



2024:DHC:8638



117 to 120

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

% Date of decision: 06th November, 2024

+ W.P.(C) 15264/2024, CM APPL. 64183/2024 & CM APPL. 64184/2024

DEMAS DEVELOPERS PRIVATE LIMITEDPetitioner

Through: Mr. Sidharth Yadav, Sr. Adv.
with Mr. Apoorv Agarwal, Ms.
Prachi Dargi, Ms. Saloni Singh,
Ms. Divya Verma, Mr. Tushar
Gadia and Mr. Kamakshraj
Singh, Advs.

versus

INDIAN OVERSEAS BANK & ORS.Respondents

Through: Mr. Pramod Kumar, Adv. for
R-1/Indian Overseas Bank.

118

+ W.P.(C) 15265/2024, CM APPL. 64170/2024 & CM APPL. 64190/2024

JIFFY REALTORS PRIVATE LIMITEDPetitioner

Through: Mr. Sidharth Yadav, Sr. Adv.
with Mr. Apoorv Agarwal, Ms.
Prachi Dargi, Ms. Saloni Singh,
Ms. Divya Verma, Mr. Tushar
Gadia and Mr. Kamakshraj
Singh, Advs.

versus

INDIAN OVERSEAS BANK & ORS.Respondents

Through: Mr. Pramod Kumar, Adv. for
R-1/Indian Overseas Bank.



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+ W.P.(C) 15266/2024, CM APPL. 64172/2024 & CM APPL. 64173/2024

ALVITA REALTORS PRIVATE LIMITEDPetitioner

Through: Mr. Sidharth Yadav, Sr. Adv.
with Mr. Apoorv Agarwal, Ms.
Prachi Dargi, Ms. Saloni Singh,
Ms. Divya Verma, Mr. Tushar
Gadia and Mr. Kamakshraj
Singh, Advs.

versus

INDIAN OVERSEAS BANK & ORS.Respondents

Through: Mr. Pramod Kumar, Adv. for
R-1/Indian Overseas Bank.

120

+ W.P.(C) 15267/2024, CM APPL. 64176/2024 & CM APPL. 64177/2024

DEV RISHAB REAL ESTATE PRIVATE
LIMITED

.....Petitioner

Through: Mr. Sidharth Yadav, Sr. Adv.
with Mr. Apoorv Agarwal, Ms.
Prachi Dargi, Ms. Saloni Singh,
Ms. Divya Verma, Mr. Tushar
Gadia and Mr. Kamakshraj
Singh, Advs.

versus

INDIAN OVERSEAS BANK & ORS.Respondents

Through: Mr. Pramod Kumar, Adv. for
R-1/Indian Overseas Bank.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 64185/2024 in W.P.(C) 15264/2024



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CM APPL. 64189/2024 in W.P.(C) 15265/2024

CM APPL. 64174/2024 in W.P.(C) 15266/2024

CM APPL. 64178/2024 in W.P.(C) 15267/2024

1. Allowed, subject to all just exceptions.
2. These applications are disposed of.

W.P.(C) 15264/2024, CM APPL. 64183/2024 & CM APPL. 64184/2024

W.P.(C) 15265/2024, CM APPL. 64170/2024 & CM APPL. 64190/2024

W.P.(C) 15266/2024, CM APPL. 64172/2024 & CM APPL. 64173/2024

W.P.(C) 15267/2024, CM APPL. 64176/2024 & CM APPL. 64177/2024

3. The aforesaid four writ petitions, although filed by different petitioners, raise a common question of law based on almost similar facts and can be conveniently heard and disposed of together.
4. For the sake of convenience W.P.(C) No.15264/2024 titled **M/s Demas Developers Private Limited v. Indian Overseas Bank and Ors.** is taken as the lead case and the findings recorded therein shall apply *mutatis mutandis* to the other three writ petitions, as this Court is only confining itself to the legal issues addressed by the learned counsel for the petitioners.
5. Shorn of unnecessary details, a Corporate Term Loan facility was sanctioned to M/s Era Infra Engineering Limited (hereinafter referred to as 'the Corporate Debtor') by the respondent no.1/IOB in terms of sanction letter dated 15.11.2012, and the petitioners claim that they mortgaged their properties for securing the loan facilities but not as guarantors, which properties are claimed to be agricultural properties bearing different khasra numbers and measurements, owned



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by the respective petitioners. Evidently, the account became NPA¹ and accordingly, proceedings were initiated by the respondent no.1/IOB under the SARFAESI Act².

