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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1037/2015

M/S NARENDRA IMPEX LTD

.... Petitioner

Through: Mr. Kailash Vasudeva, Sr. Advocate
with Mr. Amit Sinha, Advocate

versus

ASSET RECONSTRUCTION COMPANY (INDIA) LTD & ANR

..... Respondent

Through: Mr. Mohit Arora, Advocate for
NBCC
Mr. Rajesh Mahajan, ASC

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

10.08.2016

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By this writ petition, the petitioner – M/s Narendra Impex Ltd., seeks a writ of certiorari to quash the order dated 28.11.2014 passed by the learned CMM in CC No. 102/1S under Section 14 of the SARFAESI Act ('the Act') and to set aside the order dated 21.03.2015 passed by learned Additional Sessions Judge/Special Judge: CBI-03 (PC Act), South District, Saket Courts, in Crl. Revision No. 23 of 2015.

During the course of arguments, it is pointed out that the petitioner, M/s Global Education Foundation and the Indian Overseas Bank entered into a tripartite agreement on 28.06.2010, where under premises having an aggregated super saleable area of 78350 sq. ft. at ground and first floors, half portion East Side in NBCC Plaza, Pushp Vihar, Sector V, New Delhi, was leased out to M/s Global Education Foundation-a trust, by the petitioner

herein, and the entire rent of the said premises was to go to Indian Overseas Bank and Punjab National Bank.

Respondent No. 1 ARCIL has been assigned its rights by Indian Overseas Bank in respect of the dues owed by the petitioner to Indian Overseas Bank and that is how the aforesaid proceedings under Section 14 of the Act were undertaken by ARCIL. In those proceedings under Section 14 of the Act, the impugned order dated 28.11.2014 came to be passed by the learned CMM directing dispossession of the petitioner/its tenant M/s Global Education Foundation.

During the course of hearing, it is pointed out that M/s Global Education Foundation has not made payment of rent since the beginning and the outstanding rent is to the tune of Rs. 141 crores.

The submission of learned counsel for the respondent is that M/s Global Education Foundation is an alter ego of the petitioner. It is a trust constituted by the same persons, who are the promoters of the petitioner itself. In this regard, attention has been drawn to the tripartite agreement dated 28.06.2010, which has been placed on record in the connected writ petition No. 2600/2014 preferred by M/s Global Education Foundation. The said petition has also been heard and disposed of by a separate order today. A perusal of the said tripartite agreement shows that the said agreement was signed by the same person-stated to be one Mr. Rakesh Kumar Garg, on behalf of the petitioner as well as M/s Global Education Foundation.

Mr. Vasudev has submitted that the petitioner is a company incorporated under the Companies Act, whereas M/s Global Education Foundation is a trust, and the two are separate and distinct legal entities. He submits that the failure of the tenant to make payment of rent cannot non-

suit the petitioner in the present petition. He submits that there are disputes between the Petitioner and M/S Global Education Foundation, which is the reason for non-payment of rent by the said tenant. Mr. Vasudev has sought to advance submissions with regard to ARCIL being incompetent to initiate proceedings under Section 14 of the Act on the day when they were so initiated. He has also submitted that, in any event, the tenant cannot be evicted in proceedings under Section 14 of the Act.

It is clear from a perusal of the tripartite agreement itself that the petitioner and M/s Global Education Foundation are creations of the same persons, and the same set of persons are controlling them. The authorized signatory of the petitioner and M/s Global Education Foundation in the tripartite agreement is the same viz. Shri Rakesh Garg. He is a Director of the Petitioner Company and, at the same time Chairman of M/s Global Education Foundation.

Pertinently in the connected writ petition filed by M/S Global Education Foundation i.e. W.P. (Crl) 2600/2014, respondent No. 2, Punjab National Bank ('PNB') has filed its Counter Affidavit. Along with the same, PNB has filed as Annexure R-7 the extract of Minutes of Meeting of the Trustees of M/s. Global Education Foundation dated 26.06.2010, wherein it is recorded "*...Rakesh Kumar Garg be and is hereby authorized to sign and execute all the documents and to do all such acts as may be required from time to time.....*". This extract has been signed by R.K. Garg in his capacity as the Chairman of the Trust. Equally pertinent is the fact that the Petitioner and M/s Global Education Foundation have filed a joint written statement in OA No. 141/2012, filed by PNB, wherein the Petitioner was the Defendant No. 1 and M/s Global Education Foundation was the Defendant No. 3.

In the above background, the so called differences and distinction sought to be drawn by the Petitioner, with M/s Global Education Foundation are clearly an eyewash and farcical. By merely creating a camouflage in the aforesaid manner, the petitioner cannot seek to evade its liability towards its creditors. The fact that the petitioner is seeking to protect the interest of M/s Global Education Foundation, by filing the present petition and praying that the dispossession notice issued by the Receiver on 15.12.2014 be quashed, further shows that the petitioner and the so-called tenant M/s Global Education Foundation are one and the same entity.

In view of the conduct of the petitioner and its sister concern M/s Global Education Foundation in not paying the rent to the tune of nearly Rs. 141 crores, I am of the opinion that the petitioner is not entitled to any discretionary relief from this Court in the exercise of its extraordinary writ jurisdiction. On this short ground, the petitioner should be non-suited. I am, therefore, not inclined to entertain or deal with any of the other submissions sought to be advanced by the petitioner. Dismissed.

Dasti.

VIPIN SANGHI, J

AUGUST 10, 2016

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