

**IN THE DEBTS RECOVERY TRIBUNAL-1, MUMBAI**  
(BEFORE HON'BLE I/c PRESIDING OFFICER, DRT AT PUNE)  
**ORDER SHEET**

Sr. No.901

OA No.283/2019

Classification	No. of Exh.	
		<p style="text-align: center;"><b><u>INTERLOCUTORY APPLICATION No.767/2019</u></b> <b><u>In</u></b> <b><u>ORIGINAL APPLICATION No.283/2019</u></b></p> <p>Catalyst Trusteeship Ltd. ..Applicant Versus Dewan Housing Finance Corporation Ltd., and others ..Defendants</p> <p>Mr. Rohit Gupta a/w Ms. Vinita Hombalkar and Ms. Sushila Vichare i/b Orbit Law Services - Advocates for the applicant Mr. Rajesh Nagori i/b Ms. Sanjana Ghogare - Advocate for defendant no.1 Mr. S V Kanetkar a/w Ms. Saloni Kapadia i/b Cyril Amarchand Mangaldas - Advocates for defendant no.2 Ms. Anita Irani a/w Ms. Aksha Hudda i/b Juris Corp - Advocate for defendant no.4 Mr. Vikrant Makhare i/b Mr. Negandranth Shah - Advocate for defendant no.7 None for other defendants</p> <p style="text-align: right;"><b>Shri Deepak M Thakkar</b> <b>I/c Presiding Officer</b> <b>8<sup>th</sup> November, 2019</b></p> <p><b><u>ORDER</u></b></p> <p>1. The applicant is Debenture Trustee and Security Trustee as provided under sub-section (5) of Section 71 of the Companies Act, 2013 and Regulation 4(4) of the SEBI (ILDS) Regulations, 2008.</p>

