2024:DHC:2768-DB

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

\+ W.P.(C) 8064/2023 & CM APPL. 31026/2023

M/S OM SHYAM TRADERS AND OTHERS ..... Petitioner

Through: Mr. R.R. Jangu, Advocate with Petitioner in person

versus

SMFG INDIA CREDIT COMPANY LIMITED (FORMERLY KNOWN AS FULLERTON INDIA CREDIT CO. LTD.) ..... Respondent

Through: Mr. Sumit Goswami, Advocate

% Date of Decision: 03rd April, 2024

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

W.P.(C) 8064/2023 and CM APPL. 5571/2024

1. Present petition filed under Article 226 of the Constitution of India seeks setting aside of the order dated 07th February, 2023 passed by Debt Recovery Appellate Tribunal (DRAT), New Delhi in Appeal No. 144/2022 arising out of order dated 22nd July, 2022 passed by Debt Recovery Tribunal (DRT)-III, New Delhi in S.A. No. 23/2021.

2. This Court vide interim order dated 01st August, 2023 while permitting the Petitioners to deposit a sum of Rs. 10 lakhs with the Registry of this Court had restrained the Respondent herein from taking any steps for auctioning the property bearing No. E-21-22, Diary Road, Adarsh Nagar, Near Adarsh Nagar Metro Station, Delhi ('mortgaged property'). The

Respondent has filed CM APPL. 5571/2024 seeking vacation of the said interim order. Since the pleadings in the writ petition are complete, the petition itself has been taken up for hearing.

3. The Petitioners admittedly applied for a loan facility from the Respondent in 2015, which was allowed in favour of the Petitioners vide Loan Agreement dated 26th September, 2015 (1st Loan). The Respondent disbursed an amount of Rs. 64,00,000/- on 30th September, 2015, which was repayable in 180 Equated Monthly Installments (EMIs). Further there was another loan allowed in favour of the Petitioners vide the Loan Agreement dated 10th November, 2015 (2nd Loan). In lieu of the said loan agreement the Respondent disbursed an amount of Rs. 4,25,000/- on 30th September, 2015, which was repayable in 62 EMIs.

4. The Petitioners defaulted in making payments of the EMIs and therefore, its loan accounts were declared as Non-Performing Asset (NPA) on 30th October, 2017. The Financial Institution ('FI') invoked arbitration and the Petitioners herein suffered an arbitral award for a sum of Rs. 90,39,196/- on 11th January, 2019, for which execution proceedings were filed by the FI.

5. The Petitioners state that though there were defaults in payment of EMIs, it continued to make payments and some installments towards EMIs were lastly paid on 26th August, 2019 and 31st July, 2019 qua 1st and 2nd Loan respectively.

6. The FI thereafter, initiated action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), which was challenged by the Petitioners herein by filing an application before DRT-III, which was numbered as SA

No.23/2021. The Petitioners filed an interim application I.A. No. 199/2021 in the said proceedings seeking a restraint against the FI for taking physical possession of the mortgage property. The said application was dismissed by DRT-III vide order dated 08th February, 2021. In the said order, DRT-III returned a finding that though the Petitioners herein have offered to regularize its loan accounts, the said offer is not bona fide.

7. The said order of DRT-III, Delhi was challenged by the Petitioners before the DRAT in Miscellaneous Appeal No. 47/2021. The Petitioners initially failed to make a pre-deposit of 25% and therefore, the appeal was dismissed vide order dated 26th February, 2021. Subsequently, in pursuance to the order passed by this Court in W.P.(C) No. 10786/2021, the Petitioners were granted liberty to approach the DRAT for revival of the said appeal by making a pre-deposit. It is stated by the Petitioners that it indeed deposited a sum of Rs. 30 lakhs with DRT-III thereafter, and filed an application for revival of its appeal. It appears from the record that the said appeal has not been revived.

8. In a second ground of litigation, the Petitioners filed I.A. No. 1022/2022 in S.A. No. 23/2021 before DRT-III seeking to restrain the Respondent from auctioning or selling the mortgage property and to open the seal of the said property. The said interim application as well as the S.A. No. 23/2021 has been dismissed by DRT-III vide order dated 22nd July, 2022 holding that the recourse taken by the FI under SARFAESI Act, 2002 is in accordance with law.

