

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 820 of 2018**

{Arising out of Order dated 18.09.2018 passed in Writ Petition (C) No. 2175 of 2018 by the learned Single Judge}

Aditya Birla Finance Limited Having Its Registered Office At- Indian Rayon Compound, Verawal, Gujarat- 362266

And Branch Office In Delhi At-2nd Floor, Uco Bank Building, 5 Parliament Street, Connaught Place, New Delhi- 110001

And

4th Floor, Lal Ganga Shopping Mall, G.E. Road, Raipur 492001 Chhattisgarh.

Through Its Authorised Officer- Mr. Lalit Sardana

---- Appellant

Versus

1. Sh. Vishal Chopra S/o Late Sh. S.N. Chopra R/o Chopra Chasma Ghar, Ravi Bhawan, Opposite Gpo (Head Post Office), Jaistambh Chowk, Raipur 492001 Chhattisgarh.
2. Smt. Dipali Chopra W/o Sh. Vishal Chopra R/o House No. 8, Taigor Nagar, S.B.I. Colony, Tikrapara, Raipur 492001 Chhattisgarh.
3. Shri Chopra Trading Company Having Its Office At Chopra Chasma Ghar, Ravi Bhawan, Opposite Gpo (Head Post Office), Jaistambh Chowk, Raipur 492001 Chhattisgarh Through Its Authorised Officer, Sh. Vishal Chopra

---- Respondents

For Appellant	: Shri Ashish Shrivastava and Shri Tanuj Agrawal, Advocates
For Respondents	: Shri Amrito Das, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

07/01/2019

1. The Finance Company is in appeal against the decision or order dated 18.09.2018 passed by the learned Single Judge since the writ application of

the private Respondents was allowed and order of the Debts Recovery Appellate Tribunal, Allahabad (for short 'the DRAT') was set aside.

2. The Respondents are the borrowers and they were in default in a matter of making payment of the dues outstanding against the Finance Company. Law was set into motion by issuance of notice dated 09.09.2016 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFESI Act'). The argument made against the decision was that the Appellant-Company did not comply with the mandatory provisions of SARFESI Act, especially Section 13(3A) by considering the representation of the Respondents, therefore all actions taken thereto had been rightly held to be bad by the Debts Recovery Tribunal and there was no occasion for the Appellate Tribunal to interfere with the said decision.
3. The learned Single Judge relied on some decisions of the Hon'ble Apex Court, one of them being ***Mardia Chemicals Ltd. & Others v. Union of India & Others***; (2004) 4 SCC 311. The writ application was allowed on the ground of violation of mandatory provision of sub-section (3A) of Section 13 of the SARFESI Act and a direction was given that the proceedings subsequent to the stage of notice under Section 13(2) stands quashed. The possession of the building was ordered to be handed over to the Respondents but leeway was granted to the Appellant to proceed further from the stage of decision, on the representation filed on behalf of the Respondents under Section 13(3A) of the SARFESI Act.
4. Learned counsel representing the Appellant-Company submits that there seems to be a serious error committed by the learned Single Judge not on the principle or the ratio on which reliance has been placed by him while allowing the writ application, but appreciating the true facts which have relevance to the adjudication. There never was any violation committed by

the Appellant-Company, much less of Section 13(3A) of the SARFESI Act and to fortify such a submission, Court's attention was drawn to the so-called objection/representation filed on behalf of the Respondents, if it can be treated to be so in the eye of law. The Appellant-Company has brought on record the communication/letter written to the Authorised Officer of the Finance Company on 22.09.2016, copy of which is at page 82 of the writ appeal.

5. Appellant's counsel has taken us through the entire communication only to strengthen the argument made on their behalf that there is no objection or representation filed on behalf of the borrowers, much less under Section 13(3A) of the SARFESI Act. Even if for the sake of argument, the communication dated 22.09.2016 is treated as one, reading of the same throws up only one essence and that it is more a mercy appeal rather than any serious objection to the notice under Section 13(2) of the SARFESI Act. No where has the borrowing which accumulated to around more than Rs. 4.61 crores then is denied. There is no other effort at making any objection on the demand so raised or that a wrong person is being proceeded against by the Finance Company. The letter concludes in following words: "I therefore request to grant some time for arranging the necessary balanced loan amount to me. I shall be highly obliged if the above proposal is accepted by your concerned officers in this matter". Besides the above prayer, in the previous paragraph of the said letter, a request for grant of 3 to 6 months time for payment of the Finance Company's loan was also made.
6. Stand of the Appellant counsel therefore is that in absence of any application as such having been filed under Section 13(3A) of the SARFESI Act or even if the Authorised Officer treated the communication dated 22.09.2016 to be one under Section 13(3A), there was nothing to be

decided or adjudicated so far as prayer for grant of a period of 3 to 6 months for repayment was concerned. The Finance Company was indulgent enough and in fact it allowed almost a year time to the borrower to settle the outstanding dues but instead of doing so, he started rounds of litigation on the spacious plea that a serious right guaranteed upon him within the framework of the SARFESI Act had been violated.

