

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10181 of 2016

Bank Of Baroda through the Chief Manager, Srikrishnapuri Branch, Nawal
Arcade, Boring Road, Patna Petitioner

Versus

1. The Union Of India Through Debt Recovery Tribunal, Karpuri Thakur
Sadon, Aashana Digha Road, Patna
2. M/s Samrat Automobiles Pvt Ltd., Indira Gandhi Raj Parg, Pahari, Patna
-800007.
3. Mr. Ranvijay Singh, Managing Director, M/s Samrat Automobiles Pvt. Ltd.,
Indira Gandhi Raj Marg, Pahari, Patna
4. Mr. Jagarnath Prasad Singh, Director M/s Samrat Automobiles Pvt. Ltd.,
Indira Gandhi Raj Marg, Pahari, Patna
5. Mr. Rajiv Kumar Singh, Guarantor M/s Samrat Automobiles Pvt. Ltd.,
Indira Gandhi Raj Marg, Pahari, Patan
6. Mr. Tarkeshwar Prasad Singh, Guarantor M/s Samrat Automobiles Pvt. Ltd.,
Indira Gandhi Raj Marg, Pahari, Patna
7. Mr. Bhubaneswar Prasad Singh, Guarantor M/s Samrat Automobiles Pvt.
Ltdl, Indira Gandhi Raj Marg, Pahari, Patna
8. Mr. Sanjeev Kumar Singh, Guarantor M/s Samrat Automobiles Pvt. Ltd.,
Indira Gandhi Raj Marg, Pahari, Patna
9. Mr. Kamlesh Prasad Singh, Guarantor, M/s Samrat Automobiles Pvt. Ltd.,
Indira Gandhi Raj Marg, Pahari, Patna
10. Mrs. Shushila Singh, Guarantor M/s Samrat Automobiles Pvt. Ltd., Indira
Gandhi Raj Marg, Pahari, Pahari, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dr. K. N. Singh, Sr. Advocate
Mr. Sanjeev Shankar, Advocate
For the Res No. 2 and 3 : Mr. Vitesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 25-10-2019 Heard learned Senior Counsel for the Bank assisted

by learned Advocate on record and learned counsel representing
respondents no. 2 and 3. Respondents no. 4 to 9 have been
though served by ordinary process and the service report is
available on the record, they have chosen not to appear before



this Court. Learned counsel for the petitioner submits that before the Debts Recovery Tribunal, Patna also they have not put their appearance.

The petitioner Bank is aggrieved by and dissatisfied with the order dated 19.05.2016 passed by learned Presiding Officer, Debts Recovery Tribunal, Patna (hereinafter referred to as 'the Tribunal') in OA 234 of 2014.

By the impugned judgment and order, learned Presiding Officer of the Tribunal has held that the Original Application preferred by the Bank under Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'Act of 1993') is not sustainable and is liable to be dismissed. In paragraph '21' of the judgment the learned Presiding Officer of the Tribunal has held as under:-

“21. It is pertinent to mention here that both the Acts operate within the same scheme, but the DRT Act is a general Act, whereas the NPA Action (SARFAESI Act) is the special Act. It is well settled that the Special Act will prevail over the General act.”

Having said so, after taking note of the fact that the petitioner Bank has recovered a sum of Rs. 4.30 crores by taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act,



2002 (hereinafter referred to as the ‘SARFAESI Act of 2002’ or ‘NPA Act’) the Presiding Officer has taken a view that after realization of Rs. 4.30 Crores by taking SARFAESI action now the Bank can proceed under Section 13(10) of the SARFAESI Act of 2002’ and the Original Application is not maintainable.

