

Presented on: 22.01.2018
Registered on: 02.02.2018
Decided on: 21.05.2018
Duration: Y M D
0 03 29

IN THE DEBTS RECOVERY TRIBUNAL AT PUNE

ORIGINAL APPLICATION No.25/2018

TOTAL CLAIM AMOUNT - Rs.131,46,37,600/-/-

Catalyst Trusteeship Ltd.,
(erstwhile GDA Trusteeship
Ltd.), having its office at GDA
House, Plot no.85, Bhusari
Colony (Right), Paud Road, Pune
411 038.

... Applicant

Versus

D.S.Kulkarni Developers Ltd., a
Limited Company, having its
registered office at - 1187/60,
J.M.Road, Shivajinagar, Pune 411
005.

... Defendant

APPEARANCES

For the Applicant

Mr.Ramesh B. Ganbote - Advocate

For Defendant

None (Already set ex-parte)

Shri Deepak M Thakkar
Presiding Officer

JUDGMENT PRONOUNCED ON : 21.05.2018

JUDGMENT TRANSCRIBED ON : 22.05.2018

JUDGMENT

1. This is an application under sub-section (1) of section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('The 1993 Act' for short) for the recovery of the dues in the sum of Rs.131,46,37,600/- together with future interest thereon from the date of filing of Original Application till repayment/realization and also for enforcement of securities.
2. The factual matrix of the case is as under:-
 - i. Defendant no.1 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at the address mentioned in the cause title of the original application.
 - ii. The applicant is a Debenture Trustee duly registered

under the Securities & Exchange Board of India (SEBI).

- iii. Pursuant to the prospectus dated 28th July, 2014 defendant issued debentures under various options. The applicant is appointed as a Debenture Trustee for the said debenture vide Debenture Trust Agreement dated 4th July, 2014.
- iv. The applicant and defendant have also entered into Debenture Trust-cum-Mortgage Deed on 5th September, 2014.
- v. The debentures issued by defendant is a 'debt securities' within the meaning of section 2(ga) of the 1993 Act.
- vi. On 28th July, 2014 defendant proposed to issue Secured Redeemable, Non-convertible Debentures (NCDs/debentures) for Rs.5000/- each for option I, II and IV as well as Rs.25,000/- for option III aggregating upto Rs.10,000 lakhs with option to retain over-subscription. The terms and conditions of the public issues are as under:

Options	I	II	III	IV
Tenure	36 Months	66 Months	72 Months	84 Months
Maturity Date	06.09.2017	06.03.2020	Staggered redemption every year	06.09.2021

			till 06.09.2020.	
Frequency of Interest Payment	Quarterly (1 st Apr., 1 st July, 1 st Oct., 1 st Jan.	Cumulative (alongwith maturity)	Annually (6 th Sept. every year)	Monthly (1 st day of every month)
Coupon (%) per annum in Category I, II and III	12.50%	N.A.	12.65%	12.75%
Coupon (%) for DSK Employees, Existing, Existing Equity Shareholders, Senior Citizen, Servicemen, Ex-servicemen and Women	12.75%	N.A.	12.90%	13.00%
Redemption Amount	Face value i.e. Rs.5000/-	Maturity Value i.e. Rs.10,000/-	Face value with Staggered Redemption	Face value i.e. Rs.5000/-

- vii. Under the terms of the prospectus under option III, the specific portion of the principal amount was to be redeemed every year.
- iii. As aforesaid, defendant appointed Catalyst Trusteeship Ltd. (erstwhile GDA Trusteeship Ltd. i.e. the applicant

under the Debenture Trust Agreement dated 4th July, 2014. Defendant also signed and executed Debenture Trust-cum-Mortgage Deed (DTD) on 5th September, 2014. The said Debenture Trust-cum-Mortgage Deed is registered with the office of the Sub-Registrar, Haveli no.10 at sr.no.8241/2014 with regard to the immovable properties more particularly described in Exhibit "B" to the original application. The charge created under Debenture Trust-cum-Mortgage Deed dated 5th September, 2014 for the aggregate amount of Rs.111,69,60,000/- has been duly registered with the Registrar of Companies, Pune vide charge identification no.10520168.

