

CWP No.15874 of 2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.15874 of 2015 (O&M)
Date of decision: 15 .03.2017**

M/s HRA Paper Mills Pvt. Ltd. and others ...Petitioners

Versus

Authorized Officer, State Bank of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Jyoti Sarin, Advocate,
for the petitioners.

Mr. Rakesh Gupta, Advocate,
for respondents No.1 to 4.

Rakesh Kumar Jain, J.

This petition is preferred by a Private Limited Company and its Directors against the order dated 07.04.2015 passed by the DRT-II, Chandigarh, declining to entertain the Securitization Application (hereinafter referred to as the “SA”) in respect of the secured property situated in Himachal Pradesh, relegating the petitioners to move to the DRT-I, and order dated 08.06.2015, dismissing the review application as well.

In brief, the petitioners (hereinafter referred to as the “Company”) availed credit facilities from the State Bank of India (hereinafter referred to as the “Bank”) after mortgaging its six properties, out of which 5 properties were situated at Jalandhar and one property, i.e.

factory land and building at Indora, District Kangra, Himachal Pradesh. The Company was closed and it represented to the Bank for a settlement under the One Time Settlement (OTS) scheme after selling its properties mortgaged with the Bank, but while the negotiations were going on, the Stressed Assets Management Branch of the Bank issued a demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act") for recovery of an amount of ₹24,74,67,388.55/-. The objections filed by the petitioners on 22.09.2013 were replied by the Bank on 09.10.2013 and the account was agreed to be settled for a total amount of ₹14.25 crores. The Company paid ₹1.65 crores for the release of 3 properties and requested the Bank to release two more properties mentioned at Sr. Nos.3 & 5 of the OTS letter against the deposit of ₹2.10 crores but the Bank did not agree. In October and December, 2014, the Company gave a proposal to the Bank for release of plant and machinery in blocks for realization of ₹7.50 crores but instead of accepting the said proposal, the Bank cancelled the OTS prematurely vide its letter dated 09.01.2015, whereas the OTS was going to expire on 18.02.2015. During the subsistence of the OTS dated 18.02.2014, the application filed by the Bank to the District Magistrate, Jalandhar, under Section 14 of the SARFAESI Act, for grant of police help to take over actual physical possession of the allegedly mortgaged property situated at Jalandhar, was allowed vide order dated 17.06.2014, without even issuing any notice under Section 13(4) of the SARFAESI Act. In the meantime, one of the guarantors with limited liability filed CWP No.1052 of 2015 for release of

the property mentioned at Sr. No.4 of the OTS letter on payment. The said writ petition was allowed on 09.04.2015 with the direction to release the property after accepting the agreed price, as mentioned against the property under the OTS letter dated 18.02.2014. The Bank released the property of Sh. Navinder Sharma after accepting the payment of Rs.65 lacs and as such, total amount of ₹2.30 crores stood paid towards the repayment of loan. It is alleged that after the OTS was cancelled, the Bank tried to enforce the order dated 17.06.2014 passed by the Additional District Magistrate, Jalandhar, in respect of the properties situated at Jalandhar. The Bank also took actual physical possession of the factory land and building situated at village Mohal Tibbi, Mouza Kudsan, Tehsil Indora, District Kangra, Himachal Pradesh, on 27.01.2015 in the absence of the Company and without serving any prior statutory notice but a copy of the possession notice dated 31.02.2015 was issued to the petitioners after the actual physical possession was taken. This led to the filing of CWP No.2627 of 2015, for setting aside the order dated 17.06.2014 and letter dated 09.01.2015, cancelling the OTS and further to release the property of the applicant No.2, described at Sr. No.1 in the order dated 17.06.2014, passed by the Additional District Magistrate, Jalandhar, by accepting ₹1.45 crores against the value of the property and prayer was also made for a direction to the Bank to sell the factory land and building of the Company along with plant and machinery to realize the balance amount of ₹10.50 crores under the OTS letter dated 18.02.2014 and to issue No Dues Certificate. The said writ petition was disposed of on 16.02.2015 with liberty to the petitioners to raise all the contentions in the appropriate proceedings including the proceedings under

Section 17 of the SARFAESI Act. In the meantime, it is alleged that the Bank issued the sale notice dated 03.03.2015, fixing the e-auction of the factory land and building situated in Himachal Pradesh alongwith plant and machinery on 15.04.2015 at the reserved price of ₹9.55 crores.

Aggrieved against this action, the Company filed SA No.195 of 2015 against the order dated 17.06.2014 passed by the Addl. District Magistrate, Jalandhar, in respect of the property of petitioner No.2 situated at Jalandhar and also the premature cancellation of OTS dated 18.02.2014 and the action of the Bank initiated under Section 13(4) of the SARFAESI Act in respect of the property of the Company, i.e. factory land and building situated in Himachal Pradesh, was also challenged.

