IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.316 of 2017
In
Civil Writ Jurisdiction Case No.4748 of 2013

==

International Asset Reconstruction Company Pvt. Ltd., Registered office at 709, 7th Floor, Ansal Bhawan, 16, Kasturba Gandhi Margm New Delhi - 110001 and Corporate Office at A/508, 5th Floor, 215, Atrium, Kanakia Spaces, Andheri Kurla Road, Andheri (East), Mumbai – 400093.

... ... Respondent No.6- Appellant/s

Versus

1. M/s Eclat Industries Ltd., a Public Limited Company, incorporated under the Provisions of the Companies Act, 1956 having its Registered office at C - 30/31, Industrial Area, Patna 800013 through Sri Bashisth Narayan Choubey its Managing Director

… Petitioner-Respondent 1st Set.

2. The State of Bihar through its Chief Secretary
3. Department of Industries, Government of Bihar, Patna through its Principal Secretary
4. Industries Development Commissioner, Department of Industries, Government of Bihar, New Secretariat, Bailey Road, Patna
5. Director, Office of the Directorate of Technical Development Department of Industries, Government of Bihar - Cum - Chairman, Empowered Committee On Rehabilitation of Medium, Small and Micro Enterprises, Government of Bihar, Patna
6. Bank of Baroda (Operating Agency) through its Chief Manager, Shree Krishna Puri Branch, Naval Arcade, Shree Krishna Puri, Boring Road, Patna
7. Canara Bank through its Chief Manager, South Gandhi Maidan, Patna

... ... Respondents-Respondents 2nd Set.

==

with

Letters Patent Appeal No. 1887 of 2016
In
Civil Writ Jurisdiction Case No.4748 of 2013

==

1. Canara Bank through its Chief Manager, South Gandhi Maidan, Patna

... ... Respondent-Appellant/s

Versus

1. M/s Eclat Industries Limited, a limited Company, incorporated under the provisions of the Companies Act,1956 having its Registered office at C-30/31,industrial Area, Patna 800013, through Sri Bashisth Narayan Choubey its managing Director.

Petitioner/ Respondent 1st

2. The state of Bihar through its Chief Secretary
3. Department of industries, Govt. of Bihar, Patna through its Principal Secretary
4. Industries Development Commissioner, Department of industries, Govt of Bihar, New Secretariat, Bailey Road, Patna

5. Director, Office of the Directorate of Technical Development Department of Industries, Govt. of Bihar-cum-Chairman, Empowered Committee on Rehabilitation of Medium, Small And Micro Enterprises, Govt. of Bihar, Patna
6. Bank of Baroda (Operating Agency) through its Chief Manager, Shree Krishna Puri Branch, Naval Arcade, Shree Krishna Puri, Boring Road, Patna
7. International Asset Reconstruction Company Pvt. Ltd., (IARC) at A/508, 5th Floor, 215, Atrium, Kanakia Spaces, Andheri Kurla Road, Andheri (East), Mumbai – 400093.

.. ... Respondents- Respondents 2nd Set.

==

Appearance :
(In Letters Patent Appeal No. 316 of 2017)
For the Appellant/s : Mr. Dr. Binay Kumar Singh, Advocate
For the Respondent/s : Mr. Yogendra Prasad Sinha-AAG 7
Mr. Arbind Kumar Jha, Advocate
(In Letters Patent Appeal No. 1887 of 2016)
For the Appellant/s : Mr. Rajan Ghoshrave, Advocate
For the Respondent/s : Mr. Arvind Kumar Jha, Advocate

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-11-2017

Both these appeals have been filed by the appellants herein, namely International Asset Reconstruction Company Pvt. Ltd. (IARC)-respondent No.6 in CWJC No.4748 of 2013 and Canara Bank- respondent No.7 in the same writ petition. They call in question tenability of an order dated 29.08.2016 passed by the learned Writ Court at the instance of respondent No.1 herein M/s Eclat Industries Limited- writ petitioner in CWJC No.4748 of 2013, wherein the Writ Court has issued certain directions to the State Government in the matter of providing "corpus fund" and benefit of rehabilitation under the Bihar State Micro and Small

Enterprises Rehabilitation Act, 2008 (hereinafter referred to as 'the Act of 2008').

