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HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

HON'BLE MR. JUSTICE SAMEER JAIN

S.B. Civil Writ Petition No. 12090/2018; 09/03/2022

Jaipur Texweaving Park Ltd. *Versus* Union of India & Ors.

Summary: The High Court dismissed this writ petition with a cost of Rs. 2 lac on account of misrepresentation, not impleading the consortium banks as necessary parties and praying for relief against them in their absence, not availing the alternative remedy and keeping the Court in dark by getting ex-parte stay during the course of advocates' strike. The petitioner has given an impression that its several members have paid their entire dues and in parallel are defending the matter before the Debts Recovery Tribunal, whereby they were successful in avoiding payment of due of Rs.20 crores and interest thereon.

For Petitioner(s) : Mr. Archit Bohra with Ms. Lipi Garg and Ms. Astha Singhal

For Respondent(s) : Mr. H.P. Kar, with Mr. Manish K. Sharma, Ms. Shalini Sheoran

J U D G M E N T / O R D E R

1. Being aggrieved by the notice dated 31.05.2017 u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short hereinafter to be referred as "SARFAESI Act, 2002") as well as notice u/s 13(4) of SARFAESI Act, 2002 dated 09.03.2018 and for violation of terms and conditions of the sanction letter dated 12.03.2009 issued by the Ministry of Textiles and for violation of Fundamental Rights enshrined under Articles -14, 19 & 300A of the Constitution of India, the present writ petition has been filed with the following prayers;

"It is therefore, humbly prayed that Your Lordship may graciously be pleased to:

- a) Call for the entire record of proceedings from the respondent;
- b) declare the entire impugned action of the respondents, and notice under Section 13 (2) of the SARFAESI Act dated 31.05.2017 to be arbitrary, unlawful and unconstitutional and set aside (Annexure-4);
- c) declare the entire impugned action of the respondents, and notice under Section 13(4) of SARFAESI Act dated 09.03.2018 to be arbitrary, unlawful and unconstitutional and set aside (Annexure-20);
- d) declare and set aside the entire action initiated by the respondents under the SARFAESI Act to be illegal, perverse, unconstitutional and void ab initio;
- e) direct the respondent no. 1 & 5 to intervene in the matter and take necessary & appropriate actions as per law to protect & preserve the first textile park of Rajasthan keeping in view of the aims & objectives of the 10th Five Year Plan;
- f) in the alternative, this Hon'ble Court may appoint a Court commissioner having the understanding of the commercial laws and transactions to bifurcate the categories of members who are willing to pay the amount, who have paid the entire amount and further

who have not paid the amount and further for recovery of the amount whatsoever, to be made from the members who have not paid the amount by disposing their respective sheds and any outstanding amounts thereafter be recovered by disposing off the Common area and any other such area in the project which is not operational and is not put to industrial use.

Any other appropriate writ, order or direction which may be considered just and proper in the facts and circumstances of the case may kindly be issued in favour of the petitioner.”

2. FACTS OF THE CASE:

(i) The Ministry of Textiles, Union of India launched scheme for Integrated Textile Parks across India to cope up with the global development. In this regard, on 16.09.2005 the respondent No. 1 entered into an agreement with the respondent No. 2 for providing expert advisory for development of Integrated Textile Parks.

(ii) On 21.09.2005, the petitioner entered into a Memorandum of Agreement (MoA) with respondent No. 2 and the project of the petitioner was approved by the Project Approval Committee on 25.11.2005 and allotment letter and lease deed were executed in favour of the petitioner by RIICO for a period of 99 years.

(iii) On 18.09.2006, individuals/juristic persons applied for membership of the said park by way of share subscription agreement. On 23.05.2008 and 27.02.2012, security trustee i.e. respondents No. 2 to 4 entered into an agreement for creating and maintaining security interest over the said land in terms of financing the Amendatory Security Trustee Agreement executed on 27.02.2012.

(iv) Common Loan Agreement dated 23.05.2012 was entered in between the petitioner and consortium of 15 banks and financial institutions through respondent No. 3 for fulfilling financial needs for the development of the project.

(v) On 12.03.2009 sanction letter releasing the second installment of grant-in-aid was issued by Ministry of Textiles to the petitioner. On account of default, on 02.02.2016 a letter was issued by respondent No. 2 stating therein that the members of the petitioner company who are intending to repay their arrears and respective shares in the loan facility account, their respective Units would be kept out of purview and be absolved from recovery in future.

