AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1803 of 2016

Order reserved on: 25-9-2017

Order delivered on: 5-12-2017

MAN Industries (India) Limited, (A Company incorporated under the Companies Act, 1956), having registered office at Man House, 101, S.V. Road, Vile Parle (West), Mumbai-400 056, through its Authorized signatory Mr. Ketan Vaidya.

---- Petitioner

Versus

1. Punjab National Bank (A body corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970) having Branch Office at Anathalaya Marg, Near Kewadwadi Bus Stand, Near Telegraph Office, Raigarh, District Raigarh (C.G.)

2. Authorized Officer, Punjab National Bank, Near Kewadwadi Bus Stand, Near Telegraph Office, Raigarh Branch (C.G.)

3. M/s Scan Ispats Ltd., (a Company incorporated under the Companies Act, 1956) having office at Hospet Road, Ginigera, Tehsil and District Koppal, Karnataka, Through its Director.

4. Bank of Baroda, (a body corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970), Rourkela Branch, District Rourkela, Orissa.

---- Respondents

For Petitioner:	Mr. Satish Agrawal and Mr. Ankit Singhal, Advocates.
For Respondents No.1 and 2: -	Mr. Sachin Singh Rajput and Mr. Praveen Chaturvedi, Advocates.
For Respondent No.3:	Mr. Amit Sahni, Advocate.
For Respondent No.4:	Mr. Rajkamal Singh and Mr. Ashok Dubey, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Invoking extraordinary jurisdiction under Article 226 of the

Constitution of India, the petitioner herein, which is a company registered and incorporated under the Companies Act, 1956, calls in question legality, validity and correctness of public notice dated 4-10-2013 and confirmation of sale dated 21-12-2013 and also confirmation of sale dated 29-1-2014 seeking declaration that such confirmation of sale is illegal and bad in law and not binding on the petitioner.

2. The aforesaid reliefs have been claimed on the following factual backdrop: -

3. Punjab National Bank (PNB) being a lead Bank had initiated a proceeding under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') and thereafter, secured asset was put to auction on 22-11-2013 and secured asset was ultimately sold. The petitioner is auction purchaser in whose favour the bid was finally knocked down for ₹ 31 crores. Sale certificate was issued in favour of the petitioner on 29-1-2014, but physical possession of the subject property could not be delivered to the petitioner for which the petitioner made correspondences with respondents No.1 and 2 Bank for last two years up to June, 2016, but no physical possession of the subject property was delivered and ultimately, the petitioner decided to file this petition for setting aside the public notice, sale and confirmation of sale dated 29-1-2014 as unsustainable and bad in law. The principal ground raised in the writ petition is that

the factory is situated outside the mortgaged area and that has not been mortgaged with the respondent Bank and therefore the Bank is not able to deliver the vacant and peaceful possession of the said factory to the petitioner. It is the stand of the Bank that the petitioner should dismantle the factory from the non-mortgaged area and affix to the area which has been mortgaged. Therefore, a writ be issued to set aside the sale as the entire auction is based on misrepresentation about the details of the property. It has been prayed that the auction shall be set aside and the amount of ₹ 31 crores along with interest be refunded to the petitioner.

4. Mr. Praveen Chaturvedi assisted by Mr. Sachin Singh Rajput, learned counsel appearing for the respondent PNB, filed return opposing the writ petition stating inter alia that alternative remedy under Section 17(1) of the SARFAESI Act is available to the petitioner as such, the writ petition as framed and filed is not maintainable. The Bank has only sold plant and machinery to the petitioner as mentioned in the auction notice on “as is where is basis” and there is no concept of factory in the action notice. The petition involves disputed question of facts as well as suffers from delay and laches as auction has been confirmed on 29-1-2014 and the writ petition has been filed on 14-7-2016 and inordinate delay of two years has not been explained satisfactorily to invoke the equitable jurisdiction. Despite request by the Bank, the petitioner is not taking possession of the subject property and has filed this petition. Therefore, the writ petition as

framed and filed is not maintainable under law and deserves to be dismissed.

5. Mr. Amit Sahni, learned counsel appearing for respondent No.3, would also submit that the writ petition as framed and filed is not maintainable, the petitioner has alternative remedy of invoking the jurisdiction of Debts Recovery Tribunal and the petitioner has not come with clean hands.

