

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5708 OF 2024

Edelweiss Asset Reconstruction
Company Ltd

..Petitioner

Versus

The State of Maharashtra & Ors

..Respondents

Mr.Bhalchandra Palav i/b Bhal & Co, Advocates for the Petitioner.

Mr.Ashutosh Gole with Mr.P.Joshi, Advocates for Respondent Nos.5 to 7.

Mr. A. I. Patel, Addl. G.P. with Tanaya Goswami, AGP, for the Respondent /State.

Mr.B.Srinivasn Dutt (AVP-Legal) of the Petitioner present.

Mr.Sunil Mali, Competent Authority cum Sub Divisional Officer, Palghar is present in Court.

PSI Pankaj Hole, Gamdevi Police Station is present.

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**
DATE : APRIL 30, 2024

P.C.

The above Writ Petition is filed seeking the following
reliefs:-

- (a) “this Hon’ble Court may issue a Writ of Certiorari or any other appropriate Writ, Order or Direction under Article 227 of the Constitution of India calling for the records and proceedings of the MPID Proceedings, viz.; SPL Case Nos. 16/2022, 17/2022, 18/2022 and 19/2022, along with Civil Miscellaneous Application No.18/2024 filed before Respondent No.2 the Ld Designated Court, Palghar and after examining the validity, legality and propriety thereof, be pleased to be quash and set aside the Impugned Order of Attachment dated 21.11.2022 passed by the Respondent No.1/State *qua* the Secured Assets (i.e. the immovable properties mentioned at Sr.No.2 in Column A of the said Impugned Order).
- (b) This Hon’ble Court may issue a Writ of Certiorari or any other appropriate Writ, Order or Direction under Article 227 of the Constitution of India and pass necessary directions to the Respondent No.9 to take the physical possession of the Secured Assets with the assistance of the police authorities and hand over the same to the Petitioner in compliance of Order passed by Respondent No.8/Ld.CMM under Section 14 of the SARFAESI Act;
- (c) this Hon’ble Court may issue a Writ of Certiorari or any other appropriate Writ, Order or Direction under Article 227 of the Constitution of India directing the Respondent No.10 to provide the necessary police assistance to the Respondent No.9 to take the physical possession of the Secured Assets for complying the order passed by Respondent No.8/Ld.CMM under Section 14 of SARFAESI Act.”

2 As far as prayer clause (a) is concerned, the same does not survive any longer because the MPID Court has passed an order dated 29th April, 2024 wherein the attachment levied by Respondent No.1 against the property which forms the subject matter of the present Petition, namely, Flat Nos.401/402, 4th

Floor, Sumer Saraswati Co-operative Housing Society Limited, Laburnum Road and Owen Dunn Road, Gamdevi, Grant Road (West), Mumbai-400 007, (for short the “**secured asset**”) has been lifted. The order passed by the MPID Court is also tendered before us today by the learned AGP which is taken on record and marked “**X**” for identification. In these circumstances, nothing survives in prayer clause (a).

3 What now survives for our consideration is prayer Clauses (b) and (c) reproduced above. The learned counsel for the Petitioner submitted that since the attachment levied by Respondent No.1 is now lifted, necessary directions be passed against Respondent No.9 [being the Court Commissioner] to execute the order dated 19th May, 2017 read with the order dated 30th November, 2021 passed by the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act, 2002.

4 The learned counsel appearing on behalf of Respondent Nos.5 to 7 (the borrowers), on taking telephonic instructions from his clients, submitted that some time be granted for them to vacate the secured asset and they undertake to hand over the same to the Authorized Officer of the Petitioner-ARC on

28th May, 2024 at 11.00 a.m. The learned counsel appearing on behalf of the borrowers has further undertaken that the order passed by the MIPD Court lifting the attachment on the secured asset will not be challenged by the borrowers. The aforesaid undertakings are accepted by this Court. In view of the aforesaid undertakings, purely out of indulgence, and on humanitarian grounds, we direct that the borrowers shall vacate the secured asset on 28th May, 2024 at 11.00 a.m. and hand over vacant and peaceful possession of the same to the Authorized Officer of the Petitioner-ARC.

5 In the event the aforesaid direction is not complied with, apart from being liable for contempt [which this Court shall issue against the borrower], the Court Commissioner (Respondent No.9) shall proceed to take physical possession of the secured asset on 31st May, 2024 at 11.00 a.m. and dispossess whoever is found therein. To ensure that physical possession of the secured asset is taken by the Court Commissioner, the Senior Police Inspector of the Gamdevi Police Station shall give all necessary assistance to the Court Commissioner to ensure that the physical possession of the secured asset is taken and thereafter handed over to the Authorized Officer of the Petitioner, failing which the

Senior Police Inspector of the said Police Station shall be liable for contempt. All charges for providing Police assistance shall be borne by the Petitioner-ARC.

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

7 Though we have disposed of the Writ Petition, we now place the same on Board on 10th June, 2024 for reporting compliance.

8 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.]