IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.01.2020	Pronounced on: 03.02.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

Application Nos.8502, 8504, 8506 & 8508 of 2019
in C.S.No.950 of 2017

1. Mr.K.Bharat,
New No.20 (Old No.129),
Chambers Road,
Nandanam, Chennai – 600 035. ... Applicant/4th Defendant in A.No.8502 of 2019

2. Mr.K.Raghu Rama Krishna Raju,
New No.20 (Old No.129),
Chambers Road,
Nandanam, Chennai – 600 035. ... Applicant/3rd Defendant in A.No.8504 of 2019

3. M/s.Ind Barath Power Infra Limited,
New No.20 (Old No.129),
Chambers Road,
Nandanam, Chennai – 600 035. ... Applicant/2nd Defendant in A.No.8506 of 2019

4. M/s.Sriba Seabase Private Limited,
New No.20 (Old No.129),
Chambers Road,
Nandanam, Chennai – 600 035. ... Applicant/5th Defendant in A.No.8508 of 2019

/versus/

A.No.8502 of 2019

1. M/s.IL and FS Financial Services Limited,
No.498, Karumuttu Centre,
3rd Floor, South Wing, Anna Salai,
Nandanam, Chennai – 600 035. ... 1st Respondent/Plaintiff

2. M/s.Ind Barath Thermal Power Limited,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 2nd Respondent/2nd Defendant

3. M/s.Ind Barath Thermal Infra Limited,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 3rd Respondent/3rd Defendant

4. Mr.K.Raghu Rama Krishna Raju,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 4th Respondent/3rd Defendant

5. M/s.Sriba Seabase Private Limited,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 5th Respondent/5th Defendant

6. M/s.Tamil Nadu Generation and Distribution Corporation Limited,
10th Floor, NKPRR Maligai,
No.144, Anna Salai,
Chennai – 600 002. ... 6th Respondent/6th Defendant

A.No.8504 of 2019

1. M/s.IL and FS Financial Services Limited,
No.498, Karumuttu Centre,
3rd Floor, South Wing, Anna Salai,
Nandanam, Chennai – 600 035. ... 1st Respondent/Plaintiff

2. M/s.Ind Barath Thermal Power Limited,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 2nd Respondent/2nd Defendant

3. M/s.Ind Barath Thermal Infra Limited,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 3rd Respondent/3rd Defendant

4. Mr.K.Bharat
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 4th Respondent/3rd Defendant

5. M/s.Sriba Seabase Private Limited,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 5th Respondent/5th Defendant

6. M/s.Tamil Nadu Generation and Distribution Corporation Limited,
10th Floor, NKPRR Maligai,
No.144, Anna Salai,
Chennai – 600 002. ... 6th Respondent/6th Defendant

A.No.8506 of 2019

1. M/s.IL and FS Financial Services Limited,
No.498, Karumuttu Centre,
3rd Floor, South Wing, Anna Salai,
Nandanam, Chennai – 600 035. ... 1st Respondent/Plaintiff

2. M/s.Ind Barath Thermal Power Limited,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 2nd Respondent/ 2nd Defendant

3. Mr.K.Raghu Rama Krishna Raju
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 3rd Respondent/3rd Defendant

4. Mr.K.Bharat
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 4th Respondent/3rd Defendant

5. M/s.Sriba Seabase Private Limited,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 5th Respondent/5th Defendant

6. M/s.Tamil Nadu Generation and Distribution Corporation Limited,
10th Floor, NKPRR Maligai,
No.144, Anna Salai,
Chennai – 600 002. ... 6th Respondent/6th Defendant

A.No.8508 of 2019

1. M/s.IL and FS Financial Services Limited,
No.498, Karumuttu Centre,
3rd Floor, South Wing, Anna Salai,
Nandanam, Chennai – 600 035. ... 1st Respondent/Plaintiff

2. M/s.Ind Barath Thermal Power Limited,
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 2nd Respondent/ 2nd Defendant

