IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP-COM/110/2025
SREI EQUIPMENT FINANCE LIMITED
VS
SHRISTI INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : February 25, 2025

Mr. Jayanta Mitra, Sr. Adv.
Mr. Jishnu Saha, Sr. Adv.
Mr. Swatarup Banerjee, Adv.
Mr. Suddhaswatta Banerjee, Adv.
Mr. Shaunak Ghosh, Adv.
Mr. Sariful Haque, Adv.
Mr. Ishan Saha, Adv.
Mr. Rajib Mullick, Adv.
Mr. Biswaroop Ghosh, Adv. ...for petitioner.

Mr. Jaydip Kar, Sr. Adv.
Mr. Rishav Banerjee, Adv.
Mr. Dipen Chatterjee, Adv.
Mr.Saptarshi Mandal, Adv.
Mr. Keshav Tibarewalla, Adv. ...for respondent.

The Court :- 1. SREI Equipment Finance Limited duly sanctioned a loan of Rs.200 crores to the respondent. The respondent is in the business of construction of properties and infrastructure development. The sanction letter was issued on July 18, 2018. The agreement was entered into on July 30, 2018, which was amended on July 31, 2018. Apart from the original agreement in respect of which two immovable properties were mortgaged, three other hypothecation agreements dated August 6, 2018, July 30, 2018 and April 10, 2018 respectively, were entered into between the parties.

2. According to the petitioner, the respondent defaulted in payment of the interest. They sold out flats described under Receivables II and III of the hypothecation agreement dated April 10, 2019, without permission from the

petitioner and also failed to deposit the receivables/sale proceeds in a designated account. These failures were in serious breach of the loan agreement and the hypothecation agreements.

3. Clause 8.1 of the loan agreement provided that, although the principal amount was not required to be paid before the end of 10th year from the date of execution of the loan agreement, the interest component amounting to approximately Rs.6 crores, was to be paid on a quarterly basis. After November 2021, such payments were not made.

4. Clause 8.1.2 of the loan agreement provided that, non-payment of interest or other dues would be treated as events of default, which had several consequences. Such consequences have been enumerated under clause 8.3 of the loan agreement. Clause 8.3.1 dealt with Acceleration. It provided that a lender could declare the loans and all accrued interest thereon and all other monies in respect of the loans, to be forthwith due and payable, whereupon such amounts would become forthwith due and payable without presentment, demand, protest or any other notice of any kind.

5. Further, consequences of default were provided under clause 8.4 which are of particular significance. Of those, sub-clauses (ii) (iii) (iv) and (v) are set out hereinbelow for convenience:-

> "8.4.Other Consequences of Event of Default.
>
> If one or more of the aforesaid Events of Default shall occur and be continuing, the Lender shall have the right to take one or more of the following actions:
>
> xxx
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> [ii] enter upon and take possession of the secured property; transfer the secured property by way of lease or leave and license or sale;
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> [iii] instruct any person, who is liable to make any payment to the Borrower, to pay directly to the Lender;

[iv] sell, assign or otherwise liquidate or direct the Obligor to sell, assign or otherwise liquidate, any or all of the secured property and take possession of the proceeds of any such sale or liquidation;

[v] collect by itself or through nominee[s] or agent[s] and retain all cash proceeds, including without limitation whether arising from the business or operation of the Borrower or not, and to use such monies in whole or in part, towards repayment of the Borrower's obligations to the Lender in terms of the Financing Documents."

6. The existence of an Arbitration clause is not in dispute. The non-payment of interest component after November 2021 is also not in dispute. Consequence of non-payment are provided in the agreement. The fact that the petitioner issued a loan recall notice is also not in dispute. Upon enforcing the Acceleration clause, all monies under the loan agreement became due and payable. Prima facie, the petitioner has made out an arguable claim.

7. Mr. Mitra, learned Senior Counsel assisted by Mr. Saha, learned Senior Counsel submits that the respondent should be restrained by an injunction from proceeding to sell the flats mentioned under Receivables II and III. The conduct of the respondent in not responding to the loan recall notice, in selling out the flats and in not depositing the proceeds in a designated account etc. were breach of the terms and conditions of the agreement. The respondent displayed recklessness and disregard to its obligations under the agreement, with an intention to defraud the petitioner. The total sum due to the petitioner amounts to more than Rs.300 crores which includes the principal outstanding, interest/overdue, interest as on September 30, 2024, interest on delayed payment, penalty charges, recoverable expenses, accrued interest etc.

