

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**Transfer Petition No. 05/2022**

**Between**

J. M. Financial Asset Reconstruction Company

Ltd & Anr.

... Appellant/s

V/s.

M/s Veer Aluminium Industries Pvt. Ltd.

... Respondent/s

**AND**

**Transfer Petition No. 09/2023**

**Between**

J. M. Financial Asset Reconstruction Company

Ltd & Ors.

... Appellant/s

V/s.

M/s Veer Aluminium Industries Pvt. Ltd.& Ors.

... Respondent/s

Mr Rohit Gupta along with Ms Somya Tripathi, i/b M/s. M/s. T. N. Tripathi & Co., Advocate for Appellants.

Mr S.V. Adwant, i/b Ms Sanjana Goghare, Advocate for Respondents.

**-: Common Order dated: 20/07/2023:-**

These transfer applications are filed by M/s J. M Financial Asset Reconstruction Company for the transfer of Securitisation Application (S.A.) No. 158 of 2021 and Original Application (O.A.) No. 172 of 2013 on the files of the Debts Recovery Tribunal, Aurangabad (D.R.T.) to any other Tribunal within the jurisdiction of this Appellate Tribunal exercising jurisdiction under Sec.17-A(2) of

the Recovery of Debts and Bankruptcy Act, 1993 (“RDB Act”, in short). The same parties are involved in both these proceedings. The Applicants in T. P. No. 5 of 2022 are the Respondents in S.A. No. 158 of 2021 while they are the Applicants in O.A. No. 172 of 2013.

2. It is alleged that in the facts and circumstances which transpired during the pendency of the matters before the D.R.T., Aurangabad, apprehension was created in the mind of the Applicants that there exists a bias on the part of the Ld. Presiding Officer and hence, they want the matters to be transferred to some other Tribunal.

3. The Securitisation Application was filed by the Respondents on 07.10.2021 and no interim reliefs were sought against the Sarfaesi measures till June 2022. On 17.06.2022, the matter was taken up for hearing on the interim reliefs sought against the Applicants herein. It is submitted that the Ld. Counsel for the Applicants in the S.A. sought time to argue the matter as the main Counsel was engaged in the High Court. The Ld. Presiding Officer accepted the prayer for adjournment and re-notified the case. But nevertheless granted an order that no possession shall be taken till the Tribunal hears the matter. It is pointed out that despite the Counsel for the Transfer Petitioner being ready for hearing and adjournment was sought not by the Transfer Petitioner but by the Applicants’ Counsel. In consequence to that, the possession of the secured assets scheduled to be taken on 21.06.2022 was cancelled. Thereafter, when the matter was taken up for consideration on 23.06.2023, the Ld. Presiding Officer granted an opportunity to the Applicants in S.A. to approach the Respondents therein for exploring the possibility of a settlement. It was wrongly

recorded that the Respondents therein had agreed to the Applicants therein depositing a sum of ₹1 crore. It is pertinent that the Counsel for the Respondents therein could never have agreed to stall the proceedings on depositing a paltry sum of ₹50 lakhs against the claim in excess of ₹100 crores. That the payment of ₹50 lakhs was permitted to be made by issuance of a cheque and the prohibitory order was to stand vacated only if the cheque was dishonoured. Even that amount of ₹50 lakhs was not paid. The Applicants preferred an appeal before this Tribunal and this Tribunal was pleased to vacate the stay order/injunction granted by the Ld. Presiding Officer. On failure to comply with the order of Tribunal dated 23.06.2023 a fresh date for taking possession of the secured assets was fixed. A fresh application was filed on 18.08.2022 by the Applicants in the S.A. That application was heard on 23.08.2022 by the Ld. Presiding Officer. On that date, the submission of the Counsel that the Respondents therein had agreed to a deposit of at least ₹1 crore by the Applicants therein was recalled and the Ld. P.O. also expressed anguish about the parties not honouring the commitments made by their Counsel before the Tribunal. Despite that, the Ld. P.O. granted the second order in favour of the Applicants therein without making any deposit. Thereafter, the D.R.T. attempted to have a mediation and even permitted the redemption of the property at market value. The operative part of the order runs contrary to the judgment passed by the Hon'ble High Court and Supreme Court. All these actions of the part of the Ld. Presiding Officer raises a doubt regarding the approach made by him and a reasonable apprehension arises in the mind of the litigant regarding

the likelihood of a bias.

4. The Ld. Counsel for the Respondents in the Transfer Petition argues with vehemence that the allegations made against the Ld. Presiding Officer are unsustainable and that the Applicants cannot be granted the freedom of forum hunting. Moreover, it is pointed out that the O.A. is of the year 2013 and has become ripe for trial. Just because the transfer of the S.A. is sought on certain allegations made against the Ld. P.O., the O.A. need not be transferred. Hence, it is submitted that the applications for transfer be dismissed.