3. M/s.Ind Barath Power Infra Limited,
New No.20 (Old No.129),
Chambers Road,
Nandam, Chennai – 600 035. ... 3rd Respondent/3rd Defendant

4. Mr.K.Raghu Rama Krishna Raju
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 4th Respondent/3rd Defendant

5. Mr.K.Bharat
New No.20 (Old No.129),
Nandanam, Chennai – 600 035. ... 5th Respondent/5th Defendant

6. M/s.Tamil Nadu Generation and Distribution Corporation Limited,
10th Floor, NKPRR Maligai,
No.144, Anna Salai,
Chennai – 600 002. ... 6th Respondent/6th Defendant

Prayer in Application No.8502 of 2019:-

Judge's summons under Order XIV Rule 8 of Original Side Rules read with order VII Rule 11 of the Code of Civil Procedure Code, 1908 read with Section 151 of C.P.C

(i). To reject the plaint in C.S.No.950 of 2017 under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

Prayer in Application No.8504 of 2019:-

Judge's summons under Order XIV Rule 8 of Original Side Rules read with order VII Rule 11 of the Code of Civil Procedure Code, 1908 read with Section 151 of C.P.C.

(i). To reject the plaint in C.S.No.950 of 2017 under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

Prayer in Application No.8506 of 2019:-

Judge's summons under Order XIV Rule 8 of Original Side Rules read with order VII Rule 11 of the Code of Civil Procedure Code, 1908 read with Section 151 of C.P.C.

(i). To reject the plaint in C.S.No.950 of 2017 under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

Prayer in Application No.8508 of 2019:-

Judge's summons under Order XIV Rule 8 of Original Side Rules read with order VII Rule 11 of the Code of Civil Procedure Code, 1908 read with Section 151 of C.P.C.

(i). To reject the plaint in C.S.No.950 of 2017 under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

For Applicant in all cases	: Mr.N.L.Rajah, Senior Counsel for Mr.C.Arun Kumar.
For R1 in all cases	: Mr.Menon

COMMON ORDER

These four Applications were taken out by the defendants 2 to 5, to reject the plaint filed for recovery of money by the Non-Banking Finance Institution.

2. The plaintiff is a Non-Banking Finance Company. The borrower, 1st defendant is a company incorporated under the Companies Act. It involved in the business of generating electricity through its Thermal Power Plant using coal. The 2nd defendant is an associate Group of Company of the 1st defendant Company. The 3rd and 4th Defendants are father and son. They are the Directors/promoters of the 1st and 2nd defendant Company. The

5th defendant company incorporated under the Indian Companies Act and the 6th defendant is the purchaser of power from the 1st defendant.

3. According to the plaint, in and around January 2017, the 1st defendant requested the plaintiff to extent financial assistance to a tune of Rs.100 crores. It was represented by the 1st defendant that, about Rs.100.35 crores is due and payable by the 6th defendant towards electricity supplied but the delay in payment by the 6th defendant for over a year has affected the 1st defendant liquidity. Further, it has availed of financial facilities from a consortium of banks and financial institutions led by Punjab National Bank, and all its assets were charged as security for such facilities. Hence, the 1st defendant proposed to obtain the consent of the consortium of banks to permit the receivables/identified invoices raised by the 1st defendant on the 6th defendant payable exclusively in favour of the plaintiff and assured that, all payments from the 6th defendant towards the said invoices would be directly remitted by the 6th defendant to the plaintiff.

4. The plaintiff agreed to extend financial assistance to the 1st defendant and issued an offer letter on 25.01.2017 agreeing to extend financial assistance by way of term loan upto Rs.100 crores, as per the terms and conditions set out in the annexure to the offer letter. The 1st defendant accepted the offer through Mr.D.Madhusudhana Reddy, the person authorised by the Board of Directors signed the copy of the plaintiff's letter of offer and returned on 06.02.2017.

