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

+ **W.P.(C) 9353/2024 & CM APPL. 38354/2024**

INDIABULLS HOUSING FINANCE LTDPetitioner

Through: Mr. Anirudh Bakhru, Mr. Ankit Banati, Mr. Abhay Agnihotri & Ms. Mallika Kamal, Advs.

versus

CHAUDHARY VENTURES PVT. LTD. & ORS.Respondents

Through: Ms. Suruchi Aggarwal, Sr. Advocate along with Mr. Gurmeet Singh, Advocate for R-1. (M-9650954007) Mr. Mukesh Kumar, APP.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

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23.09.2024

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by the Petitioner- Indiabulls Housing Finance Ltd. under Article 226 of the Constitution of India, challenging the impugned orders passed by the Debt Recovery Appellate Tribunal ('DRAT'), Delhi including the *status quo* order dated 20th March, 2024. The said order of the DRAT reads as under:

"Since the Appellant has complied with the direction by this Tribunal to make the entire amount of pre-deposit, the appeal will have to be entertained. The Respondent is attempting to proceed with the takeover possession of the subject property.

2. It is pointed out that by the Ld. Counsel appearing Appellant that there is already an order of the Debts Recovery Tribunal, Lucknow (D.R.T), in which the very



same demand notice of the Respondent and the subsequent Sarfaesi measures have been quashed. The sale has been set aside, and the Respondent has been directed to take fresh steps to proceed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short). I am told that the operation of the said order of the Lucknow D.R.T. has been stayed on 22.02.2024 by the D.R.A.T., Allahabad in appeal.

3. The Ld. Counsel appearing for the Appellant would submit that given the decision of the Hon'ble Supreme Court Shree Chanmudi Mopeds Ltd. V/s Church of India Trust Association SCI Cinod Secretariat, Madras (1992) 3 SCC the stay of the operation of the order would not nullify it. The order has already been passed, and it is only put on hold. Under the circumstance, it has to be held that the Sarfaesi measures initiated by the Respondent have been set aside by the Lucknow D.R.T. and that order would continue unless it is been undone in appeal. It is submitted by the Ld. Counsel for Respondent bank that the sale certificate has already been issued to the auction purchaser, which the Ld. Counsel for the Appellant has controverted.

Since the reply has to be filed by the Respondent, the Ld. Counsel sought time to file a reply. The further Sarfaesi action shall be put on hold and the status quo as of today be maintained till the next date of hearing. List on 26.04.2024 for a hearing."

3. The grievance of the Petitioner is that the *status quo* order dated 20th March, 2024 has been passed without considering the chronology of events that have taken place both before the DRAT/DRT, Delhi, DRT Lucknow as also the order passed by DRAT, Allahabad.

4. On the last date Id. Counsels for the parties had made their submissions which are recorded *vide* order dated 22nd July, 2024:



“4. Ld. Counsel appearing for the Petitioner submits that the said status quo order passed by DRAT Delhi dated 20th March, 2024 interferes with the auction, which had already been directed pursuant to the order of the DRAT Allahabad, and pursuant to which the auction purchaser had deposited the amount of Rs. 4,81,00,000/- and the sale certificate dated 18th March 2024 was also issued.

5. Ld. Senior Counsel for the Respondents submits that the SARFAESI proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (‘SARFAESI Act’) were set aside vide order dated 4th January, 2024 by DRT, Lucknow, against which the order dated 22nd February, 2024 of DRAT, Allahabad was passed merely keeping the said order dated 4th January, 2024 in abeyance. Due to the SARFAESI proceedings having been set aside, the auction itself could not have been conducted.

6. It is also argued by ld. Sr. Counsel that the auction, which has been conducted and the acceptance of the sale consideration, is in violation of the orders passed by the DRT, Lucknow and the DRAT, Allahabad dated 4th January 2024 and 22nd February 2024 respectively. Ms. Aggarwal submits that her client is willing to clear all the dues.