Learned Senior Counsel for the petitioner Bank submits that the learned Presiding Officer has passed the impugned judgment and order on a complete misconception of law and by ignoring the judicial pronouncements on the subject. Learned Senior Counsel further submits that the Tribunal has not even looked into the Hon’ble Division Bench judgment of this Court in the case of State Bank of India through the **Deputy General Manager/Authorised Officer vs. M/s Purnea Cold Storage and Anr.** reported in **2013(4) PLJR 753** in which the Hon’ble Division Bench had upturned the judgment of the learned Single Judge and held that the application under the Act of 1993 as well as the SARFAESI action under the SARFAESI Act of 2002 can go together. It is submitted that in paragraph ‘16’ of the impugned judgment the learned Presiding Officer of the Tribunal has in fact taken note of the views which were expressed by the learned Single Judge and were not of the Hon’ble Division Bench of this Court, thereafter, he has



committed an error in taking the final view of the matter holding that the Original Application is liable to be dismissed.

Learned Senior Counsel further submits that on a bare perusal of the Act of 1993 it would appear that under Section 19 of the Act of 1993 the 'DRT' acts as an adjudicatory body whereunder claim of the Bank is determined on the basis of evidences brought on record and a certificate of recovery is issued for the determined amount after following the established procedure under various sub-sections of section 19. It is submitted that no doubt, the Act of 1993 and the NPA Action under SARFAESI Act 2002 both have similar object of recovery of public money but they operate within their own spheres and it has been held that both the Acts are complete code unto themselves. It is submitted that so far as the application under Section 13(10) of the SARFAESI Act, 2002, which the Presiding Officer of the Tribunal has referred to, is concerned, under the SARFAESI Act of 2002 a provision has been made that "where dues of the secured creditor is not fully satisfied with the sale proceed of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or the competent court, as the case may be, for



recovery of the balance amount from the borrower.”

Learned Senior Counsel submits that a bare reading of sub-section (10) of Section 13 of the SARFAESI Act of 2002 would show that it is a provision whereunder the secured creditor may file an application after recovery of certain amount under the SARFAESI Act of 2002 if the secured creditor is of the view that it's dues has not been satisfied but so far as the scope of section (19) of the Act of 1993 is concerned, under this jurisdiction the dues of the Bank has to be determined and if the Bank has chosen to file an application under Section 19 of the Act of 1993 with an intention to get it determined, the application under Section 19 of the Act of 1993 cannot be thrown out.

In ultimate analysis when during pendency of the application under Section 19, if the Bank recovers certain amount under the SARFAESI Act of 2002, it may apply for an amendment in its claim and to that extent the Bank may be permitted to amend it's claim but the ultimate determination has to take place. Learned Senior Counsel submits that in this case the Original Application was filed and during the pendency of the said application recovery of Rs. 4.30 crores had been made and thereafter, the Bank had filed an application for amendment



of claim, therefore, there was no reason for the Tribunal to take a view that the Original Application cannot be maintained and this should be dismissed.

Learned counsel for the respondents no. 2 and 3 opposed the writ application as according to him, the Tribunal has rightly come to a conclusion that Section 19 application cannot proceed after the Bank has initiated action under the SARFAESI Act of 2002 and has recovered Rs. 4.30 Crores under the said action.

Having heard learned counsel for the parties and on a careful perusal of the records, this Court is of the considered opinion that the learned Presiding Officer of the Tribunal has taken a completely erroneous view of the matter. Application under sub-section (10) of Section 13 of the SARFAESI Act of 2002 may be filed by a secured creditor only when the Original Application is not pending before the Tribunal. If the Bank had already preferred an Original Application for determination of its dues and issuance of a certificate of recovery and during the pendency of the Original Application, since the Bank had proceeded with the SARFAESI action and had recovered Rs. 4.30 crores the Bank had rightly filed an amendment application to amend its claim under the Original Application, no fault may



be found on the part of the Bank in pursuing its' remedy. The Bank had filed an application under Section 19 of the Act of 1993, at this stage the application of the Bank could not have been thrown out by the learned Presiding Officer of the Tribunal merely by referring to sub-section (10) of the Section 13 of the SARFAESI Act of 2002.

In the case of **M/s Transcore vs. Union of India & anr.** reported in **AIR 2007 SC 719=(2008) 1 SCC 125** the Hon'ble Supreme Court had occasion to analyse the Act of 1993 and the NPA Act 2002. In paragraph '18' of the judgment their Lordships held as under:

“18. On analysing the above provisions of the DRT Act, we find that the said Act is a complete Code by itself as far as recovery of debt is concerned. It provides for various modes of recovery. It incorporates even the provisions of the Second and Third Schedules to the Income Tax Act, 1961. Therefore, the debt due under the recovery certificate can be recovered in various ways. The remedies mentioned therein are complementary to each other. The DRT Act provides for adjudication. It provides for adjudication of disputes as far as the debt due is concerned. It covers secured as well as unsecured debts. However, it does not rule out applicability of the provisions of the TP Act, in particular Sections 69 and 69A of that Act. Further in cases where the debt is secured by pledge of shares or immovable properties, with the passage of time and delay in the DRT proceedings, the value of the pledged assets or mortgaged properties invariably falls. On account of inflation, value of the assets in the hands of the bank/FI invariably depletes which, in turn, leads to asset liability mismatch. These



contingencies are not taken care of by the DRT Act and, therefore, Parliament had to enact the NPA Act, 2002.”

Thereafter, having analyzed the NPA Act 2002 in paragraph ‘24’ their Lordships observed:

“24.The point to be noted is that the scheme of the NPA Act does not deal with disputes between the secured creditors and the borrower. On the contrary, the NPA Act deals with the rights of the secured creditors inter se. The reason is that the NPA Act proceeds on the basis that the liability of the borrower has crystallized and that his account is classified as non-performing asset in the hands of the bank/FI. Section 13(9) also deals with pari passu charge of the workers under Section 529A of the Companies Act, 1956, apart from banks and financial institutions, who are secured creditors. Section 13(10) inter alia states that where the dues of the secured creditor are not fully satisfied by the sale proceeds of the secured assets, the secured creditor may file an application to DRT under Section 17 of the NPA Act for recovery of balance amount from the borrower. Section 13(10), therefore, shows that the bank/ FI is not only free to move under NPA Act with or without leave of DRT but having invoked NPA Act, liberty is given statutorily to the secured creditors (banks/ FIs.) to move the DRT under the DRT Act once again for recovery of the balance in cases where the action taken under Section 13(4) of the NPA Act does not result in full liquidation of recovery of the debts due to the secured creditors. Section 13(10) fortifies our view that the remedies for recovery of debts under the DRT Act and the NPA Act are complementary to each other. Further,



Section 13(10) shows that the first proviso to Section 19(1) of DRT Act is an enabling provision and that the said provision cannot be read as a condition precedent to taking recourse to NPA Act.....”

In paragraph ‘43’ and ‘44’ of **M/s Transcore** (supra), their Lordships went on to throw light on how the NPA Act is an additional remedy, those are reproduced hereunder:

“**43.** Keeping in mind the above circumstances, the NPA Act is enacted for quick enforcement of the security. The said Act deals with enforcement of the rights vested in the bank/ FI. The NPA Act proceeds on the basis that security interest vests in the bank/FI. Sections 5 and 9 of NPA Act is also important for preservation of the value of the assets of the banks/ FIs. Quick recovery of debt is important. It is the object of DRT Act as well as NPA Act. But under NPA Act, authority is given to the banks/ FIs, which is not there in the DRT Act, to assign the secured interest to securitisation company/ asset reconstruction company. In cases where the borrower has bought an asset with the finance of the bank/ FI, the latter is treated as a lender and on assignment the securitisation company/ asset reconstruction company steps into the shoes of the lender bank/ FI and it can recover the lent amounts from the borrower.

