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

+ **W.P.(C) 5269/2017**

M/S CHHUNNU FASHIONS Petitioner
Through: Mr.Anshuz Dhingra, Advocate with
Mr.Gourav Gupta, Advocate.

Versus

M/S EDELWEISS ASSET REC. CO. LTD. Respondent
Through: Mr.R.P.Agrawal, Advocate with
Ms.Priyadarshini Verma, Ms.Monika Agrawal,
Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE C.HARI SHANKAR

ORDER
% **14.06.2017**
CAV 582/2017

1. The Respondent has appeared, and the caveat is discharged.

W.P. (C) No. 5269 of 2010 and CM App No. 22348-49/2017

2. The challenge in this petition is to an order dated 2nd June, 2017 passed by the Presiding Officer (PO) of the Debt Recovery Tribunal-II (DRT-II) in I.A.No.883/2017 in O.A.No.01 of 2013.

3. The said application was filed by the Petitioners herein, who were the defendants in the main O.As., for removal of non-hypothecated stocks, raw materials, stores, spares, plant and machinery lying at the mortgaged

premises located at Plot No.23, Sector-IV, Manesar, Gurgaon (Haryana).

4. By the impugned order, the learned PO of the DRT-II has dismissed the said application on the ground that “there is no clarity as to which the hypothecated property is and which the non-hypothecated property is, belonging to the debtor”. At the same time, the PO has noted that once a notice is issued under Section 13(2) of the SARFAECI Act, 2002 issued, “the applicants/defendants is not entitled for removal of any property from the mortgaged premises and the very filing of this application at the fag end of the O.A. seems to have been pressed into service to delay the proceedings”.

5. The learned counsel for the Petitioner has placed before the Court a certified copy of the report of the Local Commissioner (LC) dated 6th March, 2013 filed in the main O.A., which was pending before the DRT-II. Para-1 of the said report adverts to the “inventory of the stocks, raw materials, stores spares, plant and machinery and other assets hypothecated to the Applicant Bank”. That list is referred to as Annexure-A.

6. Para-2 of the report adverts to “the list of goods and machinery hypothecated with the Applicant Bank” as provided to the LC by the Assistant Manager of the Applicant Bank. This is referred to as Annexure-B.

7. Prima facie, therefore, it appears that not all the stocks, raw materials, stores spares, plant and machinery in the factory have been hypothecated to the Bank. The exercise was to isolate such of those stocks, raw materials, stores spares, plant and machinery that are not hypothecated to the bank.

That was the purpose of the Petitioner's application before the DRT.

8. The Court is of the view that an exercise ought to have been undertaken to clearly identify which of the stocks, raw materials, stores spares, plant and machinery are not hypothecated to the Bank and for that purpose, the LC earlier appointed should have been again assigned the task. The representative of the Petitioner herein as well as the representative of the Bank ought to have been asked to remain present at the time of that exercise.

9. The learned counsel for the non-applicant M/s Edelweiss Asset Reconstruction Limited submitted that the non-applicant would be also entitled to remove such of those stocks, raw materials, stores spares, plant and machinery etc. which were not hypothecated to it. That clearly was not the scope of the proceedings before the DRT-II. In fact, there was no clarity even as per the impugned order as to which of the stocks, raw materials, stores spares, plant and machinery was hypothecated or not. Further, under the SARFAESI Act, 2002 the orders were passed only for taking possession of the immovable assets that were hypothecated to the bank and not those which were not hypothecated.

10. The impugned order dated 2nd June 2017 of the DRT-II is accordingly set aside. The Petitioners' application I.A.No.883/2017 in O.A.No.01 of 2013 is restored to the file of the DRT-II. The DRT-II shall direct the LC earlier appointed by it to undertake the exercise afresh in the light of paras 6 and 7 of this order and submit a report to DRT-II within a period of two weeks.

11. The matter will be listed for directions before the DRT-II on 19th June, 2017.

12. No steps will be taken by the Respondent/non-applicants to alter the status quo at the factory premises till such time further orders are passed by DRT-II.

13. The writ petition is disposed of in the above terms.

14. Order Dasti under the Signature of the Court Master.

S.MURALIDHAR, J.
(Vacation Judge)

C.HARI SHANKAR, J.
(Vacation Judge)

JUNE 14, 2017
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