(vi) On 04.05.2017, the petitioner was issued a notice under Section 13(2) of the SARFAESI Act, 2002 from one of the consortium Banks i.e. Indian Bank, New Delhi main branch for recovery of an amount of Rs. 1,66,12,493/-. The same was part of the loan provided by Consortium of Banks and financial institutions.

(vii) On 31.05.2017, respondent No. 4 in the light of the notice under Section 13(2) of the SARFAESI Act, 2002 dated 04.05.2017 directed the petitioner to deposit the entire liability of Rs. 19,23,68,956/- in respect of the entire plot qua petitioner and members.

(viii) On 25.07.2017 the petitioner filed their statutory objections in response to the notice under Section 13(2) in terms of Section 13(3A) of the SARFAESI Act, 2002.

(ix) The respondent No. 5 turned down his request and neither reciprocated the

objections qua the action initiated under SARFAESI Act, 2002 by Consortium of Banks and Financial Institutions and Security Trustee nor intervened in the matter.

(x) The petitioner in parallel filed a representation dated 16.08.2017 before the respondent No. 1 to intervene in the matter being an interested party but no intervention was provided in the recovery initiated under the SARFAESI Act, 2002.

(xi) On 28.02.2018, respondent No. 4 issued a notice which was served upon the petitioner for taking possession of entire land on 09.03.2018, qua the same, petitioner submitted their objections by submitting that the notice is vague and does not disclose the area to which they want to take possession of and the said letter is without jurisdiction and has no sanctity in law.

(xii) The respondent No. 4 on 08.03.2018 replied to the said letter/ representation and rejected the contentions of the petitioner and on 09.03.2018 took symbolic possession of the entire park, sheds not only of the members in errors but also of the petitioner.

(xiii) On 17.04.2018, the petitioner received a legal notice from Corporation Bank, New Delhi Branch, one of the members of Consortium of Banks and Lenders, to deposit their liabilities under Section 13(3) of the SARFAESI Act, 2002 read with Rule 8(1) of the Security Interest Enforcement Rules, 2002.

(xiv) In this background, the present writ petition has been filed with the prayers referred (supra) challenging the impugned action of respondent(s) in terms of notices under Section 13(2) and Section 13(4) of the SARFAESI Act, 2002 and for declaring the entire act of the respondents under the SARFAESI Act, 2002 to be illegal, perverse and unconstitutional and for directing the respondents No. 1 & 5 to intervene in the matter or in the alternate for appointment of Court Commissioner for demarcating the arrears and liabilities in question in between the members.

3. Upon hearing the said writ petition, the Co-ordinate Bench of this Court, on account of strike of the Advocates, granted no coercive action on 01/06/2018 and the stay order was continued on one count or the other vide order dated 18/07/2018.

4. In this background, vide order sheet dated 31.01.2022 on the request of both the sides, the matter was taken up for final arguments on 04.02.2022 as the matter pertained to SARFAESI Act, 2002, recovery proceedings were at halt and urgency was claimed by both sides.

5. This Court has heard arguments advanced by respective counsels, considered the written submissions, records of the writ petition and the judgments cited at bar.

6. A preliminary objection has been raised by the respondents that the SARFAESI Act is a self-contained Code and provides for alternate remedy under Section 17 of the SARFAESI Act, 2002 Act and has an over-riding application in terms of Sections 35 of the SARFAESI Act, 2002. Sections 17 & 35 of the SARFAESI Act, 2002 are reproduced below;

"17. Application against measures to recover secured debts.—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 1 [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter

within forty-five days from the date on which such measure had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section(1) of section 17.]

[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under subsection (4) of section 13 to recover his secured debt.