9. The said order dated 22nd July, 2022 of DRT-III, Delhi was challenged by the Petitioners before the DRAT in Appeal No. 144/2022. The Petitioners made a pre-deposit of Rs. 10,40,000/- in the said appeal. The Petitioners

stated before the DRAT that they are ready and willing to pay the entire outstanding amount to the Respondent and sought three months' time for repayment. The Respondent declined the offer and stated that the Petitioners should either pay the entire outstanding amount upfront or the Respondent will proceed with auction. The DRAT dismissed the said appeal on merits vide order dated 07th February, 2023 and upheld the order of the DRT-III.

10. However, DRAT further provided Petitioners with an option of paying total outstanding amount of Rs. 64,21,161/-, until 08th February, 2023, to which the Petitioners stated that they would not be able to comply with the said condition.

11. It appears that though the auction was scheduled on 10th March, 2023, the auction did not fructify and neither did the Petitioners repay the entire outstanding as offered before the DRAT at the hearing dated 07th February, 2023.

12. In the aforesaid facts, the Petitioners filed the present writ petition on 09th February, 2023 and kept the same pending in the Registry and this petition was first time listed before this Court on 01st June, 2023. The Petitioners thereafter, on 18th July, 2023 undertook to deposit Rs. 10 lakhs with the Registry of this Court and in these facts an interim stay was granted against the auction of the mortgage property vide order dated 01st August, 2023.

13. The Respondent has filed CM APPL. 5571/2024 for vacation of the stay. It is stated that as on 24th January, 2024, there is total outstanding of Rs. 65,99,738/- and has also filed with this application the account statement as on 24th January, 2024. It is stated that the Petitioners despite making an offer

before DRAT on 07th February, 2023 to clear the entire outstanding has failed to repay the outstanding amount.

14. Learned counsel for the Respondent has also contended that the Petitioners have illegally broken the seal and changed the locks of the mortgaged property. He states that in these facts, the petition itself be disposed of and interim order be vacated.

15. In reply, learned counsel for the Petitioners state that he has no objection if the sum of Rs. 10 lakhs lying deposited with the Registry of this Court and the amount of Rs. 10,40,000/- deposited with DRAT in Appeal no. 144/2022 are released to the Respondent forthwith. He states that with respect to the balance amount, the Petitioners require further time to pay the same. He states that with respect to the statement of account dated 24th January, 2024 filed by the Respondent, the Petitioners have objections to some of the entries.

16. Having heard the learned counsel for the parties and after perusing the record, we are of the considered opinion that there is no merit in the present petition.

17. The Learned counsel for the Petitioners has not addressed any arguments on the illegality of the orders dated 22nd July, 2022 passed by DRT-III and 22nd August, 2022 passed by DRAT. The Petitioners while continuing to express their willingness to repay the outstanding amount of the Respondent before DRT and DRAT have however failed to repay despite the interim order dated 01st August, 2023 operating in their favour. We find merit in the submission of the Respondent that though Petitioners made offer of repayment before the DRAT on 07th February, 2023, yet they have failed to regularize their account despite passage of an entire year.

18. This matter was heard on 02nd April, 2024 and today, wherein though the learned counsel for the Petitioners kept reiterating that they are willing to repay the amount, no firm date of repayment has been stated before this Court.

19. The Petitioners have therefore failed to make out any ground for entertaining the present petition.

20. The Registry is directed to forthwith release the payment of Rs. 10 lakhs along with interest accrued thereon to the Respondent. In addition, the Registry of DRAT is directed to forthwith release the sum of Rs. 10,40,000/- along-with interest accrued thereon to the Respondent. Lastly, the Petitioner is granted liberty to repay the entire outstanding amount, as on the date of payment, to the Respondent within four weeks; failing which the Respondent will be at liberty to auction the mortgaged property.

21. Accordingly, the present petition is dismissed. It is directed that in case, the Petitioners fail to pay the entire lability within four weeks, the Respondent will be at liberty to auction the mortgaged property after four weeks, without seeking any clarification from this Court. With the aforesaid directions, CM APPL. 5571/2024 stands allowed. Pending applications also stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 3, 2024/hp/sk