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

+ **W.P.(C) 4888/2024, CM APPL. 19942-19943/2024**

NARESH KUMAR AGGARWAL Petitioner

Through: **Mr. Tarun Kashyap, Advocate**

versus

STATE BANK OF INDIA Respondent

Through: **Ms. Jaya Tomar, Advocate**

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Date of Decision: 04th April, 2024.

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 19943/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 4888/2024, CM APPL. 19942/2024

1. The present writ petition has been filed seeking setting aside of the interlocutory order dated 14th March, 2024, passed by the Debt Recovery Appellate Tribunal, Mumbai ('DRAT') in I.A. No. 255/2024 filed in Misc. Appeal No. 67/2024 and further, issuance of direction to DRAT to hear the appeal on merits on the basis of deposits already made by Petitioner in the accounts and to consider the said deposits as pre-deposit for entertainment of the appeal.



2. It is a matter of record that as on 14th March, 2024, the outstanding amount towards the credit facilities availed from Respondent-Bank, excluding the sale consideration, stood at ₹ 4,40,63,954/-. The DRAT vide impugned order, disposed of the Petitioner's I.A. No. 255/2024, filed seeking waiver of pre-deposit, with directions to the Petitioner herein to deposit a sum of ₹ 2,20,00,000/- towards pre-deposit as a condition for entertaining the appeal under Section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'). The DRAT observed that in the facts of the case, since, the Petitioner has not pleaded financial hardship, he is not entitled to get the percentage of mandatory pre-deposit reduced.

3. Learned counsel for the Petitioner states that the DRAT failed to appreciate that the residential property bearing No. RZ-A-110-111, Jeewan Park, Uttam Nagar, New Delhi – 110059 ('subject property') was not offered as a collateral for the credit facility of Foreign Bills Negotiable Letter of Credit ('FBNLC'). He states that the said property was offered as collateral only with respect to the EPC FBP facility. He states that therefore, the subject property cannot be sold for realising the outstanding for both the credit facilities.

4. We have heard the learned counsel for the Petitioner and perused the record.

5. The notice under Section 13(2) of the SARFAESI Act was issued to the Petitioner on 26th September, 2021, for the default in payments of both the credit facilities i.e., EPC FBP and FBNLC. The said credit facilities were classified as Non-Performing Asset ('NPA') on 16th August, 2011. Subsequently, the Respondent-Bank, issued possession notice with respect



to the subject property in the year 2012. At this stage, the proceedings under the SARFAESI Act were initiated by the Petitioner by filing SA No. 103/2012; however, the same was dismissed on 8th January, 2015 and the appeal filed against the same was dismissed by DRAT on 20th July, 2015 (1st round of litigation).

6. Thereafter, on 20th November, 2023, Respondent-Bank, issued sale notice for proposed auction of the subject property, however, the same did not culminate in a sale. The Petitioner being aggrieved, filed S.A. No. 430/2023 before the DRT challenging the said auction sale process. Thereafter, the Respondent-Bank issued another sale notice dated 5th January, 2024, proposing an auction for 25th January, 2024. The said sale notice was challenged by the Petitioner by way of I.A. No. 388/2024, filed in S.A. No. 430/2023, seeking stay of the auction sale which was dismissed by DRT vide order dated 24th January, 2024. The Petitioner elected not to assail the said order (2nd round of litigation).

7. The auction resulted in a concluded sale of 25th January, 2024. The Petitioner received notice dated 27th January, 2024 from the Court Receiver for taking possession of the subject property on 21st February, 2024. The Petitioner filed I.A. No. 921/2024 in S.A. No. 430/2023 seeking restraint against taking over possession, which was dismissed by DRT vide order dated 20th February, 2024. (3rd round of litigation).

8. The Petitioner assailed this order of the DRT in Misc. Appeal No. 67/2024 by filing an appeal on 11th March, 2024. In this appeal, the Petitioner filed I.A. No. 255/2024 seeking waiver of pre-deposit. The DRAT has recorded that the outstanding amount as on date stands at Rs. 4,40,63,954/-. It further recorded that the Petitioner has failed to plead



circumstances entitling him to reduction of the pre-deposit. Accordingly, the DRAT directed the Petitioner to deposit a sum of Rs. 2,20,00,000/- in three instalments; and clarified that amounts initially deposited by the Petitioner before the Tribunal in Misc. Appeal No. 230/2012 and S.A. No. 103/2012 shall be adjusted towards the third instalment.

9. In this writ petition, the Petitioner has impugned the direction issued by DRAT declining to reduce the mandatory pre-deposit. However, the Petitioner has failed to point out any infirmity in the said direction. The discretion to grant reduction in the pre-deposit rests with DRAT and the Petitioner has failed to make out any ground for interference.

10. At this stage it would be apposite to refer to the judgment in ***ITC Limited vs. Blue Coast Hotels Limited & Ors.***¹ wherein the Supreme Court has categorically observed that a debtor, who has failed to discharge its admitted liability is not entitled for the discretionary equitable relief under Article 226 of the Constitution, even if there is an allegation of infringement of the debtor's legal rights. The relevant paras of the judgment read as under:-

“52. We have anxiously considered the entire matter and find that the undisputed facts of the case are that a loan was taken by the debtor which was not paid, the debtor did not respond to a notice of demand and made a representation which was not replied to in writing by the creditor. The creditor, however, considered the proposals for repayment of the loan as contained in the representation in the course of negotiations which continued for a considerable amount of time. Several opportunities were in fact availed of by the debtor for the repayment of the loan after the proceedings were initiated by the secured creditor. The debtor failed to discharge its liabilities and eventually undertook that if the debtor fails to discharge the debt, the creditor would be entitled to take/realise the secured assets.

¹ (2018) 15 SCC 99



53. As held, we are of the view that non-compliance with sub-section (3-A) of Section 13 cannot be of any avail to the debtor whose conduct has been merely to seek time and not repay the loan as promised on several occasions.

54. This Court in *State of Maharashtra v. Digambar* [State of Maharashtra v. Digambar, (1995) 4 SCC 683] observed as follows: (SCC p. 692, para 19)

“19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.”

It relied on the judgment of the Privy Council in *Lindsay Petroleum Co. v. Hurd* [Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221], where the Privy Council observed: (PC p. 240)

“... Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

55. Therefore, the debtor is not entitled for the discretionary equitable relief under Articles 226 and 136 of the Constitution of India in the present case.

56. We accordingly, set aside the impugned judgment [Blue Coast Hotels Ltd. v. IFCI Ltd., 2016 SCC OnLine Bom 2663] of the High Court and direct the debtor and its agents to hand over possession of the mortgaged properties to the auction-purchaser within a period of six months from the date of this judgment along with the relevant accounts.”

(Emphasis Supplied)

11. The Petitioner, even before this Court during arguments, has not disputed the veracity of the demand of Rs. 4,40,63,954/- and the liability to pay the said debt is admitted. The argument with respect to the subject property not being offered as collateral for the FBNNLC credit facility is an



argument on merit and will be examined by the competent forum while deciding the merits.

12. We are therefore, of the opinion that the Petitioner is not entitled to maintain the present petition along with application and the same is accordingly dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 4, 2024/rhc/aa

Click here to check corrigendum, if any