6. In the meanwhile, the Corporate Debtor was subject to proceedings under the IBC³ before the NCLT⁴. It is a matter of record that the NCLT in such proceedings⁵ *vide* judgment dated 11.06.2024 accepted a resolution plan by the Resolution Applicant after due approval of the CoC⁶, of which the respondent no.1/IOB was also a signatory. As per the resolution plan approved by the learned NCLT, Delhi, the following dispositions have been provided for:-

The Admitted Financial Debt (reduced by the share of the Upfront Payment to the financial Creditors received by the Financial Creditors) shall be restructured in the following manner:

- a. A sum of INR 378 Crores shall be converted into NCDs and issued to the Assenting Secured Financial Creditors as detailed in Part B of this Plan).
- b. The balance Admitted Secured Debt will be converted into 4% common equity of the Company and issued to the Assenting Secured Financial Creditors in the ratio of their Admitted Secured Debt.
- c. The balance Admitted Unsecured Debt will be converted into 1% common equity of the Company and issued to the assenting Unsecured Financial Creditors in the ratio of their Admitted unsecured Debt.”

7. Further, *vide* Clause 13.1 of the Resolution Plan, titled as

¹ Non-Performing Asset

² Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act

³ Insolvency and Bankruptcy Code, 2016

⁴ National Company Law Tribunal

⁵ I.A/1334/ND/2023A/WI.A/5241/ND/2023 in CP IB-190/PB/20107

⁶ Committee of Creditors



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“Dissenting Financial Creditors”, the following directions were passed:-

“13.1.9 As on the Effective Date, the Dissenting Financial Creditor shall regularize all accounts of the Corporate Debtor and classify the loan account in their books as standard and update all reporting(s) made to Reserve Bank of India and the Information Utility to this effect.

13.1.10 As on the Closing Date, all rights and claims of the Dissenting Financial Creditor under any and all documents/agreements executed with the Corporate Debtor with respect of the Corporate Debtor shall stand extinguished.”

8. Insofar as the Assenting Financial Creditors are concerned, the following directions were passed:-

“13.2.3 As on the Closing Date, the Assenting Financial Creditors shall execute or issue discharge certificates, no-objection certificates for all other documents and take all such actions as may be reasonably required by the Corporate Debtor or Resolution Applicant or the SPC confirming the terms of the NCDs for the release of the Encumbrances, security interests and charges pertaining to the debt of the Company.

13.2.4 As on the Closing Date, the Assenting Financial Creditors shall release any Encumbrance, or any other form of security interest (whether over immovable, movable assets, fixed deposits) cash, rights, privileges or property) that was created/granted/arranged in connection with any debt or obligation of the Corporate Debtor and its joint ventures, at any time prior to the Effective Date, shall automatically stand released and all liabilities and obligations of the Corporate Debtor and its joint ventures in relation to such Encumbrance or other form of security interest shall stand extinguished (including those created / arranged by the Corporate Debtor as a guarantor or a third party security provider) in relation to its subsidiaries or joint ventures, if any, without the requirement of any further action on part of any Person and the Corporate Debtor or Resolution Applicant or the SPC.

13.2.5 As on the Effective Date, the Assenting Financial Creditors shall not be entitled to take, initiate or continue any steps or proceedings against the Corporate Debtor and its joint ventures or its assets whether by way of demand, legal proceedings, alternative



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determination process (including arbitration or an expert determination process), the levying of distress, in any jurisdiction whatsoever for the purpose of obtaining payment of any liability for obtaining payment, or for the purpose of placing the Corporate Debtor and its joint ventures into liquidation or any analogous proceedings. This shall be without prejudice to the rights of the Assenting Financial Creditors in relation to the terms of the repayment as proposed in this Resolution Plan.

13.2.6 As on the Effective Date, any and all legal proceedings initiated before any forum by or on behalf of the Assenting Financial Creditors, to enforce any rights or claims against the Corporate Debtor or its joint ventures or enforce or invoke any security interest over the assets or property of the Corporate Debtor, or its joint ventures, shall immediately, irrevocably and unconditionally stand withdrawn, and extinguished, and the Assenting Financial Creditors shall take all necessary steps to ensure the same.

13.2.7 The Assenting Financial Creditors shall have no other rights or claims against the Corporate Debtor and its property/ properties (including but not limited to, in relation to any past breaches by the Corporate Debtor or joint ventures or any right of recompense that the assenting Financial Creditors may have) other than as agreed in the terms of the NCDs and all prior claims shall immediately, irrevocably and unconditionally stand extinguished.