It was the case of the respondent- writ petitioner M/s Eclat Industries Limited in the writ petition that a direction be issued to the State Government and the Departments of Industries in the State Government, who are added as respondent Nos.1 to 4, to provide relief by way of fund to the writ petitioner-Company in accordance to the Industrial Incentive Policy, 2011 framed by the State of Bihar for revival of sick industry and further prayer was that International Asset Reconstruction Co. Pvt. Ltd. (IARC), appellant in LPA No.316 of 2017, be restrained from effecting recovery against the writ petitioner-respondent no.1 in accordance to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act').

It is seen that the respondent-writ petitioner M/s Eclat Industries Limited had taken loan from Industrial Development Bank of India (IDBI) and the Bank of Baroda and on account of non-payment of loan, the accounts became non-performing asset. In the meanwhile, the respondent-writ petitioner M/s Eclat Industries Limited was declared as a sick industry and proceedings were also held before the Board for Industrial and Financial

Reconstruction. However, on 31.03.2010 the Industrial Development Bank of India entered into an assignment agreement with International Asset Reconstruction Co. Pvt. Ltd. (IARC), appellant in LPA No.316 of 2017, wherein assigner Bank, i.e. Industrial Development Bank of India, assigned all the debts of the borrower company M/s Eclat Industries Limited to the International Asset Reconstruction Co. Pvt. Ltd. (IARC). Similarly, another assignment agreement was executed on 22.01.2011 between the appellant-International Asset Reconstruction Co. Pvt. Ltd. (IARC) and the Bank of Baroda in the matter of assigning debts of M/s Eclat Industries Limited. After the aforesaid assignment agreements were completed, the appellant-company again by way of restructuring support finance granted sanction of Rs.60 lacs to the respondent no.1-writ petitioner M/s Eclat Industries Limited on 29.01.2011 and on 04.03.2011 the agreement for restructuring support finance was executed. When the account became non-performing asset on 11.01.2013, the appellant-Company issued notice to the writ petition-respondent No.1 under Section 13(2) of the SARFAESI Act demanding payment of Rs.45,82,581/- on or before 31.12.2012 with respect to the restructuring finance. Thereafter on 25.01.2013, again a notice was issued for making a payment of

Rs.55,32,49,453/- being outstanding in the term loan and working capital loan assigned to the writ petitioner- M/s Eclat Industries Limited by IDBI and Bank of Baroda. Thereafter, the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) took over the assets of the writ petitioner under the SARFAESI Act and physical possession was taken over by them. In the meanwhile, the writ petition in question was filed by the respondent No.1 on 27.02.2013 seeking a direction to the respondent Nos.1 to 4 to provide relief by way of corpus fund as envisaged under the Industrial Policy of 2011 and further to restrain the appellant in LPA No.316 of 2017 International Asset Reconstruction Co. Pvt. Ltd. (IARC) from proceeding with the coercive steps under the SARFAESI Act.

Records indicate that after the writ petition was filed, notices were issued and the Industrial Development Commissioner for the State of Bihar was summoned and it is seen that certain proceedings were pending and the State Government was to take a decision with regard to creation of a corpus fund under the Industrial Policy of 2011 for payment to the respondent writ petitioner M/s Eclat Industries Limited. When the matter, was so pending, an offer was also made by the counsel for the writ petitioner on 04.03.2014 for payment of certain dues to the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) on or before 31.03.2014. It seems that during pendency of the writ petition, the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) agreed for settlement of the claim in case they are paid a sum of Rs.250 lacs. It was agreed that a sum of Rs.50,00,000/- would be paid by 31st March, 2014 and the balance of Rs.200 lacs immediately on creation of corpus fund under the Industrial Incentive Policy of 2011. This order was passed on 25.03.2014 and in view of this, proceedings initiated by the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) under the SARFAESI Act was directed to be kept in abeyance. However, from 25.03.2014, the matter kept on lingering on various dates up to 12.08.2014 when it was found that the Industrial Development Commissioner indicated that the corpus fund has not been created, the matter is under detailed examination and it would take some more time. The appellant-company herein, who were respondent no.6, objected to the same and it was found that except for making payment of Rs.50 lacs which was promised earlier nothing has been done for payment of the remaining Rs.200 lacs. The matter was kept on pending, the corpus fund was not created, the proceedings of the SARFAESI Act were stayed and finally the writ court allowed the writ petition by the impugned order passed on 29.08.2016 and the direction issued was that as Apex Committee constituted under the Act of 2008 has already taken a decision with regard to creation of the corpus fund and a rehabilitation scheme in its meeting held on 28.10.2014 and as this decision of the Apex Committee is binding on all concerned in view of Section 5(4) of the Act of 2008, the Writ Court directed the Canara Bank, appellant in LPA No.1887 of 2016, to take immediate steps in accordance to the meeting held by the Apex Committee on 28.10.2014 and provide a term loan of Rs.2.80 crore and working capital loan of Rs.2.65 crore to the writ petitioner M/s Eclat Industries Limited within four weeks and the State Government was directed to implement the rehabilitation scheme in accordance to the decision taken on 28.10.2014 and as far as the proceedings initiated by the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) is concerned, it was directed that immediately on release of payment, the amount shall be paid to the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC).