It is alleged that vide order dated 07.04.2015, the DRT-II, Chandigarh, entertained the SA in respect of the property situated at Jalandhar but refused to entertain and hear the issue regarding the challenge to the action of the Bank initiated under Section 13(4) of the SARFAESI Act pertaining to the property situated in Himachal Pradesh. The petitioners filed the review application bearing IA No.435 of 2015 in SA No.195 of 2015 for seeking recall of the order dated 07.04.2015. However, the said application was dismissed vide the impugned order dated 08.06.2015 and hence, the present petition has been filed solely with the prayer to issue a writ in the nature of *certiorari* to quash the order dated 08.06.2015 passed by the DRT-II, Chandigarh.

Counsel for the petitioners has submitted that the secured assets/mortgaged properties of the Company were located in different states i.e. States of Punjab (Jalandhar) and Himachal Pradesh (Kangra), against

which the Bank had issued the credit facility/loan. The action was initiated for taking over possession of the property situated in Himachal Pradesh under the provisions of the SARFAESI Act, for which the petitioners had filed SA before the DRT-II, while assailing the validity of the action of the Additional District Magistrate, Jalandhar, initiated under Section 14 of the SARFAESI Act. However, the jurisdiction to hear the cases of the States of Himachal Pradesh, Haryana and Chandigarh vests with the DRT-I and of the State of Punjab with the DRT-II and DRT-I & DRT-II both are located at Chandigarh but the only issue to be decided in this case is as to whether the DRT-II has been justified in declining to hear the SA of the petitioners in respect of the action having been initiated by the Bank regarding the secured asset located in Himachal Pradesh as well, while initiating action in respect of the property situated in the State of Punjab.

Counsel for the petitioners has relied upon a Division Bench judgment of the Madras High Court in the case of **Asian Health and Nutri Foods Ltd. vs. The Debts recovery Tribunal**, MANU/TN/3205/2014 to contend that if the secured assets are located in different States, then instead of filing separate applications before the separate DRTs, a single application can be filed.

On the contrary, counsel for the respondents has relied upon a Full Bench decision of the Delhi High Court in the case of **Amish Jain and another vs. ICICI Bank Ltd.**, 2013(2) RCR(Civil) 252.

I have heard learned counsel for the parties and perused the available record with their able assistance.

There is no dispute that the assets mortgaged by the Bank at the

time of availing loan/credit facility were located in two different states and action has been initiated by the Bank for taking over the secured assets for the purpose of recovering the debts. However, the question involved is as to whether the Company could have filed the SA before the DRT-II i.e. having the jurisdiction to entertain the petitions pertaining to the State of Punjab, to challenge the action of the Bank in respect of the property mortgaged with it and located in the State of Himachal Pradesh.

Insofar as the decision in **Amish Jain's case (supra)** is concerned, in that case, the mortgaged property was situated at Merrut and for that matter, it was held that the DRT, Delhi would not have the jurisdiction to entertain the appeal/application filed under Section 17(1) of the SARFAESI Act but that was a case in which the secured asset was located in one State, that too out of the jurisdiction of the DRT, Delhi, whereas in **Asian Health and Nutri Foods Ltd.'s case (supra)**, the secured assets were located in the States of Tamilnadu, Andhra Pradesh and Karnataka. The Division Bench of the Madras High Court considered the Full Bench decision of the Delhi High Court in **Amish Jain's case (supra)** but was of the view that the Full Bench of the Delhi High Court was concerned with the question as to whether an appeal under Section 17 of the SARFAESI Act would lie only in the Court within whose jurisdiction the mortgaged property is situated or as to whether it can be filed in the Tribunal having jurisdiction where the Branch of the Bank which disbursed the loan is situated. The Full Bench of the Delhi High Court held that an appeal under Section 17 of the SARFAESI Act can be filed only before the Debts Recovery Tribunal within whose jurisdiction the secured asset is

situated.

While answering this question that in case the secured assets are located in different States falling within the jurisdiction of different Tribunals, the Madras High Court has held that it would not be appropriate that the very same parties to a lis are driven to various Courts for the very same cause of action, merely because the reliefs sought are in respect of different properties situated in different jurisdictions. In this regard, the observations made by the Madras High Court needs to be mentioned and are reproduced as under:-