5. As a condition precedent for disbursement, the 1st defendant was required to furnish a confirmation from the 6th defendant to make payment against the identified invoices, directly to the plaintiff and provide a No Objection Certificate from the 1st defendant's lead bank.

6. On 06.02.2017, the 1st defendant executed a Deed of Hypothecation of receivables in favour of the plaintiff from the 6th defendant. The deed of Hypothecation was registered with the Registrar of Companies, Hyderabad. On the same day, the defendants 2 to 4 executed the Letter of Guarantee in favour of the plaintiff, guaranteeing due payment/repayment of all amounts due and payable by the 1st defendant to the plaintiff in respect of the said facility.

7. On 06.02.2017, following three pledge agreements were executed in favour of the plaintiff as security for repayment of the above facility and other facilities extended to the 1st defendant entity. The defendants 2, 3 and 5 have executed a power of attorney on 06.02.2017 in favour of the plaintiff to deal with

those pledged shares and same duly registered.

Pledge agreements

1) Between Plaintiff and 1st defendant, 2nd defendant, M/s.Ind Barath Power Gencom Ltd (Power Gencom) M/s.Ind Barath Energy (Utkal) Ltd, M/s.Arkay Energy (Rameshwaram) Ltd, (Arkay Energy) (all associate companies of the 1st defendant) in terms of which 102,701,538 equity shares of face value Rs 10/- each held by the 2nd defendant in Power GenCom.

2) Between the plaintiff and 1st defendant, 2nd defendant, Power GenCom, Ind Baath Utkal and ARkay Energy, in which 2,299,500 equity shares of face value Rs.10/- each held by the 2nd defendant in Arkay Energy, to the plaintiff.

3) Between plaintiff and 1st defendant, 3rd defendant, 5th defendants, M/s.Bharat Waterfront Private Ltd, Power GenCom, Ind Barath Utkal and Arkay Energy, in terms of which 20,825,244 equity shares of face value Rs.10/- each held by the 5th defendant in the 2nd defendant company and 4,210,096 equity shares of face value of Rs.10/- each held by the 3rd defendant in the 2nd defendant company were pledged in favour of the plaintiff.

8. The details of the pledge shares are morefully set out in the schedule 'B', 'C' and 'D' annexed to the plaint.

On 27.03.2017, the 1st defendant wrote to the 6th defendant pointing out that the 6th defendant's delay in payment of bills due to the 1st Defendant had the potential to render the 1st defendant's accounts with its Lenders' Consortium as a Non Performing Asset with serious adverse consequence to the 1st Defendant. The 1st Defendant informed the 6th Defendant that the plaintiff had agreed to provide funding against dues to the 1st Defendant on the condition that the payment in respect of the bills upto Rs.100.35 Crores would be made directly by the 6th defendant to the plaintiff and that the leader of the consortium had also consented to this arrangement. A copy of Punjab National Bank's letter dated 20.03.2017 was also enclosed. The 1st Defendant irrevocably authorized the 6th Defendant to make payments of the bills due and payable directly to the plaintiff, for an amount of Rs.100.35 crores and also requested that the concerned office of the Superintending Engineer be instructed to take this mandate on record and act accordingly when payments were released.

9. On 31.03.2017, the 6th defendant replied to the 1st defendant's letter dated 27.03.2017 confirming that it has approved the proposal of the 1st defendant for payment of dues (September 2015 to May 2016) of Rs.100.35 Crores to the plaintiff, along with other Captive Power Plant (CPP) generators as and when fund allotment was made for payment. The plaintiff states that all the invoices/hypothecated receivables, had been passed for payment by the 6th defendant and was only awaiting allotment of funds for disbursement to the 1st defendant.

