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

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Date of Decision: 06.11.2024

+ **CO.APP. 4/2024 and CM Nos.14815/2024 and 31133/2024**

PHOENIX ARC PRIVATE LIMITED

.....Appellant

Through: Mr Suresh Dobhal, Mr Sikhar Kumar
and Mr Abhinav Sharma, Advocates.

versus

M/S MANASVI SECURITY SERVICES & ORS.Respondents

Through: Mr Arjun Nanda, Advocate for R-1.
Mr Aditya Ralhan, Advocate for R-2.
Ms Ruchi Sindhwani, SSC for
Official Liquidator with Ms Megha
Bharara, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

1. The appellant (Phoenix ARC Private Limited) is an asset reconstruction company and claims that it holds security interest in respect of a property described as Property at Festival City, Village Phagguval, NH-1, GT Road, Jalandhar Bypass, Ludhiana, Punjab (hereafter *the subject property*). The appellant also claims that respondent no.2 also holds security interest in respect of the aforementioned property to the extent of 35%.

2. The controversy in the present appeal relates to the question whether at this stage the dues of the security agency (M/s Manasvi Security Services) deployed for watch and ward of the subject property, are required to be paid



by the appellant.

3. Respondent no.1(M/s Manasvi Security Services) had filed an application (Co. Appl. 575/2018) before the learned Company Court under Rules 6 and 9 of the Company (Court) Rules, 1959 praying that a sum of ₹1,22,00,000/- be released to it against its outstanding bills for providing security services in respect of the subject property during the period from April, 2016 to December, 2017.

4. In the given facts, the learned Company Court noted that the appellant had paid its share of the security expenses commensurate with 65% of the security interest in the subject property but had declined to pay the balance amount on the ground that the same was required to be paid by respondent no.2 commensurate with its share of 35% from the security interest of the subject property. However, the learned Company Court directed the appellant to pay the balance amount of ₹74,55,000/-, which undisputedly was payable to respondent no.1, as the appellant had sold the subject property and realised the sale proceeds.

5. The appellant has preferred the present appeal assailing the said decision on the ground that it has no liability to pay the share of expenses of respondent no.2 for the security services provided in respect of the subject property. The appellant has founded the said challenge on the ground that its share of the security interest in the subject property is confined to 65% and therefore, it is liable to pay the expenses incurred by the Official Liquidator to the extent of its proportion.

6. At this stage, there appears to be no dispute that the appellant and



respondent no.2 are secured creditors and hold security interest in the subject property in the ratio of 65:35. The learned Company Court had noted the aforesaid fact in paragraph 21 of the impugned order, which is set out below:

“21. It appears that a resolution was reached at the instance of Phoenix ARC Private Limited that the security dues shall be cleared in the ratio of 65:35 as per the loan agreements and the amount payable by Phoenix ARC Private Limited was calculated at Rs. 1,38,54,000/- whereas Rs. 74,55,000/- was stipulated to be paid by the Energy Ventures & Reality Private Limited. It was also resolved that in case there is any dispute as between the aforesaid two parties, the same shall be settled and payment would be made in such ratio to the applicant security agency.”

7. Notwithstanding that the appellant's share is only 65% in respect of the subject property, the appellant has been called upon to pay the entire amount for the reason that the appellant has since sold the subject property under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and has realised the entire sale proceeds of the subject property.

8. The learned counsel appearing for the appellant submits that the sale of the said property is not complete and has been interdicted by the learned Debt Recovery Tribunal (hereafter *the DRT*) in an action (being SA No.283/2023 captioned *Rajesh J. Aeren v. Phoenix ARC Pvt. Ltd.*) instituted by the borrower and an order has been passed directing the parties in the said proceedings to maintain the *status quo*.

9. It is submitted by the appellant that if the applicant (Rajesh J. Aeren)



succeeds in the said proceedings, the appellant may have to refund the sale proceeds realised from the sale of the subject property. And, therefore, at this stage, the appellant cannot be called upon to pay expenses in excess of its share of the subject property.

10. The aforesaid contention is unmerited. Undisputedly, the entire sale proceeds of the subject property have been collected and presently retained by the appellant. The appellant has not made over 35% of the sale proceeds to respondent no.2.

11. The learned counsel appearing for the appellant also does not dispute that in the event the sale is set aside, the appellant would continue to hold security interest in the subject property and it would not forfeit its recourse to the same.

12. Insofar as respondent no.2 is concerned, the learned counsel appearing for respondent no.2 states that its overseas holding company is in liquidation and it has no director in India, therefore, it is not in a position to make any payment at this stage. In the given circumstances, we find no infirmity with the decision of the learned Company Court in directing the appellant to pay the entire security expenses at this stage. We, however, clarify that the appellant would be entitled to adjust the said amount from the share of respondent no.2's security interest in the subject property. To make it abundantly clear, the said amount would be adjusted from the part of the sale proceeds of the subject property, which may be due to respondent no.2. Needless to state that in the event the sale is set aside by the learned DRT in the pending proceedings (SA No.283/2023 captioned *Rajesh J.*



Aeren v. Phoenix ARC Pvt. Ltd.), the appellant would have the right to adjust the said amount from the amount payable to respondent no.2 as and when the security interest in the subject property, is enforced.

13. As noted above, there is no dispute that respondent no.1 has provided the security services and is entitled to be paid for the same. The payments due to respondent no.1 cannot be withheld on account of any dispute between the secured creditors (the appellant and respondent no.2). Since the appellant is *in seisin* of the entire sale proceeds of the subject property, the payments for the security services in relation to the subject property are required to be paid by it at this stage.

14. The appeal is dismissed with the aforesaid observations. All pending applications are also disposed of.

15. We direct that the entire amount deposited by the appellant with the Registry of this Court, which is now invested in a fixed deposit, be forthwith realised and paid to respondent no.1.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 06, 2024
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