IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3190 of 2016

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1. M/s Dakshineswari Logistic and Services Pvt. Ltd., a Company incorporated under the Indian Companies Act, 1956, represented through its Managing Director and authorized representative Mrs. Sangita Prasad having registered office at 23A, Netaji Subhas Road, 4th Floor, Room No. 13, Kolkata-700001.
2. Mrs. Sangita Prasad, Wife of Rajeev Shankar Prasad, R/o Resident of 42, Kavi Raman Path, Nageshwar Colony, East Boring Road, P.S. - Buddha Colony, District- Patna.

... ... Petitioners

Versus

1. Indian Overseas Bank, a Nationalized Bank having its registered office at 763, Anna Salai, Chennai-600002, Tamil Nadu having a branch office known and called as Kankarbagh Branch, situated at H-23, Doctors Colony, Kankarbagh, Patna-800020.
2. The Chief Manager, Indian Overseas Bank, Kankarbagh Branch, having his office at H - 23, Doctors Colony, Kankarbagh, Patna-800020
3. The Authorised Officer, Indian Overseas Bank, Kankarbagh Branch, having his office at H - 23, Doctors Colony, Kankarbagh, Patna-800020.
4. West Bengal Motor Vehicles Weighbridge Corporation Ltd., a Existing Company within the meaning of Companies Act, 1956 having its registered office at 53C/1, Dr. S.C. Banerjee Road, P.S. - Beliaghata, Kolkata – 700010.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr.Aditya Shankar, Advocate
Mr. Sanchay Srivastava, Advocate
Mr. Saurav Suman, Advocate

For the Respondent Bank: Mr.Sajay Singh Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 18-02-2019 Heard learned counsel for the petitioners and learned counsel representing the Bank.

Mr. Aditya Shankar assisted by Mr. Sanchay Srivastava, learned counsel for the petitioners submits that the demand notice issued under Section 13(2) of the Securitization and Reconstructing of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the

SARFAESI Act') does not provide a correct picture of the Account and the Bank is demanding more than Rs. Six Crores without adjusting a sum of Rs. 2.75 crores which has been deposited by the petitioners. Learned counsel, therefore, submits that the very demand notice issued by the Bank is illegal, arbitrary and bad in law.

It is his further submission that on several occasion the petitioners have approached the Bank for settlement of the Account but the Bank is not considering the proposal of the petitioners keeping in mind the recovery policy of the Bank and the guidelines of the Reserve Bank of India on the subject. Learned counsel has given much emphasis on his submission that the petitioners are willing to settle the Account and pay the lawful dues of the Bank.

On the other hand, Mr. Sanjay Singh Thakur, learned counsel representing the Bank has taken a stand that the writ application is prematured as the petitioners have moved this Court for quashing of the notice under Section 13(2) of the SARFAESI Act, 2002 which does not give a cause of action to the petitioners. Learned counsel submits that the petitioners had submitted his objection to the notice and the said objection has already been disposed of in terms of Section 13(3-A) of the

SARFAESI Act, 2002. It is submitted that in view of the judgment of the Hon'ble Apex Court in the case **Mardia Chemicals Ltd. Vs. Union of India** reported in **AIR 2004 SC 2371** and the recent judgment of the Hon'ble Supreme Court in the case of **M/s Hindon Forge Pvt. Ltd. & Anr. Vs. State of Uttar Pradesh** reported in **AIR 2018 SC 5382** following in the case of **ITC Limited Vs. Blue Coast Hotel Pvt. Ltd.** reported in **AIR 2018 SC 3063**, the petitioners will have an opportunity to challenge the order of the Bank under Section 13(3-A) of the SARFAESI Act, 2002 only when any of the measures as provided in Section 13(4) of the SARFAESI Act, 2002 is taken by the Bank.

Learned counsel submits that presently Bank has not taken any action under Section 13(4) of the SARFAESI Act, 2002.

Having heard learned counsel for the parties and on perusal of the records this Court is of the considered opinion that the writ application is premature. The petitioners will have a cause of action to challenge the decision of the Bank rejecting his objection under Section 13(3-A) of the SARFAESI Act, 2002 only when action under Section 13(4) SARFAESI Act, 2002 is taken by the Bank. While challenging the action of the

Bank under Section 13(4) of the SARFAESI Act, 2002, the petitioners will have all liberty to challenge the decision of the Bank on all such grounds which they are pleading before this Court.

At this stage, if the recovery policy of the bank and the guidelines of the Reserve Bank of India are permitting the Bank to consider the proposal for settlement, this Court finds no reason as to why the Bank will not consider the same. The petitioners may, if so advised, approach the competent authority of the Bank a fresh by submitting a proposal keeping in mind the guidelines of the Reserve Bank of India and in case such a proposal is submitted with the competent authority of the Bank, the same will be considered in accordance with those guidelines and the recovery policy of the Bank and a decision thereon shall be taken.

At this stage, this Court also finds that although decision under Section 13(3-A) of the SARFAESI Act, 2002 is said to have been taken by the Bank, but a copy of the said decision has not been brought on record with the counter affidavit. The Bank shall send a copy of the decision to the petitioners within a period of two weeks from today.

The fresh proposal, if any, submitted by the petitioners in accordance with the observations of the Court hereinabove shall be considered by the competent authority of the Bank and disposed of within a period of 60 days from the date of submission of proposal keeping in mind the guidelines of the Reserve Bank of India and recovery policy of the Bank. Learned counsel for the petitioners undertakes that such proposal shall be submitted within four weeks from today.

This writ application stands disposed off, accordingly.

(Rajeev Ranjan Prasad, J)

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