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		<p>2. The applicant in its capacity as Debenture Trustee and Security Trustee has filed the Original Application under Section 19 of The Recovery of Debts Due To The Banks &amp; Financial Institutions Act, 1993 (for short "the 1993 Act") for the recovery in the sum of Rs.26861,92,62,415/- and for the enforcement of the securities charged to the debenture holders. The amount is due and payable by defendant no.1 to the debenture holders.</p> <p>3. The applicant has moved this Tribunal for urgent ad-interim reliefs</p> <p>4. Defendant no.1 is a housing finance company and non-banking company. Defendant no.1 had come out with three Public Issues for issuance of non-convertible debentures. On 12<sup>th</sup> August, 2016, 6<sup>th</sup> September, 2016 and 30<sup>th</sup> May, 2018 defendant no.1 signed and executed Debenture Trust Deeds to secure the redemption of non-convertible debentures for the Public Issue nos.1, 2 and 3 respectively. Defendant no.1 failed to pay the amount of interest and principal with regard to the non-convertible debentures on its respective due dates. Defendant no.1 also committed other defaults as stated in clause (7) of the Debenture Trust Deeds.</p> <p>5. It is the case of the applicant that in terms of Debenture Trust Deed, defendant no.1 was under obligation to repay the principal amount and pay interest to the holders of non-convertible debentures, at the agreed rate. It is the case of the applicant that based on the information acquired from the Statutory Auditor's Report, the certificates issued by the Credit Rating agency so also the correspondence exchanged by defendant no.1, the applicants have noticed that it</p>
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		<p>is an event of default in terms of the Debenture Trustees and in particular clause no.7 thereto. The applicant through its Advocate issued legal notice on 12<sup>th</sup> September, 2019 calling upon defendant no.1 to make the entire payment in the sum of Rs.24,94,47,863/- crores alongwith the interest, penal interest, costs, charges and expenses. Despite notice, defendant no.1 has failed to make the payment.</p> <p>6. There are about 85,000 debenture holders. The applicant has a reason to believe that defendant no.1 is not in a position to pay the principal amount of debentures and/or interest on its due date. The default started occurring from 4<sup>th</sup> August, 2019 till the date preceding filing of the Original Application. Defendant no.1 has not disputed the liability.</p> <p>7. The applicant states that some of the debenture holders have filed suit before the Hon'ble Bombay High Court. Defendant no.1 is in the process of selling its large portfolio of entire wholesale book of Rs.35,000/- crores. Further, defendant no.1 has dealt with certain assets even after the default was committed by it. Defendant no.1 dealt with the assets by giving preferential treatment to the unsecured creditor and lender Banks.</p> <p>8. The applicant therefore, seeks the direction against defendant no.1 to file comprehensive affidavit giving details of the payment made by it to any Bank or Financial Institution and the debenture holders after September, 2018. The applicant also seeks direction to give details with regard to the release of the charge over any property in favour of Bank or transfer of any part of the secured asset to any Bank for any consideration or by way of set off against the</p>
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		<p>outstanding loan.</p> <p>9. Mr. Gupta submitted that on 4<sup>th</sup> November, 2019 the Hon'ble Bombay High Court recorded the statement made by defendant no.1 in Interim Application No.1/2019 in Commercial Suit (L) No.1092 of 2019 that the relief sought in the present application is identical and therefore, the direction was granted to this Tribunal proceed with the hearing of the matter for ad-interim relief and pass order. Accordingly, the applicant has pressed into service the aforesaid reliefs.</p> <p>10. Mr. Gupta submitted that the applicant has no difficulty if defendant no.1 is collecting the legitimate dues from the borrower. However, there shall not be any preference in making the payment to unsecured creditor ignoring the secured creditor. There should not be any case of passing of the money to the unsecured creditor.</p> <p>11. The application is opposed by Mr. Nagori for defendant no.1 submitting that as far as prayer clause (a) is concerned, the order dated 10<sup>th</sup> October, 2019 passed by the Hon'ble Bombay High Court in Notice of Motion (L) No.2320 of 2019 in Commercial Suit (L) No.1034 of 2019 in the case of Reliance Nippon Life Asset Management Ltd., Mumbai vs. Dewan Housing Finance Corporation Ltd., Mumbai &amp; Ors. Mr. Nagori submitted that the Hon'ble Bombay High Court has passed the order as set out in paragraph no.31 and therefore, it will take care of the applicant's rights as well. Therefore, no further order be passed.</p> <p>12. Mr. Nagori submitted that in view of the order dated 10<sup>th</sup> October, 2019 passed by the Hon'ble Bombay High Court prayer clause (b) will not survive. As far</p>