9. According to Mr. Mitra, upon invocation of the Acceleration clause, the entire sum became due and payable and the entitlement of the

petitioner is no more restricted to the interest component alone. The respondent sold away the flats. The cash flows received from such sale were hypothecated as the second charge and the first charge respectively, under Receivables II and III. The proceeds were not deposited in any designated account. Serious breach was committed by the respondent and the petitioner apprehends that there will be no chance of recovery of the outstanding, if the respondent is not restrained by an order of this Court and a Receiver is not appointed to supervise, monitor and participate in the future sale of flats.

10. Mr. Kar, learned Senior Advocate for the respondent submits that the moratorium was for a period of ten years. The principal amount has not become due. The calculation in paragraph 9 is defective. The petitioner, as of now, will be entitled to the interest component which has been calculated approximately at Rs.82 crores by the petitioner. The petitioner has taken possession of an immovable property at New Town, Rajarhat and sale notice has been issued. The valuation of the said property as per the petitioner's calculation is more than Rs.97 crores. Thus, the dues payable as per the pleadings and under the loan agreement, were completely secured and recoverable from the sale proceeds upon sale of the said property.

11. The agreement specifically provides the manner in which the dues could be recovered and, accordingly, such right has already been exercised by the petitioner by taking possession of one of the mortgaged properties under the loan agreement and by taking steps to sell the same.

12. It has been further submitted that the 47 flats under Receivables III were allotted to third parties and the bookings took place prior to execution of the agreement dated July 30, 2018. Lastly, whatever money was received from sale of the flats, both under Receivables II & III, were deposited in an account maintained with the UCO Bank as the lead bank of a consortium of four banks. Thus, the allegation that the respondent has siphoned off the

funds with the object to deprive the petitioner from the legitimate dues, was completely misconceived. Moreover, the application for injunction has been filed after three years from the date of first default and, as such, there cannot be any urgency to grant any relief to the petitioner, as prayed for in the application.

13. Mr. Kar further submits that Receivable II is upon creation of a second charge and the DBS Bank has the first charge. At best, the petitioner may be entitled to the residual amount, upon meeting the charge of DBS Bank. Thus, no injunction upon the said Receivables can be granted. The flats mentioned under Receivables II, cannot be made the subject matters of an order of injunction. Appointment of Receiver over the facts will affect third party rights.

14. Having heard learned counsel for the respective parties, this Court is satisfied that the interest component payable as per the loan recall notice has been secured. The petitioner has already taken possession of the mortgaged property at New Town and has proceeded for sale. The reserve price kept by the petitioner, as per its own valuation, is above Rs.97 crores. With regard to the other outstanding, the calculation is subject to the final decision of the learned Arbitrator, on evidence. However, the petitioner has made out an arguable case with regard to the effect of Acceleration under the relevant clause of the agreement and the principal becoming payable upon termination of the agreement. Thus, protection of amounts payable under the agreement, is necessary Accordingly, this Court directs that if any flat under Receivables III is sold or any other money is received in respect of those flats, the sale proceeds or money received shall be deposited in a designated account. For such purpose, the learned Advocates-on-record of each of the parties shall act as Joint Receivers. They will open a savings account in any Nationalized Bank, which will be the designated account. This arrangement will continue for a

period of three months. Within such time, the petitioner shall take steps for appointment of an Arbitrator and pray for interim orders before the learned Arbitrator. With regard to the sale of the flats under Receivables II, over which the petitioner has a second charge, it is directed that, in case the respondents sell any of those 57 flats, henceforth, the details of the sale and details of the proceeds received therefrom, and the account in which those were being deposited, shall be informed to the learned Joint Receivers. This arrangement will also continue for a period of three months as well and the petitioner shall be at liberty to approach the learned Arbitrator for further interim orders. If the Tribunal is not constituted within the period of three months, the petitioner may seek interim reliefs before this court, if the situation so demands, strictly in accordance with law.

15. Accordingly, AP-COM/110/2025 stands disposed of on the above terms.

(SHAMPA SARKAR, J.)

pkd.