10. On 31.03.2017, at the request of the 1st defendant to disburse the amount of Rs.100 crores to them, the plaintiff disbursed Rs.62,00,00,000/- crores to the 1st defendant into the plaintiff's account with Punjab National Bank and Rs.31,19,45,206/- in the plaintiff's account with Axis Bank, after deducting upfront half-yearly interest payable as per the loan agreement. Out of Rs.50.11 crores released for payment against invoice of September 2015, the 6th defendant on 13.04.2017 paid only Rs.5,74,61,518/- to the plaintiff towards part receivables hypothecated in favour of the plaintiff and remaining amount was diverted to Power Finance Corporation (Rs.25 crores) and M/s.Arkay Energy (Rameshwaram) Ltd company, (Rs.19.36 crores). The said diversion of the money being in contravention of the 6th respondent letter dated 31.03.2017, the plaintiff notified the 6th respondent through letter dated 19.06.2017 about the breach and requested to remit all future payments that is due to the 1st defendant, directly to the plaintiff.

11. Meanwhile, the plaintiff came to know that for the default in payment by the 1st defendant to its supplier of coal to the Thermal Power Plant, suits were filed and restrain order was obtained prohibiting the 6th defendant from disbursing any money payable to the 1st defendant to the extend of their suits claim. Though the plaintiff have a priority of charge over the money payable by the 6th defendant to the first defendant, the amounts of

the invoices discounted by the 1st defendant with the plaintiff were now sought to be diverted/paid to the other creditors. Hence in the suits (C.S.Nos.189/2017, 302/2017 and 402/2017) the plaintiff has filed intervention applications. Pending applications, the 6th defendant in violation of the 1st defendant's instruction and its own undertaking and in violation of the prohibitory order has released a payment of Rs 47.25 crores to M/s.Adani Enterprises Limited, which was only a supplier and an unsecured creditor.

12. The Plaintiff, after issuance of notice of default and receipt of the reply to revoke the recall of the request for 1st defendant and having realised that the security/receivables hypothecated to the plaintiff (as set out in Schedule A to the plaint) had been disbursed on 11.07.2017 and 01.08.2017, by the 6th defendant to other creditors of the 1st defendant, in complete violation of and contrary to its letter dated 31.03.2017, the present suit is filed for the following relief:

a). For a sum of Rs.102,00,98,362/- (Rupees One Hundred and Two crores Ninety Eight Thousand Three Hundred and Sixty Two only) together with interest at 17% per annum on Rs.94,25,38,482/- (Rupees Ninety Four Cores Twenty Five Lakhs Thirty Eight Thousand Four Hundred and Eighty Two only) from the date of the plaint till the date of recovered inter alia, by sale of the pledged shares set out in the schedules B to D;

b). For costs of the suit.

c). For such further or other relief as this Hon'ble court may deem fit and proper in the circumstances of the case.

13. This plaint is now sought to be rejected on the ground that, the instant suit is barred by law. According to the defendants 2 to 5, who are the applicants herein, the plaintiff has been notified as one of the Non-Banking Financial Companies (NBFC) by the Central Government vide notification in S.O. No. 2641 (E) dated 05.08.2016. By virtue of this notification, the provisions of SARFAESI Act, will apply in relation to the claims raised by the plaintiff. Therefore, the plaintiff has to pursue his remedy only in accordance with the provisions of the SARFAESI Act. Section 34 of the said Act, oust the jurisdiction of Civil Court. While there is express bar under statute to file civil suit, the plaint has to be rejected under Order VII Rule 11 of C.P.C.

14. In response to the applications to reject the plaint, the plaintiff has filed common counter with the below averments.

The ouster of Civil Court jurisdiction, under section 34 of the SARFAESI Act is totally incorrect. Section 13 (1) of the said act, enables the secured creditor to enforce the security interest without the intervention of the Court or Tribunal notwithstanding anything contained in Section 69 or 69-A of the Transfer of Property Act. Therefore, the plaintiff has the option to enforce the security interest created in its favour against the borrower namely the defendants 1 to 5. Further, it is contended by the plaintiff that, Section 31(b) of the Act, excludes the provision of SARFAESI Act in respect of pledge of shares. In this case, the 1st defendants along with defendants 2 to 5 have pledged shares set out in Schedule B to D of the plaint and the relief sought is to recovery of the money payable through sale of those pledged shares. Hence, the applications to reject the plaint has to be dismissed.