6. Mr. Rajkamal Singh, learned counsel appearing for respondent No.4 – Bank of Baroda, would submit that the writ petition is not maintainable, the remedy is elsewhere, unnecessarily the writ petition is filed, whereas factual dispute is involved in the instant case and in the present writ petition, factual disputes cannot be gone into by this Court and it can be settled competently by the DRT. He would finally submit that the petitioner was knowing the nature of property as such, the writ petition deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the records with utmost circumspection.

8. The question relating to availability of remedy under Section 17(1) of the SARFAESI Act to the auction purchaser is no longer *res integra* and stands determined authoritatively by a recently delivered decision of the Supreme Court in the matter of **Agarwal Tracom Pvt. Ltd. v. Punjab National Bank and**

others[1] in which Their Lordships have formulated a question in paragraph 18 of the judgment as under: -

> "18. The short question that arise for consideration in this appeal is whether the High Court was justified in holding that the remedy of the appellant (auction purchaser) lies in challenging the action of the secured creditor (PNB) in forfeiting the deposit by filing an application under Section 17 of the SARFAESI Act before the DRT or the remedy of auction purchaser is in filing the writ petition under Article 226/227 of the Constitution of India to examine the legality of such action."

9. Answering the issue, Their Lordships held that the expression "any person" occurring in Section 17(1) of the SARFAESI Act includes auction purchaser and succinctly observed as under: -

> "27. Reading of the aforementioned Sections and the Rules and, in particular, Section 17(2) and Rule 9(5) would clearly go to show that an action of secured creditor in forfeiting the deposit made by the auction purchaser is a part of the measures taken by the secured creditor under Section 13(4).
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> 28. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "**provisions of this Act and the Rules made thereunder**" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action

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taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13 (4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2), (3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?

29. We also notice that Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction purchaser in case the auction purchaser commits any default in paying installment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5). In our view, the measures taken under Section 13(4) commence with any of the action taken in clauses (a) to (d) and end with measures specified in Rule 9.

30. In our view, therefore, the expression “any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer” in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).

31. The auction purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The

appellant, therefore, falls within the expression "any person" as specified under Section 17(1) and hence is entitled to challenge the action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act.

32. Learned counsel for the appellant placed reliance on the decision of the Division Bench of High Court of Bombay in **Umang Sugars Pvt. Ltd. vs. State of Maharashtra & Anr.**, 2014(4) Mh.L.J. 113 which, according to him, supports his submission. We have gone through the decision and unable to agree with the view taken therein. Their Lordships, while holding that Section 17(1) does not apply to auction purchaser and, therefore, writ petition filed by him can be entertained in such cases, did not notice the Rules, which deal with the measures taken under Section 13(4) and nor considered its effect on the measures.

33. In **United Bank of India vs. Satyawati Tondon & Ors.**, (2010) 8 SCC 110, this Court had the occasion to examine in detail the provisions of the SARFAESI Act and the question regarding invocation of the extraordinary power under Article 226/227 in challenging the actions taken under the SARFAESI Act. Their Lordships gave a note of caution while dealing with the writ filed to challenge the actions taken under the SARFAESI Act and made following pertinent observations which, in our view, squarely apply to the case on hand:

> "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.

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 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.

44. 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.
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> 45. 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."

34. In the light of foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of SARFAESI Act before the concerned Tribunal to challenge the action of the PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment of the High Court.

35. The appellant is, accordingly, granted liberty to file an application before the concerned Tribunal (DRT) under Section 17(1) of the SARFAESI Act, which has jurisdiction to entertain such application within 45 days from the date of this order. In case, if the appellant files any such application, the Tribunal shall decide the same on its merits in accordance with law uninfluenced by any of the observations made by this Court and the High Court in the impugned judgment."

10. In view of the principle of law laid down in the above-stated judgment {**Agarwal Tracom Pvt. Ltd.** (supra)}, I am of the considered opinion that the petitioner auction purchaser has a remedy of filing appeal under Section 17(1) of the SARFAESI Act before the Debts Recovery Tribunal questioning the confirmation of auction and other proceeding. Therefore, this writ petition is disposed of granting liberty to the petitioner to file an application before the DRT under Section 17(1) of the SARFAESI Act. If such an application is filed within 45 days, the DRT would decide it expeditiously in accordance with law. All the contentions are kept open to be decided by the DRT. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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