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

\+ **WRIT PETITION (CIVIL) No. 5470/2018**

Date of decision: 11th July, 2018

M/S UDAY ESTATES PVT. LTD. ..... Petitioner
Through Mr. Ashwini Kumar Mata, Sr. Advocate with Mr. Sanjay Sharma, Advocate.

versus

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED (ARCIL) ..... Respondent

Through Mr. Ateev Mathur & Ms. Jagriti Ahuja, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Present writ petition by M/s Uday Estates Private Limited impugns orders dated 29th September, 2017 and 29th January, 2018 of the Debt Recovery Appellate Tribunal ('Appellate Tribunal'). Other prayers made, include the prayer that Appeal No. 318/2016 filed by petitioner should be heard and decided by the Appellate Tribunal on merits or in alternative the question of law raised should be decided by the High Court. Further prayer is to direct the respondent i.e. Asset Reconstruction Company (India)

Limited ('ARCIL') not to take possession of the property bearing 'De Aqua' at Plot No. 1, Shastri Park District Centre, Delhi.

2. By order dated 29th September, 2017, Appellate Tribunal had rejected the application of the petitioner for waiver of condition of pre-deposit of 50% of the amount of debt due as claimed by the secured creditor or determined by the Debt Recovery Tribunal, whichever was less. By order dated 29th January, 2018, appeal filed by the petitioner was dismissed by the Appellate Tribunal for failure to make pre-deposit.

3. Primary contention of the petitioner is that the respondent could not have invoked provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'). On 13th March, 2013, the respondent had paid Rs.81.60 Crores to Bank of Baroda, albeit under the One Time Settlement ('OTS') Scheme. Hence, the respondent was not and cannot be treated as a secured creditor under the SARFAESI Act. Findings of the Debt Recovery Tribunal ('DRT') in the order dated 29th April, 2016 that the respondent was a secured creditor were challenged before the Appellate Tribunal.

4. Respondent's submit that the petitioner having invoked jurisdiction of the Appellate Tribunal vide Appeal No. 318 of 2016, must make pre-deposit as per second proviso to Section 18(1) of the SARFAESI Act. DRT vide order dated 29th September, 2017 has held that the respondent was a secured creditor entitled to invoke and take recourse to SARFAESI Act. Petitioner, the debtor, despite opportunities had failed to make payment/pre-deposit and comply with the statutory terms.

5. Petitioner had earlier filed Writ Petition (C) No. 4573/2013 before this High Court raising the plea that the respondent was not a secured creditor within the meaning of SARFAESI Act and hence could not have invoked provisions of SARFAESI Act. It is stated at the Bar that the writ petition was withdrawn with liberty to approach the DRT.

6. Factum that the respondent had paid Rs.81.60 Crores to Bank of Baroda on 13th March, 2013 and the petitioner's obligation and liability to pay Rs.81.60 Crores with applicable interest to the respondent is undisputed.

7. Contention raised by the petitioner relates to the legal effect of the transaction and assignment deed etc. executed by the Bank of Baroda in favour of the respondent. DRT vide order dated 29th April, 2016 had examined the legal effect and opined that the respondent was a secured creditor, who had rightly invoked the SARFAESI Act. Accordingly, securitization application filed by the petitioner was dismissed.

8. This Order dated 29th April, 2016 by the DRT had directed the petitioner to pay the dues owed within nine months by three quarterly installments. Payment could be made by the petitioner from their own resources or by sale of secured asset by getting a better buyer to the satisfaction of the respondent. In case of a single default in payment of installments, the respondent was at liberty to proceed against the petitioner in accordance with law.

9. Aforesaid findings and directions given in the order dated 29th April, 2016 by the DRT, were challenged in the appeal preferred by the petitioner before the Appellate Tribunal.

10. Petitioner having invoked statutory and then the appellate remedy was required to comply with the statute. Accordingly, the petitioner was required to make the pre-deposit to abide by the statutory mandate of Section 18(1) of the SARFAESI Act. Appellate Tribunal as an appellate forum has the power to examine findings given by the DRT including right of the creditor to invoke securitization proceedings. A tribunal and authority conferred with the power to act under the statute has jurisdiction to satisfy itself on whether power has been excised in accordance with and conditions of exercise of the power exist. Thus, to this extent, the impugned orders passed are in accordance with the statute i.e. SARFAESI Act.

11. The next issue is whether the High Court should exercise its discretion to interfere under Article 226 and 227 of the Constitution. It is correct that the question of jurisdiction can be raised in a writ petition. Similarly, the High Court can exercise discretion and in a case of this nature impose reasonable terms even when they examine question of jurisdiction of the tribunal under a special enactment. On being questioned, whether the petitioner has made payment(s) to the respondent on or after 13th March, 2013, it is stated that the petitioner had paid an amount of Rs.15 Crores when the matter was pending before the DRT. No payment thereafter has been made. Obligation to pay Rs. 81.61 Crores with interest (less Rs.15 Crores already paid) is undisputed. In this factual background, counsel for the respondent states that amount of Rs.130 crores is due and payable by the petitioner to the respondent. Learned Senior Advocate for the petitioner states and accepts that about Rs.100 Crores is payable.

12. Account of the petitioner was classified as a non-performing asset in March 2013. The petitioner had earlier given an undertaking before the DRT pursuant to which an interim stay order was passed. On breach of the undertaking, interim stay was vacated vide order dated 27th March, 2013. Feeling aggrieved the petitioner had approached the tribunal which had granted the petitioner one month's time. The petitioner again defaulted, and on 29th May, 2014, the stay was vacated. The petitioner had thereupon approached the High Court and was granted conditional stay subject to payment of balance amount. Once again the petitioner defaulted.

13. DRT vide order dated 29th April, 2016 had granted time to the petitioner make payment in installments spread over nine months. Order dated 28.8.2017 in W.P.(C) No.7554/2017 passed by another Division Bench records petitioner's un-willingness to pay/deposit at least 25% of Rs.110 Crores.

14. Given the aforesaid factual background, we asked whether the petitioner is in a position to make payment of about Rs.50 crores in installments.

15. Learned Senior Advocate for the petitioner, on instructions, states that the petitioner is not in a position to make any payment.

16. In view of the statement made expressing inability to make any payment, we are not inclined to issue notice in the writ petition as the factum that debt is due is undisputed. Immovable property is the only asset of the petitioner from which recovery can be made. Facts of the case do not justify indulgence as enough time and opportunities have been granted.

17. Writ petition is dismissed, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JULY 11, 2018
VKR/NA