IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16087 OF 2023

Amin Norrali Rangara & Anr ..Petitioners

Versus

State Bank of India & Anr ..Respondents

Mr.Prathamesh Kamat (through VC)*, with Mr.Kayush Zaiwalla i/b Poonam Utekar, Advocates for the Petitioners.*

Mr.Animesh Bisht*, with Mr.Abhishek Mukherjee, Ms.Drishti Das, Ms.Roma Bhojani i/b Cyril Amarchand Mangaldas, Advocates for Respondent No.1.*

Mr.Minesh D. Shah, *Authorized Representative of Triliance Global Trade LLP is present.*

Mr.Rajesh Upadhyaya, *Assistant General Manager of Case Lead Officer/Bank Representative is present.*

CORAM : B. P. COLABAWALLA & SOMASEKHAR SUNDARESAN, JJ.
DATE : JANUARY 5, 2024

P.C.

The Petitioners have filed the above Writ Petition seeking a direction against Respondent No.1 to consider the offer of the Petitioners to release the Duplex Flat Nos.13/14 S on 9th & 10th Floor, Jivesh Terraces, B-766, B.J. Road, Bandra (West), Mumbai 400 050 (hereinafter referred to as "***the said flats***") in favour of financer/buyer introduced by the Petitioners and/or their nominees under the provisions of the SARFAESI Act, 2002 for valuable consideration in a time bound manner, with necessary undertakings, as this Court may deem fit and proper.

2 The said Flats were subjected to 9 auctions through the aegis of the Recovery Officer, DRT Mumbai. However, the said auctions were unsuccessful. The Petitioners still have the physical possession of the said flats, dissuading prospective buyers. The reserve price fixed for sale of the said flats ranged from Rs.12.60 Crores to Rs.14.45 Crores.

3 Now, the Petitioners have introduced a buyer namely M/S TRILIANCE GLOBAL TRADE LLP having its address at 14TH FLOOR, 1420 B, One BKC, BANDRA EAST, C-66, Mumbai: 400051, Maharashtra, India (PAN NO.AAQFT4012M) (hereinafter referred to as ***"TRILIANCE"***), who has offered to pay Rs. 14.50 Crores (i.e. Rs. 5 lakhs more than the highest reserve price fixed by the Ld. Recovery Officer, DRT I, Mumbai earlier) for the purchase of the aforementioned flats. The Petitioners have undertaken to this Court that they are in no way connected with

TRILIANCE. The next public auction of the said flats is presently scheduled for 2nd February 2024 by the Recovery Officer, DRT, Mumbai.

4 Instead of the sale being conducted by the Recovery Officer, DRT, Mumbai, both, the Petitioners as well as Respondent No.1 have stated that the said flats will now be put for sale under the provisions of the SARFAESI Act, 2002 read with the Security Interest (Enforcement) Rules, 2002. TRILIANCE shall participate in the said auction process conducted under the provisions of the SARFAESI Act, 2002.

5 The learned Counsel for the Petitioners, on instructions, states that the Petitioners waive all notices that are or may be required to be served on them, whether under the SARFAESI Act, 2002 and/or the rules framed thereunder.

6 Accordingly, it is directed that:

(a) TRILIANCE shall deposit an EMD amount of Rs. 1.45 Crores with the 1st Respondent Bank within 2 working days of this order being uploaded;

(b) The 1st Respondent Bank shall then issue a public notice inviting bids from the public for sale of the said flats within three days from the date of submission of the EMD by TRILIANCE.

(c) The public auction shall be conducted in the manner and mode set out in the applicable provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002.

(d) The reserve price for such public auction will be Rs. 14.50 crores. Only bids higher or equivalent to Rs. 14.50 crores, as may be, received from any bidder [including TRILIANCE] shall be considered in the auction. TRILIANCE is also permitted to participate in the auction process. The parties, [including TRILIANCE who is present in Court through their authorised representative] have agreed that if TRILIANCE does not participate in the auction process, his EMD of 1.45 Crores will be forfeited by the 1st Respondent Bank.

(e) Once the public auction is conducted, the 1st Respondent bank shall confirm the sale in favour of the highest bidder by following the procedure as set out in Rule 9 of the Security Interest (Enforcement) Rules, 2002.

(f) Once the auction process is completed, and the same is confirmed in favour of the highest bidder, the Petitioners undertake that they shall, within two days of the confirmation of sale, hand over peaceful and vacant possession of the said flats to the 1st Respondent bank so as to enable it to hand over the same to the successful auction purchaser and carry out the other necessary formalities regarding issuance and registration of the sale certificate etc.

(g) If for any reason the auction to be conducted as per this order fails, then, the Petitioners undertake to hand over vacant and peaceful possession of the said flats to the 1st Respondent bank within a period of 7 days of the 1st Respondent bank calling upon them to do so. After this, the 1st Respondent bank is free to conduct a fresh auction as per the provisions of the SARFAESI Act, 2002 read with the Rules framed thereunder.

(h) In respect of the said flats, the DRT Receiver has already been appointed by an order dated 29th April 2023 in the DRT Recovery Proceedings. In addition, a Court Commissioner has also been appointed under the provisions of the SARFAESI Act, 2002 in terms of the orders of the learned CMM Court, Esplanade in C. C. No.140/SA/2014 (SBI V Rangara Industries Pvt Ltd & Ors). The Petitioners have already provided an undertaking to vacate the said flats as mentioned earlier. Accordingly, it is directed that in case the Petitioners or their family members fail to vacate the said flats as mentioned earlier, the Court Commissioner appointed by the CMM pursuant to the orders passed in C. C. No.140/SA/2014 (SBI V M/s Rangara Industries Pvt Ltd & Ors), shall forthwith take physical possession of the said flats with the help of the police authorities, if required, without any further court orders. All costs, expenses, charges, or any other charges by whatever name called, shall be adjusted against the accounts of the Petitioners alone.

7 It is clarified that the present order is restricted to sale of the said flats only and shall not be construed as a full and final

settlement of the dues of the Petitioners and the Borrower which they owe to Respondent No. 1. The payment that may be received by Respondent No. 1 for the sale of the said flats, will be adjusted against the total dues of the Borrower and Respondent No. 1 shall give due credit of this payment. Respondent No.1 will be entitled to recover the balance amount as per law from the Petitioners and other borrowers.

8 The Petitioners undertake that they will not allow any other person to stay, or claim any right in any manner whatsoever, in respect of the said flats till payment of the entire sale consideration for the said flats.

9 Since the entire process of sale of the said flats is now going to be undertaken under the provisions of the SARFAESI Act, 2002 and the Rules framed thereunder, the parties have agreed that the DRT Receiver appointed pursuant to the order dated 29th April, 2023 [passed by the Recovery Officer in Transfer Recovery Proceedings No.617 of 2016] shall stand discharged with immediate effect. In view of this order, the auction sale to be conducted by the Recovery Officer in relation to the said flats on

2nd February, 2024 shall also not survive and accordingly will not to be conducted by the Recovery Officer.

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

11 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.]**