC against the Petitioner shall come to an end. It is clarified that all legal proceedings/actions against the Borrower company namely, Garden View Impex Pvt. Ltd., and other guarantors, shall continue unaffected by this order. Until 31st March, 2024, any proceedings initiated against the Petitioner, or the mortgaged property, shall remain stayed.

6. In the event, the amount of Rs.6,89,00,000/- (Rupees Six Crores Eighty Nine Lakhs) is not paid on or before 31st March, 2024, the above Writ Petition shall stand dismissed without further reference to the Court. In such an event the Respondent-ARC shall be entitled to proceed against the Petitioner in accordance with law, as if there was no settlement.

7. In the interregnum, and till 31st March, 2024, if the Petitioner and/or any person claiming through them, requires inspection of the original title documents which are with the Respondent-ARC, then they are free to take the same by giving 48 hours prior notice in that regard.

8. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

9. 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.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]