



6

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

% Date of decision: 27th August, 2024

+ W.P.(C) 16187/2023, CM APPLs. 65066/2023, 14608/2024,
31420/2024

M/S USHA INDIA LIMITED

.....Petitioner

Through: Mr.Abhindra Maheshwari,
Advocate with Mr.Chirag Shah,
RP.

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Mr.Shiv Ram Sharma,
Advocate for Indian Bank
Respondent No. 2
Ms.Anjali Sharma,
Mr.S.K.Sagar, Ms.Kanishka
Sharma, Advocates in CM
No.31420/2024.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. Pursuant to the previous order passed by this Court dated 09.07.2024, the petitioner has filed a rejoinder along with relevant documents.
2. The instant writ petition moved on behalf of the petitioner through its Resolution Professional has come up for final hearing and disposal.
3. Having heard the learned counsels for the parties present and on perusal of the record, shorn off unnecessary details the petitioner



company, being the Corporate Debtor, failed in repaying its debts and credit facilities. Consequent thereto, the properties of the petitioner which were mortgaged and hypothecated with the respondent bank were auctioned on 23.01.2007 for a total sum of Rs. 29,93,01,000/- under the SARFAESI Act¹. The petitioner being the Corporate Debtor challenged the action under the SARFAESI Act by filing an SA² under Section 17 of the aforesaid act bearing No. 01/2007 challenging the auction sale of the secured assets.

4. It appears that IFCI Ltd.³ being one of the secured creditors of the petitioner/Corporate Debtor also challenged the action taken by the other creditors by filing Writ Petition (C) No. 3060/2012 before this Court, which was decided *vide* judgment dated 30.04.2014 thereby directing the respondent - Indian Bank to deposit the surplus amount along with accrued interest with the learned DRT-1⁴, Delhi.

5. The DRT-1 took possession of the aforesaid surplus amount by way of FDRs⁵ and in compliance with the directions, two FDRs dated 09.10.2014 were issued in favour of Registrar DRT-1, Delhi. Eventually, SA No. 01/2007 was dismissed for non-prosecution by the DRT-1 *vide* order dated 31.01.2018. It is also brought to the fore that CIRP⁶ commenced in respect of the petitioner/M/s. Usha India Ltd. under the provisions of the IBC⁷ by an order of the NCLT, Allahabad

¹ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002.

² Securitization Application

³ Indian Financial Corporation of India Ltd.

⁴ Debt Recovery Tribunal

⁵ Fixed Deposit Receipts

⁶ Corporate Insolvency Resolution Process

⁷ Insolvency and Bankruptcy Code, 2016



Bench⁸ dated 05.10.2023 and accordingly, Mr. Chirag Rajendra Kumar Shah (having IP Registration No. IBBVIPA-001/IP-PO 1169/2018-19/11837) has been appointed as the Resolution Professional, who has filed the present writ petition on behalf of the petitioner company on being appointed as its Interim Resolution Professional⁹.

6. The IRP then informed the DRT-1 Delhi on 08.10.2023 that a moratorium has been declared in terms of Section 14 of the IBC, and has approached this Court by way of the present writ petition, making the following prayers:-

- (i) Issue a Writ of Mandamus, directing the Respondent Bank to immediately release the Fixed Deposit amount held under Account No. [6274490077 and 6274489584] in the name of 'Registrar DRT 1 A/c Usha India Limited, Upper Ground Floor, Babur Road, New Delhi-110001] in favor of the Resolution Professional of Usha India Limited i.e the Corporate Debtor company.
- (ii) Pass any other appropriate writ, order, or direction deemed fit and proper by this Hon'ble Court.
- (iii) Grant any other relief that this Hon'ble Court deems just and proper in the circumstances of the case.

7. During the course of the proceedings, the only issue that was raised by the learned counsel for the respondent is whether the petitioner company through its IRP is entitled to the release of the aforesaid FDRs in their favour. In essence, and the said issue is with regard to the legal status of the petitioner company as to when it was registered and whether entitled to the aforesaid FDR Securities.

8. Learned counsel for the petitioner, alluding to the rejoinder filed on the record, has pointed out that initially Usha Rectifier Corporation

⁸ National Company Law Tribunal

⁹ IRP



(India) Ltd. was incorporated on 15.02.1962, and thereafter, its name was changed to Usha Rectifier Corporation (India) Pvt. Ltd. w.e.f. 01.03.1980. Further alluding to the certificates, it appears that Usha Rectifier Corporation (India) Pvt. Ltd. thereafter changed its name under the Companies Act, 1956 to Usha Rectifier Corporation (India) Ltd., thereby doing away with the word 'Private' w.e.f. 27.06.1984.

9. It is further brought to the fore that Usha Rectifier Corporation (India) Ltd., then changed its name to Usha (India) Ltd. w.e.f. 31.12.1993, and later on shifted its registered office from the National Capital Territory New Delhi to the State of Uttar Pradesh at Kanpur, w.e.f. 17.01.1997.

10. Learned counsel for the respondent/Indian Bank submitted that they have no objection if the reliefs sought by the petitioner in the instant writ are allowed, subject to the petitioner company through its IRP executing a bond to so as to indemnify them in the future in the event of any third party claiming the securities/FDRs in question, which proposal is agreeable to the learned counsel for the petitioner. The only other issue that remains to be addressed is with regard to some claim lodged by the Provident Fund Commissioner with the bank. However, it is stated by learned counsel for the petitioner through the IRP that the Provident Fund Commissioner has already lodged a claim with the petitioner company.

11. Accordingly, there is no legal hindrance in allowing the relief claimed by the petitioner. Thus, the present writ petition is allowed. The respondent bank is directed to immediately release the amount in the two Fixed Deposits held under Accounts No. [6274490077 and



6274489584] in the name of ‘Registrar DRT-1 A/c Usha India Limited, Upper Ground Floor, Babur Road, New Delhi-110001] in favor of Usha India Limited i.e., the Corporate Debtor company through its IRP.

AUGUST 27, 2024
SP

DHARMESH SHARMA, J.