15. The point under consideration is whether Section 34 of the SARFAESI Act, bar the present suit?

Soon after SARFAESI Act came into force, its constitutional validity was questioned. Particularly vires of Sections 13, 15 and 34 of the said act were tested in ***Mardia Chemical Limited and others -vs- Union of India and others (AIR 2004 SC 2371= 2004 (4) SCC 311)***. In this judgment the Hon'ble Supreme Court, while upholding the validity of the provisions of the Act except sub-section (2) Section 17, observed as under:-

> "*80. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the*

measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows :-

1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section

(4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition at it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."

16. In ***Jagdish Singh Vs. Heeralal and another*** reported in ***(AIR 2013 SC371)***, the Hon'ble Supreme Court, while considering

the scope of Section 34 of the SARFAESI Act, extracting the observation of the Supreme court made in *Mardia Chemicals case* cited supra and proceeded to say,

> *"Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrowers debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the measures provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any measures taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court*

in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."

17. Thus, the law as interpreted by the Apex Court in *Mardia Chemicals* cited supra and followed in *Jagdish Singh case cited supra,* one can safely concluded that the Civil Court jurisdiction is not totally barred to entertain dispute between a notified Non-Financial Banking Company and the creditor. The bar under Section 34 of the Act will get attracted when the secured creditor resort to any one of the measures envisaged under Sub-Section 4 of Section 13 to proceed on the secured assets to realise the debt. In such circumstances, the person aggrieved can exercise his statutory right of appeal to DRT under Section 17. In other words, if the only option for the creditor for recovery of debt is to invoke Section 13 (enforcement of security interest) and if the secured creditor does not proceed against the borrower by resorting to any one of the measures envisaged under section 13 (4) of the Act, but venture to file a Civil Suit, such a suit is barred under Section 34 of the Act.

18. In general, Section 9 of C.P.C., confers jurisdiction with the Civil Court to try all suits of Civil in nature, excepting suits of which their cognizance is either expressly or impliedly barred. Section 34 of SARFAESI Act, is the provision which oust the Civil Court jurisdiction in respect of the matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under the SARFAESI Act to determine. Section 31 of the SARFAESI Act, enlist matters which will not fall within the scope of the said Act. Therefore, Section 34 has to be read in conjunction with Section 31 to ascertain whether Order VII Rule 11 (d) of C.P.C., which envisages rejection of plaint on the ground of barred by any law.

19. In SARFAESI Act, Section 13 provides procedure for Enforcement of secured interest. Section 13(4) of the Act, gives four options to a secured creditor, the measures to recover a secured debts by the borrower. Before resorting to any one of the four measures mentioned the secured creditor has to cause a statutory notice under section 13 (2) of the Act, calling upon the borrower to discharge in full his liabilities within 60 days from the date of notice.

20. To understand, whether in this case the plaintiff has laid the suit to recover a secured debts and resorted to any one of the four measures contemplated under section 13(4), it is necessary to know what the expressions 'secured creditor', 'secured asset', 'secured debt' and 'secured interest' mean and defined and thereafter, the provisions which has employed these expressions.

> ***(zd) "secured creditor"*** *means:-*
>
> *(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);*
>
> *(ii) debenture trustee appointed by any bank or financial institution; or*
>
> *(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or*
>
> *(iv) debenture trustee registered with the Board appointed by any company for secured debt securities; or*
>
> *(v) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created*

by any borrower for due repayment of any financial assistance.

(ze) "secured debt" *means a debt which is secured by any security interest;*

(zf) "security interest" *means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes:-*

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset

Section 13: Enforcement of security

interest.-

(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section.