7. The stand of the borrower before this Court is that there never was lack of *bona fide* or desire to pay back the borrowed amount or the demand of the Finance Company, however, since they initiated proceedings under Section 13(2) and then under Section 14 of the SARFESI Act, their two properties got attached, which prevented them from even alienating them to satisfy the NPA account.
8. The question which arises for consideration in this appeal is whether the view so taken by the learned Single Judge based on the ratio of the decision of the Hon'ble Apex Court has any application to the facts of the present case and whether there has been any serious violation committed by the Finance Company as mandated under the SARFESI Act, specially under Section 13(3A) ?
9. We, having gone through the communication dated 22.09.2016 of the borrower and having culled out the essence thereof, we did not feel that the Finance Company had committed any breach of the mandatory provision, much less of Section 13(3A) of the SARFESI Act.
10. The occasion for the same would have arisen provided the said communication raised any issue either on the borrowing or the demand based on some erroneous calculations *etc.* or the obligation to pay back under any legal protection which may have been available to the borrower. The said communication, even if it is given the status of an application

under Section 13 of the SARFESI Act, then since the borrowing had been accepted by the borrower and there was no objection as such to the demand under Section 13(2). Even we accept the submissions made by the learned counsel for the respondents that letter was written on 22.9.2016 in which there was no objection with respect to liability for payment of outstanding loan dues except for the fact that he requested for 3 to 6 months time to make final repayment of the loan amount. Neither any specific mode to liquidate the outstanding loan amount nor any specific details with respect to the mode of final payment was proposed. It could not be lost sight of the fact that the proceeding before the District Magistrate was initiated only in March, 2017 i.e. almost after more than five months. It is also not the case that further proceedings took place immediately after the notice period. As there was no objection with regard to the liability of outstanding of loan amount, the only thing which remains to be seen is whether the opportunity as requested by the borrower was granted to him or not. This is what the intent and object of the provisions of Section 13 (3A) under the scheme of the SARFESI Act. The said letter dated 22.9.2016 was replied by the Bank on 27.9.2016, which was not denied, but objected that it was not the compliance of the provisions of Section 13 (3A) of the SARFESI Act.

11. The DRAT had categorically dealt with the objection in detail, which reads as under:-

“16. Firstly, the letter dated 22.09.2016 written by the borrowers reveals that no reference of demand notice dated 09.09.2016 was made in this letter nor any objection was raised towards the outstanding or any non-disbursement of loan and no request was made for re-

schedulement of loan or part payment thereof. Thus, the said letter cannot be said to be the representation/objection submitted by the borrowers under the scheme of the Act, thus, non-compliance of the such letter may be excused in view of the para no.27 of the referred judgment.

17. Secondly, the above letter was replied by the Bank on 27.09.2016. In this letter, the borrowers while referring the loan account, have demonstrated the circumstances due to which the loan could not be repaid in time, certain apprehensions that the officer may sale both the properties, whereas the sale of one property may serve the purpose and further that he is trying to sell the property at his own, which may take 3 to 6 months time. Thus, it is obvious that no specific objection was raised towards the demand notice issued by the Bank and only some time was sought. In reply to this letter, the Bank has categorically mentioned that it had taken notice of the request and assured that due process of law will be adhered to. Thus, the request of the borrower was considered and no other reason was expected to be assigned for rejection or acceptance of the said letter. Hence, it is proved that the letter dated 22.09.2016 was considered and reply was communicated to the borrowers in time. Thus, a substantial compliance of the section 13 (3A) of the SARFAESI Act has been made by the Bank.

18.Thirdly, after reply on 27.09.2016, the Bank has not proceeded further immediately for recovery of amount. The actual possession of the properties was taken after about one year and auction of the one of the properties was held in the month of April, 2018. Thus, sufficient time was given to the borrowers to repay the loan, but he has failed to make the payment and even no payment was made in compliance of the order of this Tribunal for payment of Rs. 2.00 crores, while getting interim relief.

These facts are sufficient to infer that the respondents have not availed the opportunity provided to them to liquidate the outstanding and were interested only delaying the proceedings of the Bank. Even otherwise, a period of 3 to 6 months as required by the borrowers vide letter dated 22.09.2016 has already been elapsed. So, no purpose would be served if a reasoned reply is sent now as directed by the Tribunal below. Thus, the impugned order is not sustainable.”

12. Considering the facts of present case in the light of the provisions of Section 13 (3-A) of the SARFAESI Act and the prayer made in so-called representation dated 22.9.2016, the respondents have only sought 3 to 6 months time for repayment of loan which was infact accepted by the appellant by taking action in furtherance of notice under Section 13 (2) of SARFAESI Act only after completion of more than five months from the date of representation.
13. From the above and considering the nature of representation, we are satisfied that so-called representation made by the respondents was replied and after almost passing of the period sought by the respondents, the appellant bank proceeded further. We are of the view that there was a compliance of the provisions of Section 13 (3A) of the SARFESI Act when the appellant replied the representation dated 22.9.2016 (as said to be representation under Section 13 (3A) of the SARFAESI Act) by its letter dated 27.9.2016. Further, it appears that the appellant waited for more than five months from the date of representation looking to the time sought by the respondents for repayment of loan amount i.e. 3 to 6 months, before initiating further proceeding under the SARFAESI Act, but they failed to make any effort or to take steps even after lapse of time as sought by them.

- 14.** In view of the above discussion, in our considered opinion, the learned Single Judge has committed serious error by interfering with the order of the DRAT, Allahabad.
- 15.** The appeal stands allowed. The impugned order dated 18.09.2018 stands quashed. The parties are free to proceed in accordance with law.
- 16.** Despite the above order, if the borrower still produces a purchaser for the property in question which can beget a fair price to settle the dues of the Finance Company, the Finance Company will be obliged to consider the same in a fair and objective manner.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE