

M/s Leela Business Venture Pvt. Ltd. Vs. M/s Golden Apple Resort & SPA LPP and others

COMS No. 1 of 2021

4.3.2023

Present: Mr.Ankush Dass, Senior Advocate, alongwith Mr.Sunil Mohan Goel, Advocate, for the plaintiff.

Mr.Sanjeev Bhushan, Senior Advocate, alongwith Mr.Rajesh Kumar, Advocate, for defendants No. 1 to 3.

Mr.Abhishek Thakur, Advocate, vice Mr.Kush Sharma, Advocate, for defendant No. 4.

Ms.Usha Singh and Mr.Sanjay Dalmia, Advocates, for applicant Phoenix Arc Pvt. Ltd.

OMP No. 850 of 2022

This application has been filed on behalf of applicant Phoenix ARC Private Limited on the ground that Tourism Financial Corporation of India (TFCI), having charge on the suit property for extending loan to defendants No. 1 to 3 has been arrayed as defendant No. 4 and now TFCI Limited has assigned its debts due and payable by defendant No. 1 through its partner and guarantor alongwith underlying securities thereof in favour of appellant Phoenix ARC Private Limited and, therefore, applicant company has first charge on the suit property and thus, its presence would be necessary enabling the Court to adjudicate the matter effectively and completely and also for the reasons that, as such assignment is under Section 5(5) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 (SARFAESI Act, 2002), provisions of SARFAESI Act, shall also be attracted.

Reply has been filed to the application on behalf of plaintiff. Defendants No. 1 to 3 have not chosen to file reply. In reply filed by plaintiff, no plausible reason has been made out for opposing the application, wherein in response to averment made in para 3 of the application, it has been stated that being matter of record, these averments call for no reply.

Taking into consideration submissions made by learned counsel for the parties and also the averments made in the application, I am of the considered opinion that application deserves to be allowed and applicant Phoenix ARC deserves to be substituted in place of defendant No. 4 TFCI Limited. Accordingly application is allowed by allowing aforesaid substitution.

The application stands disposed of.

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Amended memo of parties filed with OMP No. 850 of 2022 (Annexure A-3) be taken on record at appropriate place.

Learned arguing counsel appearing for plaintiff submits that in view of admissions made by defendants No. 1 to 3, suit deserves to be decreed against them for recovery of amount as claimed in the plaint. He further submits that in case defendant No. 4 succeeds in getting amount more than amount claimed to be recovered from defendants No. 1 to 3, by

selling the property in terms of auction sale notice already issued by defendant No. 4, then plaintiff would have right to receive the excess amount, if any.

Learned arguing counsel for defendants No. 1 to 3 for want of complete instruction, as instructing counsel Mr. Maan Singh, Advocate is not available today due to personal difficulty, seeks adjournment for next week.

At this stage, it is informed that as per auction sale notice issued by defendant No. 4, date of e-auction has been fixed on 9.3.2023 and, therefore, prayer has been made to list this matter after that date.

Considering the aforesaid submissions, matter is adjourned, but directing the parties to have complete instructions by next date of hearing.

As prayed, list on **13th March, 2023**.

***(Vivek Singh Thakur),
Judge.***

4th March, 2023
(Keshav)