NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2566 of 2016

1. Scania Steels & Power Ltd., A Company Incorporated Under The Provisions Of Companies Act, 1956, Having Its Registered Office At 22 KM Store, Gharghoda Road, Punjipatra, Raigarh, Chhattisgarh- 496 011, Through Its Director Shri Kanhu Charan Sahoo, Aged About 28 Years, R/o 22 KM Stone, Gharghoda Road, Punjipathra, Raigarh, Chhattisgarh, 496011.

---- Petitioner

Versus

1. State Bank Of India, SME, Branch Birsa Chowk, Rourkela, District Sundargarh, Orissa, Through Its Assistant General Manager.

2. State Bank Of India, Stressed Assets Management Branch, A/34, Pandit Jawaharlal Nehru Marg, Orcard Building, 4th Floor, Bhuwneshwar Orissa- 751001: Represented Through Its Authorized Officer.

3. Indian Overseas Bank, Through Assistant General Manager, Madhusudan Marg, Rourkela, District Sundargarh, Orissa.

---- Respondent

For Petitioner	Shri Vishal Dhagat & Shri Sanjay Kumar Agrawal, Advocates

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Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

26/10/2016

1. Present writ petition under Article 226 of the Constitution of India has been preferred to seek a direction to the respondent to decide petitioner's representation/objection and quash the proceedings initiated under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest *Act*, 2002 ('the Act, 2002' in short) as also for a declaration that the action of the respondent Bank in proceeding under Section 13 (3A) and 13 (4) of the Act, 2002 is illegal and without jurisdiction.

2. Facts of the case, briefly stated, are that the petitioner has established its steel plant at village Punjipathara, Gharghoda Road, Raigarh with Sponge Iron Kiln and 60000 TPA Rolling Mill. In the year 2008 & 2011 the petitioner obtained financial assistance/credit facilities from the respondent State Bank of India & Indian Overseas Bank ('the respondent Banks' in short), however, for its failure to repay the debt within time the account was declared Non Performing Assets ('NPA' in short) and, thereafter, the respondent Bank has initiated proceedings under the provisions of the Act, 2002.

3. On 30-6-2016 the respondent Bank issued notice to the petitioner under Section 13 (2) of the Act, 2002 calling upon the petitioner to satisfy the outstanding liabilities of Rs.46,18,01,027=00 to the State Bank of India and Rs.24,17,09,659=91 to the Indian Overseas Bank. The petitioner was also instructed not to transfer by sale, lease or otherwise the secured assets detailed in schedule 'C' with the notice without obtaining written consent of the Bank.

4. The petitioner raised an objection to the said notice on 26-8-2016, which was rejected by the State Bank of India (Lead Bank of the consortium) vide communication dated 1-9-2016. The Bank specifically mentioned that even during restructuring proposal the Bank's right to proceed under the Act, 2002 is not effected and the same cannot be made a ground to drop the proceedings. The Bank further mentioned that in the consortium meeting the petitioner agreed to pay Rs.50.00 lacs per month towards regularization of the account, but the terms was not adhered. A serious allegation was made by the Bank that the petitioner has committed blatant violation of sanction stipulation such as non routing of sale proceeds through the loan account, failure to regularize the loan account, failure to infuse funds as

agreed upon, etc., therefore, since the account has become NPA the statutory power under Section 13 (2) of the Act, 2002 has been exercised.

5. The Bank, thereafter, proceeded to invoke Section 13 (4) of the Act, 2002 and consequently it issued possession notice under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002 ('the Rules, 2002' in short).

6. Shri Dhagat, learned counsel appearing for the petitioner, would argue that the representation under Section 13 (2), (3) has not been decided by a reasoned order. The point raised by the petitioner in his representation has not been dealt with by the Bank, therefore, further proceedings under Section 13 (4) and Rule 8 (2) is without jurisdiction.

7. I have perused the document Annexure – P/28 by which the Bank has decided the petitioner's representation against the notice under Section 13 (2). The communication is a detailed and reasoned communication running into two pages dealing with all the relevant aspects of the matter, therefore, it is not permissible to argue that the representation has been decided by complete non application of mind or not assigning any reason. By

no stretch of imagination, the communication can be branded as unreasoned or without any basis.

8. The Supreme Court in **United Bank of India v. Satyawati Tondon and Others**[1] held thus in paras 42, 43, 55 & 56 :

> 42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.
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> 43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving

1 (2010) 8 SCC 110

challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

56. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13 (4) of the Act. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy.

9. Once again the Supreme Court in **Devi Ispat Limited and Another v. State Bank of India and Others**[2] has held thus in paras 7, 9 & 10 :

> 7. After the dismissal of its writ petition, Devi Ispat made a representation to the Bank under Section 13(3-A) of the Act on 22-3-2013. This was followed almost immediately thereafter by an intra-court appeal filed against the order of the learned Single Judge. Although the appeal was filed on 1-4-2013 (and we have gone through the contents of the appeal memo) there is no mention of Devi Ispat having made a representation to the Bank under Section 13(3-A) of the Act. Be that as it may, the representation was considered by the Bank and rejected on 2-4-2013. The Division Bench was informed of this during the hearing of the intra-court appeal on 26-4-2013.
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> 9. While challenging the order dated 26-4-2013 passed by the Division Bench, the learned counsel submitted that Devi Ispat had no alternative but to file a writ petition challenging the notice issued by the Bank on 18-1-2013. We find no merit in this contention:
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> > 9.1. *Firstly*, Devi Ispat had an alternate remedy to make a representation to the Bank under the provisions of Section 13(3-A) of the Act and there was no reason to by-pass the statutory mechanism.
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> > 9.2. *Secondly*, Devi Ispat did in fact make a representation to the Bank under Section 13(3-A) of the SARFAESI

2 (2014) 5 SCC 762

> Act and that representation was rejected on 2-4-2013 during the pendency of the intra-court appeal. The statutory remedy having been availed of by Devi Ispat, nothing really survived in the dispute raised.
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> 9.3. *Thirdly*, we now find from the written submissions submitted by the Bank that it has taken possession of the secured assets of Devi Ispat on 25-5-2013 and 27-5-2013 under the provisions of Section 13(4) of the SARFAESI Act and a possession notice was also published in the newspapers on 31-5-2013.
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> 10. On the facts on record and the statutory remedy having been availed of, we see no reason to interfere with the impugned order passed by the Calcutta High Court. However, it is left open to Devi Ispat to take such appropriate steps as may be considered necessary for safeguarding its interests.

10. In view of the above, since the decision on petitioner's representation cannot be said to be without jurisdiction, the petitioner has alternative remedy of preferring an appeal before the jurisdictional Debts Recovery Tribunal (DRT) under Section 17 of the Act, 2002. The petition is, therefore, dismissed, as not maintainable in view of availability of statutory efficacious alternative remedy.

Sd/-

Judge

Prashant Kumar Mishra

Gowri