- ix. As declared in the prospectus the public issue of the NCDs was opened on 4th August, 2014 and closed on 26th August, 2014. Defendant received 222,514 applications of NCDs for the subscription amount in the sum of Rs.113,01,69,000/-. Defendant made the final allotment on 6th September, 2014 of 219,147 NCDs (i.e. 219,147 NCDs of Face Value of Rs.5000/- and 849 NCDs of face value of Rs.25,000/- each) aggregating in the sum of Rs.111,69,60,000/- as set here in below:

ISIN	OPTION	Face Value (Rs.)	No. of Debentures	Amount (Rs.)
INE891A070 11	I	5,000	1,03,444	51,72,20,000/- -
INE891A070 37	II	5,000	46,851	23,42,55,000/- -
INE891A070 45	III	25,000	849	2,12,25,000/-
INE891A070 29	IV	5,000	68,852	34,42,60,000/- -
		TOTAL	219,996	111,69,60,000/-

- x. It was the obligation of defendant to pay to the debenture holders the interest on monthly, quarterly and annual basis with regard to NCDs under option IV, I and III respectively. It was the obligation of defendant to redeem the NCDs under option I and III on the specific dates described as specified in the prospectus.
- xi. Defendant appears to have paid the interest for the period upto 1st June, 2017. Thereafter, defendant defaulted from 1st July, 2017 which resulted in issuance of demand notice on 3rd October, 2017. By the said notice, the applicant called upon defendant to pay the outstanding amount due to the debenture holders with regard to option I to IV

referred to hereinabove. Despite notice, defendant failed to service the interest from time to time. Therefore, the applicant issued notice calling upon defendant to make the payment of the defaulted amount as set out in paragraph no.5.6 of the original application.

- xii. As per the terms of the contract and in particular, the provisions contained in clause 17.2.2 treats it as event of default. Further, the contract in terms of provisions of clause 17.3 of the Debenture Trust-cum-Mortgage Deed reveals that in the event of default in servicing the interest and repayment of the loan, vis-à-vis of the debenture (all options) of amount outstanding thereunder shall become due and payable forthwith. Under those circumstances, the applicant shall become entitled to initiate the action against defendant. As referred to hereinabove, defendant committed series of defaults. Therefore, the entire amount for the debentures (all options) became due and payable forthwith alongwith interest.
- xiii. On 3rd October, 2017 the applicant issued demand notice once again called upon defendant to liquidate the entire outstanding i.e. the defaulted interest and the principal loan amount. Despite notices, defendant failed and

neglected to pay the amount.

- xiv. Thereafter, defendant proposed to obtain consent of the debenture holders for the rephasing and re-schedulement of the payment of dues and substitution of the portion of the mortgaged properties under the debenture-cum-Trust Deed. On 23rd November, 2017 defendant issued notice of postal ballot to debenture holders. As per the result declared on 26th December, 2017 defendant failed to get the requisite majority by the debenture holders.
- xv. Before, the issue of debenture, defendant had obtained the value of the properties agreed to be mortgaged from two independent government approved valuers. According to defendant, the value of the property was 175 crore (approximately. On 27th November, 2017 the applicant obtained the latest value report which shows the value of the mortgage property in the sum of Rs.208.32 crore as fair market value of Rs.124.99 crore as distress value.
- xvi. On 3rd October, 2017 the applicant addressed letter to defendant drawing attention that the amount under each series together with interest was over due and payable.