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		<p>as prayer clause (d) and (e) is concerned, Mr. Nagori submitted that there is a Trust Retention Account and therefore, it is not necessary to grant relief in terms thereof. Even otherwise, there are no details of the property given by the applicant.</p> <p>13. As far as prayer clause (g) and (h) are concerned, Mr. Nagori submitted that defendant no.1 has no objection in granting this prayer and it will comply.</p> <p>14. As far as prayer clause (i) and (j) are concerned, Edelweiss Asset Management Limited has already sought this relief and therefore, the applicant cannot ask for the relief before this Tribunal.</p> <p>15. As far as prayer clause (k) is concerned, Mr. Nagori submitted that the applicant has not pressed relief at this stage and will join the necessary party and thereafter, seek the relief at appropriate stage.</p> <p>16. Mr. Kanetkar for defendant no.2, today submitted that defendant no.1 is collecting agency for and on behalf of defendant no.2. The collection made by defendant no.1 on behalf of defendant no.2 should not be affected. Mr. Kanetkar further submitted that he has no objection if action is taken against defendant no.1 vis-à-vis its assets.</p> <p>17. Per contra, Mr. Gupta submitted that the Original Application and interlocutory application was served upon defendant no.2 on 18<sup>th</sup> October, 2019. However, no representation was made on 5<sup>th</sup> November, 2019 when the application was made. Defendant no.2 has pari-passu charge with the applicant. Neither defendant no.2 has filed any affidavit nor placed any evidence about its right vis-à-vis defendant no.1. However, interlocutory application is still pending. Mr. Nagori submitted that certain assets securitised</p>
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		<p>were sold to defendant no.2. It is in this context the submissions are made by Mr. Kanetkar that defendant no.1 is collecting agency on behalf of defendant no.2.</p> <p>18. Heard the learned counsel for the applicant, defendant nos.1, 2 and defendant no.7. No argument was advanced by learned counsel for defendant no.4.</p> <p>19. The submission made by Mr. Nagori was that the Hon'ble Bombay High Court has already passed order prohibiting defendant no.1. No logical argument was advanced as to why the ad-interim relief prayed for by the applicant in the present Original Application should not be granted.</p> <p>20. I have considered the arguments advanced by the applicant and defendant no.1. I have evaluated three grounds for passing the order i.e. prima facie case, irreparable injury and balance of convenience as set out below:</p> <p>(i) The applicant has made out the prima facie case as the huge amount in the sum of Rs.26,861,92,62,415/- which is recoverable by it and which is not disputed by defendant no.1.</p> <p>(ii) In so far as the present interlocutory application is concerned, the Hon'ble Bombay Court has already passed order dated 10<sup>th</sup> October, 2019 in Notice of Motion (Lodging) No.2320/2019 in Commercial Suit (Lodging) No.1034/2019 in the case of Reliance Nippon Life Asset Management Ltd. v/s Dewan Housing Finance Corporation Ltd., Mumbai and Others. In my view therefore, it would be appropriate to pass the similar order in the present application on the same terms and conditions which has been</p>
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		<p>passed by the Hon'ble Bombay High Court in the aforesaid suit. I am therefore, convinced that if ad-interim is not granted, irreparable injury is likely to be caused to the applicant.</p> <p>(iii) As far as the relief in terms of prayer clause (d) &amp; (e) are concerned, Mr. Nagori has approbated and reprobated at the same time. On the one hand, Mr. Nagori forcefully refers to the rights of defendant no.1 to securitise the assets and on the other hand, defendant no.1 questions the applicant as to what the Commissioner will supervise. The submission of Mr. Nagori is against the fact narrated by him. It is therefore, necessary to protect the interest of the applicant as I find that the balance of convenience tilts in favour of the applicant.</p> <p>21. Thus, there shall be ad-interim order: "That pending the hearing and final disposal of the Interlocutory Application, the defendant no.1 is temporarily injuncted and restrained making further payments to any of its unsecured creditors, save and except in cases where the payments are to be made on pro-rata basis to all secured creditors, including the applicant, without the approval of this Tribunal."</p> <p>22. By consent of the applicant and defendant no.1 there shall be order in terms of prayer clause (g) and (h).</p> <p>23. The officer of the applicant is appointed as Commissioner (without any fees/remuneration) to monitor and supervise the transactions of defendant no.1. The applicant shall provide the name of the</p>
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		<p>Commissioner and it is only thereafter, that the order vis-à-vis Commissioner shall come into effect.</p> <p><b>(Deepak M Thakkar)</b> <b>I/c Presiding Officer</b> <b>Debts Recovery Tribunal-I, Mumbai</b></p>
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		<p>Mr. Rohit Gupta a/w Ms. Vinita Hombalkar and Ms. Sushila Vichare i/b Orbit Law Services - Advocates for the applicant</p> <p>Mr. Rajesh Nagori i/b Ms. Sanjana Ghogare- Advocate for defendant no.1</p> <p>Mr. S V Kanetkar a/w Ms. Saloni Kapadia i/b Cyril Amarchand Mangaldas - Advocates for defendant no.2.</p> <p>Ms. Anita Irani a/w Ms. Aksha Hudda i/b Juris Corp - Advocate for defendant no.4</p> <p>Mr. Vikrant Makhare i/b Mr. Negandranth Shah - Advocate for defendant no.7</p> <p>None for other defendants</p> <p>1. Today the matter was placed for order in IA No.767/2019. Mr. Kanetkar requested to allow him to make submissions on behalf of defendant no.2.</p> <p>2. Order in IA No.767/2019 passed separately.</p> <p>3. For hearing of IA No.767/2019, stand over to 6<sup>th</sup> December, 2019.</p> <p style="text-align: right;"><b>I/c P.O.</b></p>