Challenging this order, appellants herein, namely International Asset Reconstruction Co. Pvt. Ltd. (IARC) and Canara Bank, have filed these appeals and both of them contend that the decision taken in the Apex Committee on 28.10.2014 is not binding on them. As far as appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) is concerned, it is their contention that once the proceedings under the SARFAESI Act was initiated and pending, the Writ Court could not exercise its jurisdiction under Article 226 of the Constitution and by passing the impugned order, the entire statutory right of the appellant for recovery of the amount as far as the SARFAESI Act gets frustrated. It is indicated that once the proceedings under the SARFAESI Act were pending, the writ petition was not maintainable and as the right of the appellant in LPA No.316 of 2017 has been taken away by the Writ Court without any jurisdiction, the order so far as it restrains the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) is concerned, the same should be quashed and they granted liberty to proceed to effect the recovery under the SARFAESI Act.

As far as appellant Canara Bank in LPA No.1887 of 2016 is concerned, it is their contention that the decision of the Apex Committee taken on 28.10.2014 is not binding on them. It was taken in the State Level Committee held on 28.10.2014 when the Bank was not represented, the decision was taken behind the back of the Bank and immediately after the said decision was taken, the Bank raised various objections vide letter dated 06.11.2014, brought to the notice of the Writ Court and the State Government, the reasons as to why the Bank cannot be forced to implement the decision of the State Level Committee dated 28.10.2014 primarily on account of the fact that the Bank has not approved the decision taken by the Apex Committee, on the contrary the Bank came out with a case that the Bank has considered and re-examined the matter, techno economic viability study was made and in the report dated 30.10.2015, it was found that the project was found to be technically feasible only to the extent of Rs.6.46 crore and, therefore, the Bank had sanctioned a term loan of Rs.2.24 crore and working capital loan of Rs.1.10 crore in terms of sanctioned letter dated 26.10.2016 filed as Annexure-22. It was the case of the Bank that the decision taken on 28.10.2014 assessing the cost of the project at Rs. 9 crore and odd and directing the Bank to pay a term loan of Rs.2.80 crore and a working capital loan of Rs.2.65 crore is not binding and the said decision cannot be enforced on them.

However, learned counsel appearing for the original petitioner- respondent no.1 herein M/s Eclat Industries Limited argued that in the proceedings held in the State Level Committee dated 28.10.2014, both appellants International Asset Reconstruction Co. Pvt. Ltd. (IARC) and Canara Bank, were present, they were parties to the decision taken in the Apex Committee and, therefore, the appeals at their instance are not maintainable. It is the case of the respondent-writ petitioner M/s Eclat Industries Limited that once the Apex Committee had taken a decision after considering various aspects of the matter, indulgence now in these appeals at the instance of the appellants is not permissible.

We have heard learned counsel for the parties at length and we have also gone through the detailed order passed by the learned Writ Court. The learned Writ Court from para 1 to 9 of its impugned order narrates the facts, as has been detailed by the parties before it, and in para 10 takes note of the fact about decision of the Apex Committee binding on all concerned in view of Section 5(4) of the Act of 2008. However, while doing so, the learned Writ Court completely lost sight of the fact that the International Asset Reconstruction Co. Pvt. Ltd. (IARC), appellant in LPA No.316 of 2017, have never acceded or accepted the proposals and the decision taken by the Apex Committee. In fact, if the proceedings of the Apex Committee and the deliberations that were held from time to time are taken note of, it would be seen that they only objected to the same and it was their case that they have also initiated proceedings under the

SARFAESI Act and, therefore, they want time to take a decision in the matter.