[(4A) Where-

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or (d) is created after the issuance of notice of default

and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under subsection (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

35. The provisions of this Act to override other laws.—*The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

7. The respondents submitted that writ petition against notice under Sections 13(2) & 13(4) of the SARFAESI Act is not maintainable, specially when admittedly the objections raised by the petitioner under Section 13(3A) are duly considered. The attempt of the petitioner bypassing provisions of Section 17 of the SARFAESI Act, 2002 and straightway approaching this Court is against the judgments of Apex Court in the matter of **United Bank of India Vs. Satyavati Tandon & Ors. reported in (2010) 8 SCC 110; Kanhaiya Lal Vs. State of Maharashtra reported in (2011) 2 SCC 782; Phoenix ARC Private Limited Vs. Viswa Bharati Vidya Mandir and others reported in 2022 SCC online SC 44.**

8. The respondents submitted that time and again it has been held by the Hon'ble Apex Court in catena of judgments that:-

"If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable" and has also held that "filing of the writ petitions by the borrowers before the High Court under Article-226 of the Constitution of India is an abuse of process of the Court."

9. Secondly, the respondents have raised an objection that the petitioner has not approached the Hon'ble Court with clean hands inasmuch as they do admit in the writ

petition that notices under Sections 13(2) & 13(4) were issued by consortium of lenders i.e. 15 Consortium Banks and Financial Institutions in a scheme of Pooled Municipal Debts Obligation (PMDO) and the petitioner was granted facility by formulating respondent No. 4 as a security trustee but despite having joined in several recovery proceedings, the petitioner has not impleaded them as necessary party though the prayer is raised qua them. In the light of the said misrepresentation, the writ petition is liable to be dismissed on this count alone. The respondents relied upon judgment rendered by the Apex Court in ***U.P. Junior Doctors' Action Committee Vs. B. Sheetal Nandwani and Ors.*** reported in ***AIR 1991 SC 909.***

10. Lastly, the respondents have submitted that in pursuance to setting up the said project under the aforesaid scheme the grant of Rs.38.37 crore was sanctioned from the Ministry of Textiles and PMDO lended them 51.6 crores, as per the terms and conditions of sanction letter, facility and security agreements were duly executed referred to as Common Loan Agreement (CLA) and Trust and Retention Account (TRA) in addition to deed of hypothecation under security cover of title deeds. The petitioner has failed to serve the interest to the said credit facility and on 24.02.2012 because of the said default looking to the project in question the term **loan facility was restructured to the tune of Rs. 20.31 crores and the same was accepted by the petitioner on 24.02.2012, the same was affirmed on 28.12.2015 by admission of liability by the petitioner.**

11. In spite of the respondents' umpteen requests and communications, during the period from 2012 to 2016 the petitioner has again failed to repay the installments and regularise the loan account due to PMDO lenders.

12. Consequently, the action of petitioner was declared NPA on 29.11.2016 as per the guidelines of Reserve Bank of India and, therefore, proceedings under SARFAESI Act, 2002 were issued on 31.05.2017 to the tune of Rs. 19.24 crores approximately. The market value of the assets as per the respondents is more than 50 crores and is enough to recover the debts.

13. The petitioner, on the other hand, has submitted that the action of the respondents is without authority of law and without taking permission from Ministry of Textile/respondent No. 1. they have initiated action under the SARFAESI Act, 2002. The respondent No. 4 has no authority as the individual banks are sending notices of recovery and therefore they have approached the Hon'ble Court by way of writ jurisdiction. They further submitted that the petitioner is defending the case before the Debts Recovery Tribunal on the action initiated by the banks, therefore, they have not impleaded them as necessary party. On merits, their submission is that this is a project of public importance, funded by Government of India with a given object and, therefore, without intervention of Ministry of Textile, action cannot be initiated. The petitioner has also placed reliance upon the judgments of the Apex Court in the matters of ***United Bank of India Vs. Satyawati Tandon & Ors. (2010) 8 SCC 110; Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors (1998) 8 SCC 1; Shalini Shyam Shetty and Ors. Vs. Rajendra Shankar Patil (2010) 8 SCC 329; Ramesh Ahluwalia Vs. State of Punjab and Ors (2012) 12 SCC 331; Harbanslal Sahnja and Ors. Vs. India Oil Corpn. Ltd. and Ors (2002) 2 SCC 107; Unitech Limited and Ors. Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) and Ors. (2021) 2 SCJ 19*** and further relied on ***Civil***

Appeal No. 925-926 of 2021 in the matter of Rapid Metro Rail Gurgaon Limited Etc. Vs. Haryana Mass Rapid Transport Corporation Limited & Ors. decided on 26.03.2021.

