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

\+ **W.P.(C) 12034/2018**

SEW INFRASTRUCTURE LTD. & ANR. ..... Petitioners
Through Mr Mr Rana S. Biswas, Mr Sunil Sharma, Advocates.

versus

ANDHRA BANK & ANR. ..... Respondents
Through

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**O R D E R**

% **02.11.2018**

**CM 46586/2018**

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

**W.P.(C) 12034/2018 & CM 46585/2018**

3. The petitioners are, essentially, aggrieved by the action of respondent no.1 bank (Andhra Bank) initiated under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). There is no dispute that the petitioner no.1 company had availed financial facilities from respondent no. 1 and had failed to comply with its obligations to repay the same. Andhra Bank commenced proceedings under the SARFAESI Act and had issued a notice dated 30.08.2017 under Section 13(2) of the said SARFAESI Act, whereby the petitioners (and other guarantors) were called upon to pay the outstanding balance in the sum of ₹187,74,76,140.19/-. It is stated that

thereafter, the petitioner no.1 submitted a proposal for a resolution of its debts to the Consortium of Lenders which also included Andhra Bank. It is further stated that the Joint Lenders Forum (JLF) held a meeting on 22.12.2017 whereby it was decided that an independent Techno-Economic Viability study would be conducted to assess the viability of the proposal submitted by the petitioner.

4. The petitioner claims that the said study has confirmed that the proposal submitted by the petitioner no.1 is viable. It is further stated that the Consortium of Lenders are considering the proposal and are awaiting the report from the forensic auditor appointed by the lead bank. In this context, the petitioner prays that Andhra Bank be restrained from proceeding further under the SARFAESI Act.

5. The aforesaid contention is unmerited. Andhra Bank is entitled to enforce its security interest and cannot be precluded from seeking recourse under the SARFAESI Act. It is also well settled that the proceedings under the SARFAESI Act ought not to be interdicted in proceedings under Article 226 of the Constitution of India. The Supreme Court, in a number of cases, has held that the SARFAESI Act provides an alternative remedy and any borrower aggrieved by an action under the SARFAESI Act has to avail the remedy available under that Act. In ***United Bank of India v. Satyawati Tondon and Others: (2010) 8 SCC 110***, the Supreme Court had observed as under:-

> "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.

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55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

6. In view of the above, no interference by this Court is warranted in the proceedings instituted by Andhra Bank under the SARFAESI Act.

7. The petition is, accordingly, disposed of.

**VIBHU BAKHRU, J**

**NOVEMBER 02, 2018**
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