5. The Ld. Counsel appearing for the Transfer Applicants relies on the decision of the *Satish Jaggi vs. State of Chhattisgarh* (2007)3 SCC 62 to argue that if there is a reasonable apprehension on the part of the parties that justice will not be done, they are entitled to get a transfer of the case. The Ld. Counsel also relies on the decision of *My Palace Mutually Aided Co-operative Society vs B Mahesh & Ors Civil Appeal No. 5784 of 2022* wherein it is held that even though there is no doubt about the absence of bias, it is a well established principle that not only must justice be done; it must also be seen to be done.

6. The Ld. Counsel appearing for the Respondents submits that they had moved the Hon'ble High Court of Bombay, Bench at Aurangabad by filing a Writ Petition No. 4509 of 2023 seeking directions to decide the O.A. as well as the S.A. expeditiously as the pleadings are complete in both proceedings. The Writ Petition was disposed of with a direction that the O.A. and the S.A. be disposed of by the D.R.T. on or before 31.12.2023 subject to the decision of the Transfer Petition filed before this Tribunal.

7. The parties have raised several contentions in the O.A. as well as the S.A. and I do not intend to delve deep into the merits of the rival contentions in those applications. The only question to be decided in these transfer applications is whether the transfer of the matters is essential on the grounds alleged. The transfer petitioner would contend that a stay was granted by the Ld. Presiding Officer on flimsy grounds. The submissions made by the transfer petitioners' counsel before the Tribunal were misinterpreted. The Ld. Counsel for the Respondents herein has relied upon a catena of decisions in support of his argument that the transfer of case should be granted only in extraordinary situations or for compelling reasons. In the decision *Mrs Maneka Sanjay Gandhi & Ano. vs. Ms Rani Jethmalani* (1979) 4 SCC 167, his Lordship Krishna Iyer, J has held thus:

“2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle, the court may weigh the circumstances.”

8. In *Vikram Singh Raghubanshi vs. State of Uttar Pradesh* (2011) 7 SCC 776, it is held thus:

“18. The dangerous trend of making false allegations against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise, the judicial system itself would collapse. The Bench and the

Bar have to avoid unwarranted situations on trivial issues that hamper the cause of justice and are in the interest of none. “Liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary.” A lawyer cannot be a mere mouthpiece of his client and cannot associate himself when his client maligning the reputation of judicial officers merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system, would cause a very serious damage to the institution of judiciary. An advocate in a profession should be diligent and his conduct should also be diligent and conformed to the requirements of the law by which an advocate plays a vital role in the preservation of the society and justice system. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. (vide *O.P. Sharma vs. High Court of Punjab and Haryana (2011) 6 SCC 86*.)”

9. The Ld. Counsel for the Respondents also relies on the decision of the Hon’ble Bombay High Court in *Charu K. Mehta vs. Chetan P. Mehta & Ors. 2010 (2) Mb. L.J. 433*, where it is held thus:

“13. The transfer of case from one court to another is a very sensitive and delicate issue, which, in case of the order of transfer, casts doubt either on the competence or integrity of the judge. The court herein the application for transfer, therefore, requires to deal with it with great care and should take not only the facts of the case or allegations made therein into consideration but should also examine whether there exists circumstances from which reasonable man would think it probable or likely that the Presiding Officer will be prejudice against the Applicant.”

10. The Ld. Counsel has also relied upon a decision of the Hon’ble High Court of Kerala in *Naisam & Ors. vs. Station House Officer & Ors. 2023 SCC OnLine Ker 4482* in support of his argument that the Presiding Officers and Judges should be able to discharge their duties without fear or favour, affection or ill-will. Wild allegations of bias or false implications will have a negative impact on the independence of the judiciary and may set a bad precedent in the justice delivery system.

11. After having anxiously considered the rival arguments, the precedents, and the material on record, this Tribunal is of the opinion

that the apprehension of the transfer applicants regarding bias on the part of the Presiding Officer is unfounded. It is true that the Presiding Officer may have involved himself in getting the dispute resolved and may have shown over-enthusiasm. In the process of administration of justice, no one is infallible. The higher courts are meant to correct the subordinate courts in instances where they may have gone wrong. A judicial officer can afford to make a wrong decision which would stand corrected by the hierarchy of courts. Deciding on an issue wrongly does not automatically imply bias on the part of the judicial officer. It is nevertheless true that judicial officers should conduct themselves in a manner that precludes any perception of bias. From the facts which have been revealed in the present case, I do not find any explicit attitude of bias or prejudice in the actions or orders passed by the Ld. Presiding Officer. Some of his orders may not have been appropriate in the judicial perspective and in such instances, his order would stand corrected/quashed or rectified. The transfer applicants have themselves approached the Appellate Tribunal impugning the order passed by the Presiding Officer. Instances of interference in appeal cannot also attribute prejudice on the part of the Presiding Officer. Hence, this Tribunal is not inclined to transfer the O.A. or the S.A. The Ld. Presiding Officer is directed to dispose of the O.A. as also the S.A. expeditiously as directed by the Hon'ble High Court of Bombay in Writ Petition No. 4509 of 2023

Transfer Petitions are dismissed.

Sd/-  
Chairperson