14. On consideration of submissions advanced by respective counsels, the first and foremost issue which is required to be addressed is maintainability of the writ petition against the prayers made in the writ petition i.e. for quashing and setting aside notices under Sections 13(2) & 13(4) and the proceedings under the SARFAESI Act, 2002. This Court is of the view that firstly on account of the fact that the SARFAESI Act, 2002 specifies specific remedy under Section 17 and Section 35 has an over-riding effect over the other laws; secondly in the light of the judgments of Apex Court rendered titled as **United Bank Vs. Satyavati Tandon (supra)** and **Phoenix ARC Private Limited Vs. Viswa Bharati Vidya Mandir (supra)** and others wherein it has been held that in cases relating to recovery of dues of banks, the secured creditors, the stay granted by the High Court would have serious adverse impact on the financial health of such institutions and ultimately prove detrimental to the economy of nation. Thirdly, extra-ordinary powers under Article- 226 is not a rule of compulsion and in the matters of SARFAESI Act, 2002, a very slow and cautious approach has to be adopted and when specific remedy is available writ court should not entertain the writ petitions and therefore, the writ petition is not maintainable.

15. The present writ petition is also not maintainable as the petitioner has not approached this Court with clean hands and has not impleaded consortium banks as a necessary party though the prayers were sought against their action. In this regard, reliance is placed upon **U.P. Junior Doctors' Action Committee (supra)**. Furthermore, as iterated by Hon'ble Apex Court in the case of **S.P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead) by L.Rs. and Ors. reported in (1994) 1 SCC 1**, 'Fraud-avoids all judicial acts, ecclesiastical or temporal' the present writ petition is not maintainable.

16. The contention of the petitioner that the action is without jurisdiction and is contrary to letter dated 12.03.2009 issued by respondent No.1 i.e. the Ministry of Textile is also not tenable but is only aimed to avoid admitted liability against NPA account. On perusal of Clause 4 in Annexure-16 which is the letter dated 12.03.2019, the approval of Ministry of Textile is only required when the assets are acquired wholly or substantially out of Government grants. In the case in hand, liability of the investment was by PMDO bankers and against the members' equity and admittedly, restructuring was done in the year 2012. Further, SARFAESI Act, 2002 in terms of Section 35 has an over-riding effect and the Ministry of Textile in spite of the representation by the petitioner has turned down the request for intervention by not replying to the same.

17. The arguments raised by the petitioner is technical in nature and is not tenable. The petitioner has been successful in misrepresenting the Court and by-passing the statutory remedy, acting against the settled position of law and on relying upon the judgments namely **Whirlpool Corporation Vs. Registrar Trade Marks, Mumbai & Ors. (1998) 8 SCC 1** on account of alternative remedy rendered in trade mark or tender matters or matters of public interest whereas, the case in hand is of SARFAESI Act, 2002 which is a special law having self-contained provisions and the practice and procedures are well-defined by the Apex Court in series of judgments referred above, more specifically in

United Bank of India Vs. Satyawati Tandon & Ors. (2010) 8 SCC 110 wherein it was held as under:

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad MANU/SC/0399/1968 : AIR 1969 SC 556; Whirlpool Corporation v. Registrar of Trade Marks, Mumbai MANU/SC/0664/1998 : (1998) 8 SCC 1 and Harbanslal Sahnia and Anr. v. Indian Oil Corporation Ltd. and Ors. MANU/SC/1199/2002 : (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

18. In these facts and circumstances, this Court is of the view that the writ petition is liable to be dismissed with a cost of Rs. 2 lac on account of misrepresentation, not impleading the consortium banks as necessary parties and praying for relief against them in their absence, not availing the alternative remedy and keeping the Court in dark by getting ex-parte stay vide order dated 01.06.2018 during the course of the strike and by giving an impression to the Court on 18.07.2018 that there are several members of the petitioner who have paid their entire dues and in parallel defending the matter before the Debts Recovery Tribunal whereby they were successful in avoiding payment of due of Rs.20 crores and interest thereon.

19. In the light of the above, the writ petition is dismissed with a cost of Rs.2 lac which has to be deposited with the respondent No. 4 in half i.e. Rs.1 lac and the other half will be deposited before Rajasthan State Legal Services Authority, Jaipur within a period of 60 days.

20. All the pending applications stand disposed of.