Section 31: Provisions of this Act not to apply in certain cases:-

The provisions of this Act shall not apply to—

(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872;

(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934;

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;

(f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930;

(g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act)]or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908;

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j) any case in which the amount due is

less than twenty per cent. of the principal *amount and interest thereon.*

Section 34: ***Civil court not to have jurisdiction:-***

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

21. The plaintiff is a secured creditor and it is not a fact in dispute. The loan advanced by the plaintiff to the 1st defendant also undoubtedly a secured debt. However, the statute has defined the expression 'secured debt' as debt which is secured by any security interest. Under this Act, the expression 'security interest' has a restricted meaning. Right, title or interest of any kind other than those specified in Section 31 alone are to be considered as security interest.

22. As pointed under Section 31(b), a pledge of movables within the meaning of Section 172 of the Indian Contract Act, is beyond the purview of SARFAESI Act.

23. Reading of Sections 13 (4), 31(b), 34 along with the meaning of the relevant expressions employed in the Act, we find pledge of shares is specifically excluded from the scope of the Act under section 31(b). Those transactions excluded under section 31 does not fall within the meaning of security interest. What not fall under the meaning of 'security interest' will not fall within the definition of 'secured debt' for the purpose of this Act.

24. To reject the plaint under Order VII Rule 11 (d), the suit should appear from the statement in the plaint to be barred by any law. From the plaint averments which has been extracted above in nutshell, this Court finds that the plaintiff has resorted to sell the shares of the 1st defendant pledged by the defendants to recover the debts. The relief sought is not under any of the four measures mentioned under section 13(4) of the Act.

25. The suit laid for recovery of money by selling the shares pledged fall out of the scope and ambit of the SARFAESI Act by virtue of section 31(b). The fact being so, Section 34 of the Act, has no application to oust the Civil Court jurisdiction. Mere fact that, the suit laid by a Non-Banking Finance Company against the borrower for the debt secured is not sufficient to

determine the jurisdiction. Whether the said secured debt also satisfy the meaning of 'security interest' as defined under the Act is the test. The statements made in the plaint and the prayer clearly spell out that the shares pledge has to be sold for recover the money.

26. In ***Dhulabhai Vs. State of Madhya Pradesh*** reported in ***(AIR 1969 SC 78)***, nearly about a half a century ago, the Hon'ble Supreme Court has laid, when the Civil Court jurisdiction get ousted. The Principle laid in the said judgment is reproduced below:-

> *"(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*
>
> *(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.*

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3)...............
(4)..............

27. The exclusion of Civil Court jurisdiction under Section 3(A) is not a total exclusion.

28. The SARFAESI Act excludes certain transaction from its application when the bar Civil Court jurisdiction is subject to exclusions mentioned in Section 31 of the Act. The plaintiff cannot resort to any of the measures mentioned in Section 13 (4) to enforce the 'secured interest' based on the shares pledged, since section 31 (b) will stare at him. Therefore, Civil Court is the forum for the plaintiff, if he opt to recover the debt by selling the pledged shares. Hence, the plaintiff has rightly approached this Court. This Court finds no merit in the applications filed to reject the plaint.

29. It is disheartening to note that these applications are filed after two years, from the date of instituting the suit and after few rounds of fight in the interlocutory applications. Further, in Application No.8277 of 2017 filed under Order XII Rule 6 of C.P.C., the 1st defendant has admitted the liability and consent decree has been passed on 05.01.2018. Now these Applications are filed by the defendants 2 to 5.

30. This Court see a dubious design in the conduct of the defendants 1 to 5, to delay the lawful process by filing these applications devoid of merits. Hence, the ***Applications are dismissed*** with cost of Rs.2,50,000/- lakhs, on each petitioners/defendants 2 to 5 payable to the plaintiff. The cost to be paid within 30 days from today.

Sd./-G.J.J
03.02.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 12/02/2020 COURT OFFICER(O.S.)