

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L)NO.1 OF 2019
IN
COMMERCIAL SUIT (L)NO.1066 OF 2019

Edelweiss Asset Management Limited

..Applicant/Plaintiff

v/s.

Dewan Housing Finance Corporation

Limited & Ors.

.. Defendants

Mr. Dinyar Madon, Senior Advocate, with Mr. Chetan Kapadia, Mr. Sachin Chandarana, Mr. Vatsal Parikh and Ms. Prashansa Agarwal, i/by Manilal Kher Ambalal & Co., for the Plaintiff in COMSL/1066/2019.

Mr. Munaf Virjee and Mr.Rushabh Parekh, i/by ABH Law LLP, for Defendant No.1.

Ms. Vinita Hombalkar, i/by Orbit Law Services, for Defendant No.2.

CORAM : A.K. MENON, J.

DATED : 10TH OCTOBER, 2019

P.C. :

Called for ad-interim relief.

1. Mr. Madon, the learned Senior Counsel, appearing on behalf of the applicants seeks urgent reliefs in terms of prayer clauses (e), (f) and (h) of the Interim Application thereby directing the defendant no.1 to disclose on oath assets and properties which have been transferred or

securitized by defendant no.1 during the last year with written approval of defendant no.2, if any, out of the hypothecated assets and to disclose the payments made to other lenders within six months from receiving the date of filing the suit and in the meantime, restraining the defendants and their servants and agents by a temporary injunction from effecting any payments to secured as well as unsecured creditors including out of current and future receivables in preference to the plaintiff's claim in the entire outstanding of the plaintiff is paid.

2. The factual background of the case and as set out in the plaint is partly similar to the case of the plaintiffs in Commercial Suit (L)no.1034 of 2019.
3. The plaintiff is an Asset Management Company (AMC) for mutual funds including the Edelweiss Mutual Fund (EMF). Defendant no.1 is a housing finance company registered with the National Housing Bank. The plaintiff in its capacity as Investment Manager on behalf of the EMF subscribed to 6,43,928 secured non-convertible redeemable debentures (NCDs) of face value of Rs.1000/- each issued by defendant. Defendant no.1 has apparently defaulted in payment of interest and principal sum. The plaintiff seek recovery of sum of Rs.69,32,68,730/- said to be due to them as of 30th September, 2019

together with interest thereon till the payment of realization.

4. The defendant no.2 is a debenture trustee in relation to the non-convertible debentures and has entered into the Debenture Trust Deed whereunder the defendant no.2 was to hold the security created by defendant no.1 on its receivables for the benefit of all debenture holders. Defendant no.1 was at the material time rated by Credit Analysis and Research Ltd." ("CARE") a rating agency with a "AAA" rating. The defendant no.1 NCDs also carried a "AAA" rating as assessed by Brickworks Ratings India Pvt. Ltd. representing the investments to be of a high degree of safety.

5. It is contended by Mr. Madon that a total sum of Rs.64,39,28,000/- has been invested and grade I, IV and V NCDs had matured at the end of the date of deemed allotment. The terms and conditions of Debenture Trust Deed provided for events of default. Upon occurrence of event of an default remedies were provided. The debenture trustee would act and declare the principal amount of the debentures and interest and other monies to be due and payable forthwith and the security credited would become enforceable. The debenture trustee -defendant no.2 had very wide rights to protect the investments of the debenture holders. If the default in payment of the amounts on due dates continue beyond seven working days or if the

default in performance and observance of governance and conditions continued for 30 days, the debenture trustee could take suitable action and was bound to protect the rights and rights of the plaintiff and other funds. From September 2018 Media reports indicated liquidity constraints faced by defendant no.1. There were allegations against the management of defendant no.1 as well.

6. According to Mr. Madon, defendant no.1 committed defaults in its obligations to make payments under the NCDs and this resulted in downgrading of credit ratings. On 5th June, 2019 CARE published the fact that defendant no.1 had been assigned a “Default Rating”. Reasons were also assigned for such a downgrade. In the background of such developments, the defendant no.1 is said to have conducted a partial stake sale of its holdings in its housing finance division in favour of an investor. Several securitization transactions have been entered into by the defendant no.1 which according to Mr. Madon are similar to the case of M/s. Reliance Nippon Life Asset Management Limited. Such securitization was carried out on receivables which are subject matter of pari-passu charge in favour of numerous funds.
7. The defendant no.1 has allegedly failed to disclose the material information and provided misleading information in relation to its debenture service reserve and its indebtedness. It has avoided

declaring quarterly results.

8. Upon failure to repay the dues on the due dates, on 3rd October, 2019 a default notice was served upon defendant no.1 calling upon them to pay Rs.69,32,68,730/-. Mr. Madon submitted that some of the lenders of defendant no.1 have submitted to a Inter Creditor Agreement under framework for resolution of stressed assets issued by the Reserve Bank of India. Although the defendant no.2 has sought the consent of the plaintiff since it is not amenable to the directions of the Reserve Bank of India, the plaintiff has not consented. Moreover, SEBI had made it optional for AMCs to join the Inter Creditor Agreement and AMCs could join only if it would serve the best interests of the unit holders. It is learnt that majority of the debenture holders have opted not to join the Inter Creditor Agreement.
9. In view of the aforesaid default, the plaintiffs are of the view that their interests are not secured by the Inter Creditor Agreement and the debenture trustee also did not take suitable action, Mr. Madon states that he is entitled to the appropriate reliefs.
10. Since this matter was taken up for hearing along with Commercial Suit (L) No. 1034 of 2019 filed by Reliance Nippon Life Asset Management Limited, the submissions made on behalf of the

defendants in that suit have been adopted by the counsel for the defendant nos.1 and 2. By an order of even date passed in the Commercial Suit (L) no.1034 of 2019, I have restrained defendant no.1 by itself, its servants, agents, contractors and/or any other persons claiming through them by an order and temporary injunction from effecting any payments to the secured as well as unsecured creditors in preference to that of the plaintiff.

11. Although defendant no.2 trustee has submitted that they are in the process of adopting legal measures in that suit, it has clearly supported the plaintiff's application for grant of urgent ad-interim reliefs. The factual background leading up to the plaintiffs in this suit to approaching the Court arising out of the very same defaults and the conduct of the defendant no.1 in seeking to securities receivables which were subject matter to the pari-passu charge.

12. I am of the view that the relief granted in Commercial Suit (L) no. 1034 of 2019 would also have to be granted in the present suit. In addition, I am of the view that the plaintiffs herein have made out a case for grant of ad-interim relief in terms of prayer clause (e) of the Interim Application as well. Accordingly I pass the following order;

(i) *Defendant no.1 is temporarily restrained from making further payments and/or disbursements to any unsecured creditor of defendant no.1 except in the case where payments are made on a pro-rata basis to all secured creditors including the plaintiff.*

(ii) *In addition to the above, there will be order in terms of prayer clause (e) which reads as follows;*

“ (e) Pending the hearing and disposal of this Suit, this Court be pleased to direct defendant no.1 to disclose on oath the assets and properties which have been transferred and/or securitized by defendant no.1 in the last one year along with prior written approval of defendant no.2, if any, out of the assets and properties mortgaged, charged or hypothecated, as the case may be, in favour of defendant no.2 for payment of debentures vide ISINs INE202B07HS6, INE202B07HQO and INE202B071J3 and INE202B07IY2.”

(ii) Reply on behalf of the defendants to be filed within two weeks from today.

(iii) Rejoinder to be filed within two weeks thereafter,

(iv) List the motion in accordance with its turn.

(v) Liberty to apply for further relief.

(A.K.MENON, J.)