Despite notice, defendant failed and neglected to make the payment.

xvii. The present claim of the applicant is based on the information submitted to the regulatory authority as set out in paragraph no.5.10 of the original application. There are 8500 debenture holders which is extremely large.

xviii. As on 21st January, 2018 there was owing, due and payable by defendant to the applicant the sum of Rs.131,46,37,600/- which includes principal, interest and default interest of all the four options which is reproduced hereunder:

A. DUES TO DEBENTUREHOLDERS					
Option	Face Value as on 21.01.2018	No.of debentures as on 21.01.2018	Principal (Amt.Rs.)	Interest (Amt.Rs.)	Default Interest (Amt.Rs.)
I	5000	103444	51,72,20,000	5,34,79,133	41,85,884
II	5000	46851	23,42,55,000	10,63,62,177	20,31,129
III	21250	849	1,80,41,250	32,07,240	1,39,507
IV	5000	68852	34,42,60,000	2,88,14,090	23,93,690
SUB-TOTAL			111,37,76,250	19,18,62,640	87,50,210
TOTAL					131,43,89,100

B. DUES TO DEBENTURE TRUSTEE	
Annual Fees for the FY 2017-2018	1,72,500
Other Expenses	76,000
TOTAL	2,48,500
GRAND TOTAL OF CLAIM (A+B)	131,46,37,600

- xix. Defendant failed to pay two consecutive installments of interest on 01st July, 2017 and 01st August, 2017 with regard to option I. The applicant therefore, called upon defendant to pay the said amount with interest within 60 days. In response thereto, defendant placed on record that it is unable to pay the amount within 60 days. Thereafter, pursuant to the default in payment of service of interest and payment of principal amount as on 6th September, 2017 under debenture (Option I), the applicant issued notice on 8th September, 2017.
- xx. Despite follow up, defendant failed to service the interest and repay the loan as per the terms of Debenture Trust-cum-Mortgage Deed. The applicant therefore, issued notice on 3rd October, 2017 calling upon defendant to liquidate the entire liability towards the said debt securities i.e. debentures, has remained unpaid for more than 90 days of the demand notice issued on 3rd October,

2017.

xxi. The applicant was therefore, left with no other alternate but, to file the original application which was presented on 22nd January, 2018.

3. Defendant was duly served with the summons which was received by Mr. Rohit Purandare, Company Secretary of defendant. The summons was served on 17th March, 2018. Despite knowledge of the date of hearing, defendant did not choose to enter appearance either personally or through advocate to answer the claim made by the applicant. Therefore, on 14th May, 2018 defendant was set ex-parte.
4. The applicant has filed evidence affidavit (Exhibit-5) of Shri.Umesh Manohar Salvi and list of documents (Exhibit-6) thereby adducing in evidence the documents at Sr.No.AW-1 to AW-8 which are admitted in evidence, read, recorded and exhibited.
5. I have scrutinized and examined the allegations made in the Original Application and analyzed the evidence adduced by the applicant which has gone unchallenged, uncontroverted and unrebutted.

6. Since defendant is set ex-parte, Mr.R.B.Ganbote submitted that pendent lite and mortgage securities are the only two issues required to be dealt with. Accordingly, I deal with the same.
7. Pendent lite and future interest: The applicant has claimed pendent lite and future interest @ 15.43% p.a. which includes 2% default interest from the date of filing of the original application till payment/realization. As per the terms of the contract, default interest is in the form of penalty levied upon the borrower for default in making the payment; it is the interest to be charged one time only. Upon termination of the contract, the applicant is not entitled for the default interest. Be that as it may, the applicant has left it to the discretion of this Tribunal to decide/to grant or not to grant default interest @ 2% p.a. which I hereby decline. Mr.R.B.Ganbote submitted that pendent lite and future interest @ 13.43% p.a. which is the contractual rate be granted. Mr.R.B.Ganbote submitted that there is default in repayment of interest on and from 1st July, 2017. Thereafter, defendant has not come forward to make the payment of the outstanding. In my view, Mr.R.B.Ganbote is justified in pressing for the contract

rate @13.43% p.a. being the amount advanced for defendant for the business purpose. I therefore, grant pendent lite and future interest @ 13.43% p.a. from the date of filing of the original application till payment/realization.

