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

+ W.P.(C) 10871/2018 & C.M. No. 42393/2018

M/S HITECH GRAINS PROCESSING PVT. LTD.
AND ANR.

..... Petitioners

Through: Col. H. S. Sharma and Mr Bharat
Sharma, Advocates.

versus

REGISTRAR OF COMPANIES AND ORS. Respondents

Through: Mr Jaswant Singh Aggarwal with Mr
Vikrant Nilesh Goyal, Advocates for
R-1 & R-3.

Mr Pankaj Garg with Mr Milind Garg
and Ms Arpita Kumari, Advocates for
R-2/Indian Bank.

Mr Rachit Mittal and Ms Tanvi
Aggarwal, Advocates for R-4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **10.10.2018**

1. The petitioners have filed the present petition, *inter alia*, praying that the second charge registered by Registrar of Companies (ROC) in respect of certain properties of the petitioner company in favour of respondent no.2 (Indian Bank) be set aside. The petitioners claim that the said charges have been registered on the basis of forged and fabricated documents and further, that the petitioners were not provided any notice by the ROC prior to registering the same. The petitioner claims that this is contrary to Section 78 of the Companies Act, 2013.

2. The learned counsel appearing for the Indian Bank has handed over photocopies of certain documents, which indicate that the information for creating a charge was signed by one of the Directors of the petitioner company and bears the seal of the petitioner company. The learned counsel appearing for the Indian Bank also informs this Court that the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI) has already been initiated.

3. The controversy whether the documents in question have been signed by the director of the petitioner company, are forged and fabricated raises disputed questions of fact. It would not be apposite to examine such disputes in these proceedings.

4. Insofar as the petitioner's grievance that, he did not received any notice from the ROC prior to registration of the charge is concerned; it is seen that the petitioner was duly informed of the same and he has also made a representation to the ROC. The learned counsel appearing for the ROC also submits that the said objections would be considered and disposed of by an appropriate order. In this view, no further orders are required to be passed at this stage as *ex post facto* notice has been issued to the petitioner.

5. Before concluding, it is relevant to mention that the fact that an action under the SARFAESI has already commenced by Indian Bank has been concealed in this petition. Concededly, the petitioners were fully aware that an action under the SARFAESI had been initiated but have intentionally concealed this fact from this Court.

6. In view of the above, the petition is dismissed with costs quantified at ₹25,000/-. The cost will be deposited with the Delhi High Court Legal

Services Committee within a period of one week from today. The pending application is also disposed of.

VIBHU BAKHRU, J

OCTOBER 10, 2018

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