IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.05.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.14182 of 2019
and W.M.P.14236 of 2019

M/s.Laxmi Prasanna Cold Storage Private Limited
Rep by its Director Mr.C.V.NarasimhaRayal
Registered and Corporate Office
At Flat No.3, Vigneshwar Apartments
1st Floor, New No.9, Periyar Road
T.Nagar, Chennai - 600 017.

Branch Office at
No.22-11-88/2, Thunuguntla Vari Street
KVR Complex
Lalaper, Guntur. ... Petitioner

Versus

1. The Authorised Officer
   Edelweiss Asset Reconstruction Company Ltd.,
   a company incorporated under the company Act 1956
   and registered as an Asset Reconstruction Company
   pursuant to section 3 of SARFAESI having its
   Registered Office at Edelweiss House, Off CST Road,
   Kollna, Mumbai - 400 098.

2. The Chief Judicial Magistrate Cum
   Principal Assistant Sessions Judge
   Guntur, Andra Pradesh.

3. The Registrar
   Debts Recovery Tribunal-II
   4th Floor Dewa Towers
   770-A, Anna Salai
   Chennai - 600 002. ..Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the impugned order, dated 26.04.2019 made in SA No.159 of 2019 passed by the 3rd respondent and quash the same in so far as the payment condition is concerned.

For Petitioner : Mr.R.Roshan

O R D E R

(Order of the Court was made by SUBRAMONIUM PRASAD, J.,)

The instant Writ Petition is directed against the order dated 26.04.2019 passed by the Debts Recovery Tribunal-II, Chennai in SA.No.159 of 2019. The Debts Recovery Tribunal-II, Chennai, by its order dated 22.05.2017 directed the petitioner to deposit 50% of its amount due as a condition precedent for passing of the order of Status-quo.

2. The petitioner had availed credit facilities from the UCO Bank and the petitioner was not regular in repaying the dues. O.A.No.179 of 2013 was filed by the UCO Bank under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, for recovery of total amount of Rs.29,54,69,114/- towards OD, FPB and PCL (Rs.11,37,38,326/-, towards Over Draft facility and Foreign Purchase Bill and Rs.18,17,30,788/- found of Packing Credit Limit) with further interest @ 19% per annum and 16% per annum respectively. Claim for interest was also made from the date of OA till the date of realization. The Debts Recovery Tribunal-II, Chennai by its order dated 22.05.2017 allowed the said application and held that the petitioner herein was liable to pay Rs.29,54,69,114/-. It is pertinent to mention that the UCO Bank has assigned its debts to the first respondent.

3. The first respondent issued a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called as "the SARFAESI Act") calling upon the petitioner to pay the amount of Rs.46,03,35,567/-, failing which it was stated that the properties which had been mortgaged as security would be attached. The first respondent thereafter issued a possession notice under Section 13(4) of the SARFAESI Act and the property was attached.

4. Thereafter, an application under Section 14 of the SARFAESI Act was preferred before the learned Chief Judicial Magistrate-Cum-Principal Assistant Sessions Judge, Guntur, for taking possession of the property described hereunder:-

> "All that piece and parcel of the extent of Ac 1-23 of land with Cold Storage building and machinery

comprised in D.No.284/A and 284/B of Ankireddypalem Village, Lalpuram Gram Panchayat hamlet of Ankireddypalem within the jurisdiction of Nallpadu Sub Registration District, Guntur Registration District, Andhra Pradesh owned by Laxmi Prasanna Cold Storage Private Limited bounded on the
North: Property belonging to C.V.Narasmiha Rayal 45-45 links
South: Land belongs to Mamillapalli Surthi, Akula Sambasiva Rao 294-32 links
East: Property belongs to C.V.Rarasimha Rayal 448-48 links
West: Land belongs to Mamillapalli Krishna Kumara 364-63 links"