“25. Keeping the above fundamental principles in mind, if we have a careful look at the decision of the Full Bench of the Delhi High Court in Amish Jain, it could be seen that the Full Bench of the Delhi High Court was of the view that the question of territorial jurisdiction for the remedy of appeal provided in Section 17(1) of the SARFAESI Act cannot be determined in the light of the DRT Act making a departure from the principles enshrined in Section 16 of the Code. In other words the Full Bench of the Delhi High Court made the principles underlying Section 16 of the Code, applicable to an appeal under Section 17 of the SARFAESI Act. The Full Bench was of the opinion that the DRT Act 1993 alone made a departure from Section 16 of the Code, in view of the fact that an application under the 1993 Act is only for the recovery of a debt and need not necessarily be for the enforcement of a right over an immovable property. The Full Bench of the Delhi High Court also held that an appeal under Section 17 of the SARFAESI Act cannot be equated to an application under Section 19 of the DRT Act 1993. In para 26 of its judgment, the Full Bench

held as follows:-

"26. It would thus be seen that the principles of Section 16 of the CPC are reflected in the Sections 14 and 17A of the SARFAESI Act. Assistance to the Secured Creditor has not been provided of any Court but only of the Court within whose jurisdiction secured asset is situated. This is not without reason. It is only the CMM/DM within whose jurisdiction such secured asset is situated who can render such assistance. "

26. As rightly observed by the Full Bench of the Delhi High Court, the SARFAESI Act 2002 does not speak about territorial jurisdiction. It only speaks about (i) the Tribunal having jurisdiction in the matter of Section 17 (1) and (ii) disposal of the application in accordance with the provisions of the 1993 Act and the Rules issued therein. Therefore, only two alternatives are available to us for resolving this issue. The first is to simply go by the prescription regarding territorial jurisdiction in clauses (a), (b) and (c) of Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) and the prescription contained in clauses (a), (b) and (c) of Rule 6 of the Debts Recovery Tribunal (Procedure) Rules, 1993. If this is not acceptable, (as per the opinion of the Full Bench of the Delhi High Court), then the only other alternative is to look for guidance from the principles that underline the concept of territorial jurisdiction under Section 16 of the Code of Civil Procedure.

27. In so far as the case on hand is concerned, we need not go as far as the Full Bench of the Delhi High Court has gone. If we can fall back upon clauses (a), (b) and (c) of Section 19(1) of the DRT Act 1993 and clauses (a), (b) and (c) of Rule 6 of DRT (Procedure) Rules, 1993, then the petitioners herein are entitled to file an application under Section 17(1) of the SARFAESI Act,

on the file of any one of the Debts Recovery Tribunals within whose jurisdiction a part of the cause of arose.

28. Even if Section 19(1) of the 1993 Act and Rule 6 of the DRT (Procedure) Rules, 1993 are presumed to be inapplicable, we have to go by the general principles that originated from the common law and culminated in Sections 16 to 20 of the Code of Civil Procedure. In such an event, Section 17 would go to the rescue of the petitioner. The object behind Section 17 of the Code of Civil Procedure is to ensure that the very same parties to a lis, are not driven to various Courts for the very same cause of action, merely because the reliefs sought are in respect of different properties situate in different jurisdictions. Therefore, what underlines Section 17 of the Code are general principles based on equity and fairness of procedure. There is no reason as to why the fundamental principles that underline Section 17 of the Code cannot be applied to a proceeding under Section 17 of the SARFAESI Act. The fundamental principles on the basis of which an edifice is built in Section 17 of the Code, do not become untouchables merely because they are incorporated in the Code of Civil Procedure and merely because the DRT Act 1993 states that the provisions of the Code of Civil Procedure are not applicable to the proceedings before the Debts Recovery Tribunal.

29. As a matter of fact, the Supreme Court has repeatedly held that even principles of procedure such as res judicata recognized by the Code of Civil Procedure for application to proceedings before the Civil Courts, can be imported in appropriate cases arising under Article 226 of the Constitution. Therefore by the same analogy, the Debts Recovery Tribunal ought to apply in

the proceedings arising under Section 17 of the SARFAESI Act, the principles underlying Section 17 of the Code of Civil Procedure.

30. In view of the above, the Revision Petition is allowed, the endorsement made by the Debts Recovery Tribunal on the application filed by the petitioner is set aside. The petitioner is directed to represent the papers before the Debts Recovery Tribunal, within 10 days from the date of receipt of copy of this order. If all other requirements are satisfied, the Tribunal shall number the application and take it up for hearing. We make it clear that we have considered only one issue namely as to whether the Tribunal in question has territorial jurisdiction to entertain the appeal of the petitioner herein or not. We have not considered any other issues. There will be no order as to costs.”

Thus, following the decision of the Madras High Court in **Asian Health and Nutri Foods Ltd.'s case (supra)**, which covers the issue involved in the present case, the present petition is found to be meritorious and allowed and the decision taken by the DRT-II, declining the prayer of the petitioners to consider the SA filed by it in respect of the property situated in Himachal Pradesh, while considering the issue of the property situated in the State of Punjab, is hereby set aside. The parties shall bear their own costs.

March 15, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No