

(2021) 05 DEL CK 0178

In the Delhi High Court

Case No : Original Miscellaneous Petition (I) (COMM.) No. 370 Of 2020

IIFL Finance Limited

APPELLANT

Vs

Praful Satra & Anr

RESPONDENT

Date of Decision : 24-05-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9, 12(1), 12(5), 17
Securitization And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 13(2), 13(8), 13(13)

Citation : (2021) 05 DEL CK 0178

Hon'ble Judges : Sanjeev Narula, J

Bench : Single Bench

Advocate : Anupam Lal Das, Raunak Dhillon, Aditya Marwah, Isha Malik,
Anirudh Singh, Niharika Shukla, Saket Sikri, Malak Bhatt, Devanshi Singh, Rajat
Bector

Final Decision : Disposed Of

Judgement

Nature of limit,Amount (Rs. in lacs),"Outstanding amount as on

31-03-2021 (Rs.)",Rate of Interest

Term Loan,Rs. 10.00Cr,"Rs.10,61,19,626.11",@9.55%

property.,,,

13. Both the learned counsel have cited several case laws and raised contentions dealing with the law on the subject. The Court has considered the,,,

contentions of the parties. In the opinion of the Court, the relief as sought by Respondent No. 1 in the application, for permission to sell the Scheduled",,,

property can certainly not be granted, as admittedly the same is presently a subject-matter of a mortgage with UBI and the title deeds, thereof, are",,,

deposited with the said bank.,,,

14. The case laws and the provisions of law cited by both the parties are not required to be examined by this Court in the present proceedings, as the",,,
effect and legality of the mortgage in favour of UBI in light of the Clauses of the Deed relied upon by the Petitioner, is a question which has to be",,,
agitated before an appropriate forum, where UBI is a party. This Court, while exercising jurisdiction under Section 9 of the Act, cannot give any",,,
finding with respect to the mortgage created by Respondent No. 1, qua the Scheduled property, in favour of UBI. However, the fact remains that, by",,,
virtue of the statement made by Mr. Sikri, Respondent No. 1 is bound by the same and in effect, there is an injunction operating against Respondent",,,
No. 1 from selling, alienating and/or creating any third-party interest in respect of any of his assets including the Scheduled property. Therefore, in light",,,
of the facts noted above, a clarification is necessary insofar as the Scheduled property is concerned. In the opinion of the Court, in the present petition,",,
UBI cannot be restrained from enforcing its rights under the Notices dated 3rd April, 2021 and 7th April, 2021. Even otherwise, the Petitioner's",,,
prayer for injunction is only qua the present Respondents. Therefore, the Court clarifies that the order dated 20th November, 2020, recording the",,,
undertaking given by Mr. Saket Sikri, would not come in the way of UBI, taking recourse against the mortgaged Scheduled property in terms of the",,,
Notices dated 3rd April, 2021 and 7th April, 2021, in accordance with law.",,
15. It is further clarified that all the rights and contentions of the Petitioner as well as the Respondents on the above issue are left open. The Petitioner,,
would be at liberty to raise objections, or avail appropriate remedies in respect of its right(s) under the Deed vis-à-vis the mortgage created in favour",,,
of UBI, before the appropriate forum/ Court. With the above clarification, I.A. No. 5843/2021 stands disposed of.",,
16. At this stage both the learned counsel, on instructions, state that since the existence of the Arbitration Agreement is not in dispute, the Court may",,,
consider it appropriate to appoint an Arbitrator to adjudicate the disputes that have arisen between the parties. At the same time, Mr. Das also submits",,,
that, having regard to the fact that the mortgage was created by Respondent No. 1, in breach of the terms of the Deed, the Respondents be directed",,,
to disclose their list of assets, so that the Petitioner would know the current status of the same.",,

17. There is a consensus between the parties regarding the existence of the Arbitration Agreement and disputes having arisen between the parties and,,, that the same have to be adjudicated in terms of the dispute resolution mechanism agreed upon. Accordingly, Honâ??ble Mr. Justice D.K. Jain",,,, (Retd.), former Judge, Supreme Court of India [Contact No: 9999922288] is appointed as the common Sole Arbitrator to adjudicate upon the disputes",,,, between the parties arising out of the Deeds of Personal Guarantee both dated 30th December, 2015 executed between Petitioner and Respondent",,,, Nos. 1 and 2, respectively.",,,,

18. Since the Arbitrator has been appointed, the learned counsel for the parties jointly pray that the present petition be directed to be considered by the",,,, learned Arbitrator as an application under Section 17 of the Act. The said request is accepted and accordingly, the present petition is disposed of, with",,,, a direction that same shall be treated as an application under Section 17 of the Act, which shall be considered and decided by the learned Arbitrator in",,,, accordance with law. Till such time, the statement made by Mr. Sikri, as recorded in the order dated 20th November, 2020, with the clarification as",,,, observed today, shall continue to bind the Respondents. It is further directed that the Respondents shall file an affidavit in terms of the decision of this",,,, Court in Bhandari Engineers & Builders Pvt. Ltd. v. Maharia Raj Joint Ventures & Ors. MANU/DE/1497/2020, disclosing a list of their assets, within",,,, a period of four weeks from today. Since the present petition is being disposed of, the affidavits shall be filed before the learned Arbitrator within the",,,, timelines stipulated.,,,,

19. It is further clarified that any observations made hereinabove, and in the previous orders are only on a prima facie basis and not a final expression",,,, on the merits of the case. Needless to say, the same shall not come in the way of the learned Arbitrator while deciding the application under Section",,,, 17 of the Act and/or the disputes between the parties. All rights and contentions of the parties are left open.,,,,

20. The parties are directed to appear before the learned Sole Arbitrator as and when notified. This is subject to the Arbitrator making the necessary",,,, disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.,,,,

21. The learned Arbitrator shall be entitled to charge fee in terms of the

provisions of the Fourth Schedule appended to the Act.,,,

22. In view of the aforesaid, the petition is disposed of in the above terms.",,,