8. Mortgage securities: The applicant has pleaded and established the case for creation of mortgage by defendant as well as registration of the charge. Under section 60 of the Transfer of Property Act, defendant is entitled for redemption of the mortgage upon payment of money. I therefore, hold that defendant is entitled for redemption of mortgage.
9. Upon careful scrutiny and examination of the Original Application, analyzing the evidence and giving due weightage to the documentary evidence adduced by the applicant, I am of the view that there is no reason to disbelieve the claim made by the applicant.
10. In view of the observations made hereinabove, the Original Application filed by the applicant deserves to be granted. Hence, I pass the following order:-

ORDER

- (A) Original Application No.25/2018 is allowed with cost.

- (B) Defendant is ordered and directed to pay to the applicant the aggregate sum of Rs.131,46,37,600/- (Rupees one hundred thirty-one crore forty-six lakhs thirty-seven thousand six hundred only) with pendent lite and future interest @ 13.43% per annum from the date of filing of the original application i.e. 22nd January, 2018 till payment/realization.
- (C) The aforesaid adjudicated amount is secured by the valid and subsisting mortgage of the immovable properties i.e. all that pieces and parcel of the land included in this Schedule shall also include all the structures constructed or to be constructed in future. (1) all that piece and parcel of land bearing Survey No. 3/1C, totally admeasuring 00 H 11 R, assessed at Rs. 00.38 Paise, out of which area admeasuring 00 H 5.75 R of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (2) All that piece and

parcel of land bearing Survey No. 4/29, totally admeasuring 00 H 22 R, assessed at Rs. 00.37 Paise, out of which area admeasuring 00 H.10 R of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (3) All that piece and parcel of land bearing Survey No. 33/1 (Old Survey No.27) totally admeasuring 01 H 22 R, assessed at Rs. 07.25 paise, situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (4) All that piece and parcel of land bearing Survey No. 33/2A/1 (Old Survey No.28) totally admeasuring 00 H 20 R, assessed at Rs. 1.53 paise, situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (5) All that piece and parcel of land bearing Survey No. 33/2A/2/1

(Old Survey No.28) totally admeasuring 00 H 17 R and assessed at Rs. 00.77 paise situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (6) All that piece and parcel of land bearing Survey No. 33/2A/2/2, admeasuring 00 H 16 R, assessed at Rs. 00.76 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (7) All that piece and parcel of land bearing Survey No. 34/3B, totally admeasuring 00 H 16 R, assessed at Rs. 00.94 Paise, situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (8) All that piece and parcel of land bearing Survey No. 34/4, totally admeasuring 00 H 49 R, assessed at Rs. 02.88 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of

Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (9) All that piece and parcel of land bearing Survey No. 34/5/2, totally admeasuring 00 H 42 R, assessed at Rs. 02.10 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (10) All that piece and parcel of land bearing Survey No. 34/6, totally admeasuring 00 H 27 R, assessed at Rs. 01.69 Paise, situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (11) All that piece and parcel of land bearing Survey No. 34/11, totally admeasuring 00 H 27 R, assessed at Rs. 01.69 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (12) All that piece and parcel of land bearing Survey

No. 34/18, totally admeasuring 00 H 28 R, assessed at Rs. 01.25 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (13) All that piece and parcel of land bearing Survey No. 34/26/1, totally admeasuring 00 H 19 R, assessed at Rs. 00.91 Paise, situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (14) All that piece and parcel of land bearing Survey No. 34/26/2, totally admeasuring 00 H 12 R, assessed at Rs. 00.46 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (15) All that piece and parcel of land bearing Survey No. 35/1A+1B/1 (Old Survey No. 30) totally admeasuring 01 H 84 R situated at village Fursungi, situated within the limits of

Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (16) All that piece and parcel of land bearing Survey No. 35/1A+1B/2 (Old Survey No.30) totally admeasuring 01 H 84 R situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (17) All that piece and parcel of land bearing Survey No. 35/2/2, totally admeasuring 00 H 95 R, assessed at Rs. 04.72 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (18) All that piece and parcel of land bearing Survey No. 42/1/4, totally admeasuring 00 H 07 R, assessed at Rs. 00.35 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (19) All that piece

and parcel of land bearing Survey No. 42/1/4A admeasuring 00 H 18 R, assessed at Rs. 00.85 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (20) All that piece and parcel of land bearing Survey No. 43/2/4 admeasuring 00 H 22 R, assessed at Rs. 01.10 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (21) All that piece and parcel of land bearing Survey No. 45/3, totally admeasuring 01 H 37 R, assessed at Rs. 07.37 Paise out of which land admeasuring 00 H 3.75 R, situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (22) All that piece and parcel of land bearing Survey No. 45/4, totally admeasuring 00 H 03 R, assessed at Rs. 00.19 Paise

out of which land admeasuring 00 H 1.5 R, situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (23) All that piece and parcel of land bearing Survey No. 45/5, totally admeasuring 01 H 23 R, assessed at Rs. 06.75 Paise out of which land admeasuring 00 H 28.18 R, situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (24) All that piece and parcel of land bearing Survey No. 46/2, totally admeasuring 00 H 51 R, assessed at Rs. 00.37 Paise out of which land admeasuring 00 H 17 R of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (25) All that piece and parcel of land bearing Survey No. 48/3, totally admeasuring 00 H 64 R, assessed at Rs. 02.87 Paise out of which land

admeasuring 00 H 29.33 R, situated at village Fursungi, situated within the limits of Panchayat Samiti Haveli, Grampanchayat Fursungi and also situated within the jurisdiction of Sub Registrar Haveli, Pune; (26) All that piece and parcel of land bearing Survey No. 49/1A, totally admeasuring 00 H 51 R, assessed at Rs.01.25 Paise out of which land admeasuring 00 H 17 R of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (27) All that piece and parcel of land bearing Survey No. 54/1/3/2 admeasuring 00 H 33 R, assessed at Rs. 1.00 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (28) All that piece and parcel of land bearing Survey No. 54/2C/1, totally admeasuring 00 H 51.50 R, assessed at Rs. 02.07 Paise, out of which area admeasuring 00H. 20.50 R, of village Fursungi, Tal. Haveli, Dist. Pune,

situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (29) All that piece and parcel of land bearing Survey No. 54/4A/2, totally admeasuring 00 H 50 R, assessed at Rs. 03.27 Paise, out of which area admeasuring 00H. 28 R, of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (30) All that piece and parcel of land bearing Survey No. 54/3C/1 admeasuring 00 H 60 R, assessed at Rs. 2.94 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune; (31) All that piece and parcel of land bearing Survey No. 56/1+2+3+4/1, total land admeasuring 00 H 07 R, assessed at Rs. 00.56 Paise (Well Property) of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat Fursungi and

also situated within the jurisdiction of Sub-Registrar Haveli, Pune and (32) All that piece and parcel of land bearing Survey No. 56/2/1B, total land admeasuring 00 H 86 R, assessed at Rs. 04.09 Paise of village Fursungi, Tal. Haveli, Dist. Pune, situated within the limits of Grampanchayat, Fursungi and also situated within the jurisdiction of Sub-Registrar Haveli, Pune.

- (D) Defendant is granted liberty to redeem the mortgage properties within a period of Three Months from the date hereof failing which the applicant shall be entitled to dispose of the mortgaged properties and appropriate the sale proceeds as per law.
- (E) Issue Recovery Certificate.
- (F) The Registrar is directed to send the copy of Judgment and Recovery Certificate to the applicant and defendants.

Sd/-
(Deepak M Thakkar)
Presiding Officer
Debts Recovery Tribunal, Pune