44. According to Snell's Equity (Thirty-first edition) at page 777, a dual obligation could arise on the same transaction, namely, A's obligation to repay a sum of money to B or some other obligation. In such a case, B can sue A for money



or for breach of the obligation. However, B will often have some security which covers the obligation of A, say, in the form of an asset over which B can exercise his rights. B may be entitled to this security either by law or by operation of common law principles or under the transaction (contract). In addition, B may acquire a personal right of action against the third party. Security over the asset (property) may be obtained by mortgage, charge, pledge, lien etc. Security in the form of right of action against a third party is known as guarantee. Broadly, there are three types of security over the asset. One is where the creditor obtains interest in the asset concerned (mortgage). Second is securities in which the rights of the creditor depends on possession of the asset (pledge/ lien). The third is charge where the creditor neither obtains ownership nor possession of the asset but the asset is appropriated to the satisfaction of the debt or obligation in question (charge). The dichotomy, which is of importance, is that more than one obligation could arise on the same transaction, namely, to repay the debt or to discharge some other obligation.

In the aforementioned background of judicial pronouncement, the views expressed by learned Tribunal that the SARFAESI Act of 2002 being special statute shall prevail over the Act of 1993 is not a correct view and it is required to be held that both the Acts are though complementary to each other,



are independent in operation and though the object of both the Acts are the same, they operate in their own laid down procedure independently. In the case of **Purnea Cold Storage & Anr.** (supra) the Hon'ble Division Bench has held in paragraphs 13, 14, 15 and 16 as under:

“13. We are of the opinion that the learned single Judge has rightly held that both the Acts are complementary to each other and that there is no inherent or implied inconsistency between the remedies under the two Acts. However, having held that both remedies are complementary to each other and there was no inherent or implied inconsistency in either of the enactments, the learned single Judge has erred in holding that the provisions contained in the Act of 2002 has an overriding effect over the Act of 1993. Once the Act of 2002 is invoked, the remedy under the Act of 1993 cannot be availed of except for the remainder of the dues which cannot be satisfied by sale of the secured assets.

14. Section 35 of the Act of 2002 does give the Act of 2002 an overriding effect over any other law notwithstanding anything inconsistent contained in such other law. In other words, the Act of 2002 would have overriding effect over the provisions contained in the Act of 1993, had the provisions contained in the Act of 1993 been inconsistent with the provisions contained in the Act of 2002. It is by now well settled and accepted universally that the Act of 2002 is complementary to the Act of 1993 and has been enacted with a view to providing a speedier remedy to



the secured creditors. Having held that there was no inherent or implied inconsistency between the two enactments, the learned single Judge has erred in invoking Section 35 of the Act of 2002 to stay the proceeding before the Tribunal. We also agree with the Delhi High Court that there is no embargo in either of the Acts restraining the secured creditor from pursuing both the remedies simultaneously or one after the other. The reading of such an embargo would frustrate the very soul and very purpose of both the enactments.

15. There is nothing wrong about the Bank in approaching the Tribunal within the period of limitation. No ulterior motive can be imputed against the Bank for approaching the Tribunal within the period of limitation as suggested by Mr. Arbind Kumar Jha. On the contrary, we believe that it is the endeavour of the petitioner to thwart every action of the Bank in realizing its outstanding dues. The petitioner has challenged every stage of action before this Court or before the Tribunal. The intention to delay the proceeding is writ large in the conduct of the petitioner.

16. We can view this matter the other way also. Sub-section (10) of Section 13 of the Act of 2002 does enable a secured creditor to realise remainder of its dues before the Debts Recovery Tribunal in case the sale proceeds of the secured assets are not sufficient to satisfy the debt. In the present case, the secured asset could not be sold at all. Hence, the entire debt remained outstanding even after having taken recourse to the Act of 2002. The Bank, therefore, had the remedy of recovery before the Tribunal as envisaged by Section 13(10) of the Act of 2002.

In the aforesaid view of the matter, the impugned



judgment dated 19.05.2016 passed in OA 234 of 2014 by the Tribunal is hereby set-aside and OA 234 of 2014 is restored. The Tribunal shall proceed to consider the Original Application in accordance with law after giving notice to the respondents.

(Rajeev Ranjan Prasad, J)

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