7. The auction purchaser, who is present today, pursuant to the previous order of this Court dated 15th July, 2024, submits that the auction was conducted on 20th November, 2023, much prior to the order dated 4th January, 2024 of the DRT, Lucknow. Thus, there is no violation of the said order.

8. The auction purchaser also submits that the right to redemption of the Respondent No.1 is also lost pursuant to the sale of the property.”

5. After hearing the ld. Counsels for the parties, the Court had observed as under:



“9. *Heard. A perusal of the order dated 13th May, 2024 impugned before this Court reflects that the matter is listed before the DRAT, Delhi on 29th July, 2024. DRAT, Delhi has primarily proceeded on the basis that DRAT, Allahabad has kept the order dated 4th January, 2024 passed by DRT Lucknow in abeyance and therefore it is DRAT, Delhi’s opinion that the SARFAESI proceedings cannot be proceeded with, as the appeal was pending before it and the order of pre-deposit was complied with.*

10. *DRAT Delhi is in seisin of the entire matter and considering that the auction has taken place, there is a need to adjudicate the matter expeditiously. A perusal of the order dated 20th March, 2024 would also show that the entire chronology of events that have occurred including the original order of the DRT, Delhi dated 6th October, 2023 the subsequent orders of the DRAT, Allahabad and DRAT, Delhi would also have to be taken into consideration.”*

6. As can be seen from the above, this Court had considered the fact that the main submission on behalf of the Petitioner that the order of the DRT, Delhi had not been considered by the DRT, Lucknow while granting stay. However, since the matter was being heard by the DRAT, Delhi, this Court had directed that the DRAT, Delhi would proceed with the matter and pass the final order, which may be placed before this Court. The relevant portion of the order is extracted below:

“11. *Since the matter is pending and is coming up before the DRAT, Delhi on 29th July, 2024, this Court deems it appropriate to direct as under:*

(i) *The DRAT, Delhi shall hear the matter on 29th July, 2024 and pass a speaking order on interim relief, if any, which has been sought.*

(ii) *The DRAT, Delhi shall also take into consideration*



the submission on behalf of the Respondents that they are willing to clear all the dues subject to reconciliation of the accounts.

(iii) The auction purchaser shall also be heard by the DRAT, Delhi before passing any further orders.

12. Let the order, which may be passed by the DRAT, Delhi be placed on record for the perusal of this Court on the next date of hearing.”

7. Today, the Court is informed that *vide* order dated 21st August, 2024, passed by the DRAT, Delhi in Appeal No. 387/2023, the relevant orders of the DRT, Lucknow and DRT, Delhi have been upheld. In effect, therefore, the auction itself has been set aside by the DRAT, Delhi. The operative portion of the said order read as under:

*“89. In view of the above discussion, this Tribunal is of the opinion that there is no illegality or irregularity so far as the order of the Ld. DRT, Delhi dated 06.10.2023 is concerned the same is, therefore, upheld. So far as order dated 04.01.2024 of ld. DRT, Lucknow is concerned, the same is also upheld since respondent FI has not served the notice on the guarantor i.e. Aspek Media Pvt. Ltd. under Section 13(2) and Section 13(4) of the SARFAESI Act and has also conducted auction in violation of the judgment of the Hon’ble Supreme Court in **Celir LLP vs. Bafna Motors (Mumbai) Private Limited & Ors.** (supra). Since the auction has been set aside, the amount deposited by the auction purchaser be refunded to it in accordance with law.”*

8. In view thereof, the ld. counsel for the Petitioner wishes to amend the present writ petition. However, this Court is of the opinion that since the present writ petition *inter alia* was against a *status quo* order dated 20th March, 2024, that has now merged with the final order of DRAT, Delhi dated 21st



August, 2024, passed in Appeal No. 387/2024, the Petitioner is free to avail of its remedies against the said final order by a separate writ petition, as the same is a detailed order which may be required to be assailed with fresh grounds.

9. The present writ petition is infructuous as the impugned interim orders have now merged with the final order.

10. The petition is disposed of with liberty to avail of its remedies in respect of the order dated 21st August 2024. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

SEPTEMBER 23, 2024

Rahul/ms/Pc