13.2.8 It is clarified that any agreements/arrangements between the Corporate Debtor, its property/ properties, its joint ventures and any Assenting Financial Creditors relating to margin requirements shall stand extinguished and the benefit of any deposit amounts, fixed deposits, margin payments or any other payments made by the Corporate Debtor, its property/ properties pursuant to the aforementioned arrangements/ agreements shall be available to the benefit of the Company.

13.2.9 As on the Effective Date, the Assenting Financial Creditors shall regularize all accounts of the Corporate Debtor and classify the loan account in their books as standard and update all reporting(s) made to Reserve Bank of India and the information utility to this effect.”

9. Learned senior counsel for the petitioners raised the grievance that despite the debt of the corporate debtor having been restructured

Signature Not Verified

Digitally Signed By: SAVITA PASRICHA
Signing Date: 07.11.2024
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W.P.(C) No.15264/2024 & connected matters

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and resolution plan being approved by the CoC, of which the respondent no.1/IOB was the signatory, the proceedings are still continuing before the learned DRT. It was pointed out that by way of a corporate debt restructuring, there is an admitted secured claim of ₹1,129.44 crores as against the admitted unsecured claim of ₹387.21 crores and thereby total admitted amount is ₹1,516.65/- crores.

10. Learned counsel for the petitioner has urged that even during the course of the SARFAESI proceedings, there have been several blemishes committed by the respondent no.1/IOB in as much as it has failed to comply with Section 13(8) of the SARFAESI Act besides Rule 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002 so much so that the now the sale proclamation has been issued for sale of the mortgaged property, which is an agriculture property, in complete derogation of Section 31(i) of the SARFAESI Act.

11. Learned senior counsel for the petitioner has alluded to the decision by the Gujarat High Court in the case of **Prashant Shashi Ruia v. State Bank of India**⁷, whereby it has been held that once the claim gets settled by the corporate debtor, there is no independent right of action available to the secured creditor to proceed independently against the guarantor.

12. However, learned counsel for the respondent no.1/IOB vehemently urged that the present writ petitions are not maintainable and the appropriate remedy for the petitioner is to approach the learned DRT, Delhi and raise appropriate objections and he has

⁷ MANU/GJ/2177/2021 dated 16.12.2021



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alluded to orders dated 20.10.2023, 13.09.2024 and lastly 27.09.2024 passed by the learned DRT.

13. Learned senior counsel for the petitioner submitted that they have already raised appropriate objections before the learned DRT but instead of deciding their objections, the learned DRT has heard them on their securitisation application and that the matter is fixed for pronouncement of the orders on 08.11.2024.

14. Unhesitatingly, the petitioner is approaching this Court for a relief which cannot be entertained since the matter is already pending before the learned DRT. The plea by the learned counsel for the petitioners that the decision by the Supreme Court in the case of **Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd and Ors.**⁸, is binding on the right of redemption to the borrower requiring thirty days' clear notice in terms of Section 13(8) of the SARFAESI Act read with Rule 8(6) of the Rules of 2002 and the publication of sale notice under Rule 9(1) is an issue that must be addressed before the learned DRT. Likewise, whether the subject property/mortgaged property is agriculture in nature and thus exempted from the dragnet of the SARFAESI Act in terms of section 31(i) is a plea that too be addressed before the learned DRT.

15. There is some merit in the plea of the learned senior counsel for the petitioner that the decision in the case of **Lalit Kumar Jain v. Union of India** was one wherein it was held that the approval of the resolution plan under Section 31 of the IBC would not automatically discharge a guarantor from his obligations, and yet at the same time,

⁸ MANU/SC/1042/2023



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in view of the fact that the resolution plan has been accepted by the NCLT vide *vide* judgment dated 11.06.2024, the issue that arises for consideration is since the entire debt of the borrower has been restructured in the resolution plan, and certain conditions are attached to the assenting and dissenting secured creditors, whether the respondent no. 1 bank can proceed under the SARFAESI Act considering the overriding effect of the proceedings under the IBC in terms of section 238 of the IBC. The bottom line is all the aforesaid issues should be addressed before the learned DRT, which is the competent forum for now.

16. Accordingly, the present writ petitions are disposed of with a direction that the learned DRT, Delhi shall consider the aforesaid objections raised by the petitioners while deciding the securitisation application in accordance with law.

DHARMESH SHARMA, J.

NOVEMBER 06, 2024
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