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

\+ W.P.(C) 6084/2024 and CM Nos.25282/2024 and 68886/2024

M/S SKYLAND BUILDERS PVT LTD .....Petitioner

Through: Mr Abhimanyu Bhandari, Senior Advocate with Ms Roohe Hina Dua, Mr Ankit Khera and Mr Arav Pandit, Advocates.

versus

M/S KOTAK MAHINDRA BANK LTD & ORS. .....Respondents

Through: Mr Rajeeve Mehra, Senior Advocate with Ms Jagriti Ahuja and Mr Vijay Dutt, Advocates for R-1.
Mr Akshay Makhija, Senior Advocate with Ms Nidhi Mohan Parashar, Mr Vikrant Kumar and Mr Deepak Yadav, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

% **06.03.2025**

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 15.03.2024 passed by the learned Debts Recovery Appellate Tribunal, Mumbai [**DRAT**] in Miscellaneous Appeal No.32/2024 in SA No.327/2023.

2. The petitioner had filed the said appeal (being Appeal No.32/2024), *inter alia*, impugning an order dated 02.12.2023 passed by the Debts Recovery Tribunal-II, Delhi [**DRT**] in IA No.3447/2023 in SA No.327/2023. The petitioner had also sought interim relief staying the auction of the immovable property no.48/138 measuring 375 square yards bearing the address E-108, Malcha Marg, Diplomatic Enclave,

Chanakyapuri, New Delhi-110021 [**the subject property**].

3. The learned DRT had, by an order dated 02.12.2023 which was impugned before the learned DRAT, rejected the petitioner's prayer for an interim relief (IA No.3447/2023).

4. It is the petitioner's case that the action initiated by respondent no.1 bank [**Kotak Mahindra Bank**] was not maintainable by virtue of Section 31 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [**the SARFAESI Act**]. The petitioner claims that it had availed of a loan of ₹6.5 crores and had repaid a substantial amount of the said loan and the total outstanding was less than 20% of the loan availed. According to the petitioner, the same rendered any action under Section 13(4) impermissible. Additionally, the petitioner had also claimed that it had signed blank documents, which were filled up by the officials of Kotak Mahindra Bank subsequently. However, the learned DRT did not find that there was any *prima facie* case in favour of the petitioner.

5. The learned DRT had examined the claim regarding the amount outstanding and concluded that the amount recoverable, in respect of which enforcement action under Section 13(4) of the SARFAESI Act had been instituted, was more than 20% of the loan amount. The learned DRT was also not persuaded to accept – on a *prima facie* basis – that the petitioner had signed documents containing blanks. Thus, the petititioner's request for urgent relief was rejected.

6. The petitioner had appealed the said decision and its appeal was listed before the learned DRAT on 23.01.2024. The order passed on the said date indicates that the learned DRAT was informed that no bids had been received in the auction, which was scheduled for the same date.

Accordingly, the learned DRAT issued directions for completion of pleadings and had adjourned the proceedings. However, the learned DRAT had also accorded liberty to the petitioner to apply for an early hearing in event of any urgency. The learned DRAT had also recorded Kotak Mahindra Bank's contention that whenever the property is put to auction, a notice would be furnished to the petitioner.

7. In compliance with the said statement, Kotak Mahindra Bank issued a notice dated 05.02.2024, which was received by the petitioner on 06.02.2024 informing the petitioner that it proposed to auction the ground floor of the subject property on 23.02.2024 by an online auction to be conducted *via* M/s e-Procurement Technologies Limited – Auction Tiger. The petitioner was also accorded an opportunity to redeem the subject property, if it so desired.

8. The petitioner, thereafter, filed an application, which was taken up by the learned DRAT on 22.02.2024. However, on that date, the learned counsel for the Kotak Mahindra Bank informed the learned DRAT that no bids had been received.

9. In view of the above, the learned DRAT was of the view that "*the immediate threat of the property being auctioned is no longer in place*". Accordingly, the petitioner's application was adjourned to 23.04.2024. However, later in the day, the petitioner was informed that two bids had been received by the Kotak Mahindra Bank. This led the petitioner to once again file an urgent application before the learned DRAT, which was disposed of by the impugned order, which reads as under:

> "The matter is taken up for hearing by way of a praecipe filed by the Appellant for seeking urgent relief.
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> When the matter came up for hearing on 22.02.2024, the

property was put up for sale. The Ld. Counsel for the Respondent Bank submits that no bids have been received and that there is no urgency. Believing that submission made by the Ld. Counsel for the Respondent bank, the matter was adjourned. Today, when the matter was taken up for hearing, the Ld. Counsel for the Respondent submits that the property has already been sold and that there were two bidders. The submission made and the action taken by the bank is deprecated. The Appellant is at liberty to take further action that is available to them.".

List on 23.04.2024 for further hearing."

10. Mr Bhandari, the learned senior counsel appearing for the petitioner submits that it is clear from the facts that Kotak Mahindra Bank had misrepresented the facts before the learned DRAT. Thus, leading the DRAT to believe that there was no urgency involved. And, in the given circumstances directions be issued to the respondents to maintain the *status quo* as to the subject property.

11. It is relevant to note that the learned DRAT has not disposed of the petitioner's appeal and the same is now listed for further hearing on 23.04.2024.

12. Insofar as the auction of the subject property is concerned, the auction has been confirmed in favour of respondent no.2.

13. This court had, by an order dated 01.05.2024, clarified that principle of *lis pendens* would apply. Thus, in the event the petitioner succeeds in its application before the learned DRT or its appeal before the learned DRAT, the necessary consequences will follow.

14. Mr Makhija, the learned counsel appearing for the successful auction purchaser is present in the court. He confirms that respondent no.2 fully

understands that if the petitioner succeeds in its challenge to the action initiated by Kotak Mahindra Bank, the sale of the subject property in its favour would require to be cancelled. He also states that in the event respondent no.2 deals with the subject property, he will make sure that all persons are informed of the pending proceedings as well as the consequences of the petitioner succeeding in those proceedings.

15. In view of the aforesaid, the petitioner is adequately protected. We do not consider it apposite to pass any order or consider the petitioner's contentions regarding the merits of its challenge to the auction proceedings as the same are pending before the learned DRT and the learned DRAT.

16. In view of the above, we dispose of the present petition with the observations as made above.

17. It is clarified that all rights and contentions of the parties are reserved.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 06, 2025
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Click here to check corrigendum, if any