

M/S Art Housing Finance (India) Limited vs Directorate Of Enforcement And Ors on 10 July, 2020

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3686/2020 & CM APPLs. 13197/2020, 13198/2020, 13199/2020, 13200/2020, 13201/2020

M/S ART HOUSING FINANCE (INDIA) LIMITED Petitioner

Through: Mr. Siddharth Aggarwal,
Nagpal, Ms. Stuti
Vishvendra Tomar,

versus

DIRECTORATE OF ENFORCEMENT AND ORS Respondent

Through: Mr. Amit Mahajan, CGSC with
Malika Hiremath, Advocate
Ms. Shobhana Takiar, Advocate
R-3.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 10.07.2020

1. This hearing has been held through video-conferencing.

2. Mr. Mahajan, ld. Standing Counsel takes a preliminary objection that this writ petition is not maintainable in view of the orders dated 1st June, 2020 and 10th June, 2020, passed by the Co-ordinate Bench in a bunch of writ petitions which included the Petitioner. He specifically relies on W.P. (C) 3083/2020 wherein an application has been moved in respect of these very fixed deposits. Part of the said fixed deposits belong to the National Housing Bank (hereinafter, 'NHB'). He submits that since the said application had raised similar issues, the same cannot be adjudicated by a separate writ petition. Mr. Mahajan further submits that the Petitioner had agreed by the said consent order passed in the said writ petition, where similar provisional attachment orders were issued qua immovable and movable properties, that it would appear before the adjudicating authority and address all its submissions before the adjudicating authority. Thus, a similar order should be passed even in the present case.

3. Mr. Aggarwal, ld. counsel for the Petitioner firstly submits that the provisional attachment order which was under challenge in the W.P. (C) 3083/2020 was dated 5th May, 2020 and the provisional attachment order which is challenged in the present petition is dated 19 th May, 2020. He then refers to the orders dated 1st June, 2020 and 10th June, 2020 passed in the said petition to argue that insofar as the present provisional attachment order dated 19th May, 2020 is concerned, the Court had reserved the Petitioner's right to challenge the same.

4. A perusal of order dated 10th June, 2020 in W.P. (C) 3083/2020 reveals that the provisional attachment order dated 19th May, 2020 was not under challenge in W.P. (C) 3083/2020 and liberty was specifically reserved for the Petitioner to avail of his remedies in accordance with law. The operative portion of the order dated 10th June, 2020 reads as under:

"...

At this stage, ld. counsel for the petitioners submit that another provisional attachment order dated 19.05.2020 has come to be passed and that the petitioners reserve their rights to assail the said order of attachment in accordance with law as may be available to them. Let it be so."

5. Insofar as the argument of adopting a similar course of action in the present petition is concerned, this Court would consider the same on the next date. As mentioned in the last order, some part of the fixed deposits which are lying in the HDFC bank belong to the NHB, which is a government bank. A simple attachment of the said amount would in effect result in freezing and non-utilisation of the amounts in the fixed deposits. Since it is the admitted case of the Petitioner that the amounts belong to the NHB, it ought to be permitted to utilize the said amounts which are lying frozen. It was due to this reason that on the last occasion the Court had directed that instructions may be sought from the Enforcement Directorate (hereinafter, 'ED') by the ld. ASG.

6. Ms. Takiar, ld. counsel appears for the NHB. Let the NHB file an affidavit as to the exact status of the amount of Rs.42,85,32,698.63/- so that comprehensive orders can be passed in the present writ petition by this Court. Let the affidavit be filed within two weeks with an advance copy being served on the ld. counsel for the Petitioner and the other Respondents.

7. The ED is also directed to file on record the communication e-mail sent by the ED to the HDFC Bank on or before 30th April, 2020 as directed in the last order.

8. List on 31st July, 2020.

PRATHIBA M. SINGH, J JULY 10, 2020 Rahul /T