That apart, as far as appellant Canara Bank is concerned, it is seen that in the meeting held on 28.10.2014, no representative was present and immediately after the decision was taken on 28.10.2014, they had approached the Industries Department with a letter dated 06.11.2014 and pointed out the Techno Economic Viability Study report dated 30.05.2015, the cost of project being Rs.6.46 crore and the sanction of the Bank towards term loan of Rs.2.24 crore and working capital loan of Rs.1.10 crore.

Therefore, on a complete analysis of the issue in question, it is seen that the Apex Committee's decision taken on 28.10.2014 is being implemented by the mandamus issued by the Writ Court on the assumption that it is an agreed decision and binding on all concerned, whereas while doing so, the learned Writ Court completely lost sight of the fact that as far as appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) is concerned they had already initiated proceedings under the SARFAESI Act, proceedings were pending before the competent statutory authority and once the proceedings under the SARFAESI Act were pending, the learned Writ Court has no jurisdiction to interfere into the matter so far as it pertains to the right of

International Asset Reconstruction Co. Pvt. Ltd. (IARC) is concerned.

That apart, the question as to whether the decision taken on the basis of a local Act, i.e. Act of 2008 will supersede the provision of the Central Act, i.e. SARFAESI Act, and can be given effect to when the proceedings under SARFAESI Act were pending were important questions of law which have already given go bye and not at all considered by the learned Writ Court in spite of the fact that during the pendency of the writ petition, the Writ Court stayed the proceedings under the SARFAESI Act on an understanding that the writ petitioner-respondent herein M/s Eclat Industries Limited would pay entire amount of Rs. 2.5 crore to the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) within a reasonable period of time which commitment was never fulfilled for the reason that right from 2014 till date, the commitment of the State Government to release the corpus fund has not been fulfilled. The State Government makes an excuse that Canara Bank has not released the term loan and the working capital loan and, therefore, the corpus fund cannot be released and as far as the objection of Canara Bank is concerned, we find that they are not a party to the decision that was taken by the Apex Committee on 28.10.2014, on the contrary, based on the report submitted by them along with letter dated 06.11.2014, they had objected to the assessment of the project at Rs.9.56 crore, when according to them, the cost of the project was found to be Rs.6.46 crore and based on that they had sanctioned a term loan of Rs.2.24 crore and working capital loan of Rs.1.10 crore. The Writ Court having issued the mandamus only on account of the fact that the Apex Committee's decision was binding on all concerned under Section 5(4) of the 2008 Act, but while doing so, did not take note of the fact that the decision by the Committee was not taken in the presence of the appellant Canara Bank in LPA No.1887 of 2016 and the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) in LPA No.316 of 2017 were also not a consenting party to the rehabilitation package.

Taking note of all the circumstances, we are of the considered view that the learned Writ Court in the facts and circumstances should not have interfered into the matter and issue the mandamus as done, instead, the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) in LPA No.316 of 2017 should have been granted liberty to proceed with the proceedings initiated by them under the SARFAESI Act and as the decision of the Apex Committee with regard to direction to the Canara Bank was taken behind their back for the purpose of considering rehabilitation package, the matter should have been remitted back to the Apex Level Committee to reconsider the matter instead directing to implement a decision which was not taken in accordance to the requirement of law, i.e. with the consent of all concerned, and even without taking note of various objections, including the objection of Canara Bank based on TEV report dated 30.05.2015, and various other issues involved in the matter.

As the learned Writ Court has issued mandamus without taking note of all these aspects, we allow these appeals, quash the order passed by the learned Writ Court and direct that appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) of LPA No.316 of 2017 have a right to take action for proceeding with the proceedings initiated by them under the SARFAESI Act and the writ petitioner will have liberty to raise all such objections as are permissible to be decided by the statutory authority in the proceedings pending before the SARFAESI Act.

As far as implementation of the decision of the Apex Committee taken on 28.10.2014 by issuing direction to the Canara Bank is concerned, the same is also quashed. The matter is remanded back to the Apex Committee which shall consider the objection of the Canara Bank, hear the appellant International Asset Reconstruction Co. Pvt. Ltd. (IARC) in LPA No.316 of 2017 and after hearing all concerned proceed with the matter in accordance to law.

With the aforesaid, both the appeals stand allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2017
Transmission Date	