5. The learned Chief Judicial Magistrate-Cum-Principal Assistant Sessions Judge, Guntur, has passed an order dated 08.02.2019 for taking possession of the said property. The Advocate Commissioner who has been appointed for taking possession of the property mentioned supra had given intimation notice to the petitioner. On receipt of the notice, the petitioner herein filed a Securitisation Application before the DRT-II, Chennai. The DRT-II, Chennai has passed the impugned order directing the petitioner to pay 50% of the due amount as a condition for Status Quo.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. The learned counsel for the petitioner states that the petitioner is running a cold storage and stored produce of farmers. He states that the first respondent itself had permitted the petitioner to operate the cold storage. After permitting the petitioner to operate the cold storage, the first respondent ought not to have initiated proceedings under Section 14 of the SARFAESI Act to take possession of the cold storage. The petitioner further submits that the respondents are guilty of approbation and reprobation and the first respondent-Company cannot be permitted to go back on its stand.

8. Section 17 of the SARFAESI Act laid the procedure for filing an affidavit by a borrower to challenge the possession notice under Section 13(4) of the SARFAESI Act. Section 17 of the SARFAESI Act reads as follows:

> "17. Right to appeal
>
> (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed

to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation: For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as

expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

9. The petitioner's remedy against the order passed by the Tribunal under Section 17 of the SARFAESI Act is very much available by filing an appeal before the Appellate Tribunal as provided under Section 18 of the SARFAESI Act. It is pertinent to note that Section 18(1) mandates that an appeal can be entertained only if the borrower deposits 50% of the debt amount due to him, before the Tribunal as claimed by the secured creditor. Instead of filing an appeal under Section 18 of the SARFAESI Act, the petitioner had chosen to approach this Court directly by filing the Writ Petition under Article 226 of the Constitution of India. Section 18 of the SARFAESI Act reads as follows:

"18. Appeal to Appellate Tribunal

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

10. It is also pertinent to mention that the petitioner has challenged the order of the learned Chief Judicial Magistrate-Cum-Principal Assistant Sessions Judge, Guntur, before the DRT-II, Chennai in SA.No.159 of 2019. The learned counsel for the petitioner has not stated as to how the order of the learned learned Chief Judicial Magistrate-Cum-Principal Assistant Sessions Judge, Guntur, appointing an Advocate Commissioner is wrong. The proceedings of the learned Chief Judicial Magistrate-Cum-Principal Assistant Sessions Judge, Guntur, would show that he has followed the principles of natural justice and the Advocate Commissioner has issued notice to the petitioner. It is well settled that the remedy of the petitioner lies in filing an appeal before the DRAT by depositing 50% of the amount due as provided under Section 18(1) of the SARFAESI Act. It is however open to the DRAT to reduce the amount to 25% for the reasons recorded in writing. The petitioner cannot get over the provisions under Section 18 of the SARFAESI Act, mandating pre-deposit, by filing the instant writ petition by challenging the order of the DRT-II, Chennai, which directs the petitioner to deposit 50% of the amount due to test his bonafide without availing the statutory remedy. The petitioner has not challenged the order of the DRT-II, Chennai, under which the petitioner is liable to be pay Rs.29,54,69,114/-, to the first respondent. Since the amount to be paid by the petitioner has not been challenged, it has attained finality. The petitioner has to pay back the amount which is liable to pay for the credit facilities availed by it from the Bank.

11. In view of the fact that there is an alternative remedy prescribed under the statute, this Court is not inclined to

interfere with the impugned order by invoking extraordinary jurisdiction under Article 226 of the Constitution of India. Accordingly, the Writ Petition stands dismissed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jer / pvs

To

1. The Authorised Officer
Edelweiss Asset Reconstruction Company Ltd.,
a company incorporated under the company Act 1956
and registered as an Asset Reconstruction Company
pursuant to section 3 of SARFAESI having its
Registered Office at Edelweiss House, Off CST Road,
Kolkata, Mumbai - 400 098.

2. The Chief Judicial Magistrate Cum
Principal Assistant Sessions Judge
Guntur, Andra Pradesh.

3. The Registrar
Debts Recovery Tribunal-II
4th Floor Dewa Towers
770-A, Anna Salai
Chennai - 600 002.

+1cc to M/s.Ananda Gomathy, Advocate Sr.43393

W.P.No.14182 of 2019
and W.M.P.14236 of 2019

vp[co]
srg 01/08/2019