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WPO 841 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

THE FABWORTH PROMOTERS PRIVATE LIMITED AND ORS.
VERSUS
RESERVE BANK OF INDIA AND ORS.

BEFORE:
THE HON'BLE JUSTICE SHIVAKANT PRASAD
Date: 27th September, 2021.

APPEARANCE:
Mr. P. Chidambaram, Sr. Adv.
Mr. Ratnanko Banerji, Sr. Adv.
Mr. Joy Saha, Sr. Adv.
Mr. Shatadru Chakraborty, Adv.
Mr. Pranay Goyal, Adv.
Mr. D. Shah, Adv.
Ms. Shivangi Thard, Adv.
..for the petitioners

Mr. Abhishek Banerjee, Adv.
Ms. Parna Roy Choudhury, Adv.
Ms. Payel Ghosh, Adv.
...for the respondent Bank

The Court:-The Petitioner No. 1, Fabworth Promoters Pvt. Ltd., a registered company, the Petitioner No. 2 a holding company of the Petitioner No. 1 and the Petitioner No. 3, a shareholder of the Petitioner No. 2 as well as one of the directors of Fabworth Promoters Pvt. Ltd., has approached this Court for issuance of the writ in the nature of mandamus for setting aside the impugned letter dated August 19, 2021

and so also the proceedings initiated by the Respondent No. 2, Punjab National Bank under The Securitization And Reconstruction Of Financial Assets And Enforcement of Security Interest Act, 2002 (hereafter referred to as SARFAESI Act, 2002) and for a direction to decide the petitioner's application for restructuring in terms of the Respondent No. 1's circular dated June 7, 2019 and further to act in terms of the understanding arrived at vide letters dated August 2, 2021 and August 13, 2021.

Brief facts of the case as put forth by the petitioners is that the Petitioner No. 1 had obtained credit facilities from the Respondent No. 2 bank but, despite the orders dated September 3, 2020 passed by the Hon'ble Supreme Court in a batch of petitions including W.P. (C) No. 1190 of 2020 filed by the petitioner's *inter alia* directing Respondent No. 1 and banks, including Respondent No. 2, not to classify any loans which was standard as on August 31, 2020 to be NPA until further orders, the account of the Petitioner No. 1 was declared as NPA on September 13, 2020.

It is submitted that a proposal for restructuring the account of the Petitioner No. 1 was pending consideration by the bank and while the proposal was being considered, the Petitioner No. 1 proposed an interim arrangement proposal which was accepted by the Respondent No. 2. Whilst the interim tagging arrangement was on going, the Respondent No. 2 issued a letter dated August 19, 2021 under Section

13(2) of the SARFAESI Act, 2002 calling upon Petitioner No.1 to repay the entire loan availed by it along with interest i.e. a sum of Rs.662,48,04,688.43/- within a period of 60 days from the date of the letter failing which the Respondent No. 2 shall take one or more measures under Section 13(4) of the said Act as it may deem fit.

As a matter of fact, Petitioner No. 1 addressed a letter inter alia submitting an Addendum containing a revised financial restructuring proposal to their restructuring application submitted vide its letter dated March 03, 2021 for restructuring of the Credit Facility and the Respondent No. 2 sent a letter dated August 13, 2021 accepting the interim tagging arrangement and in fact, clarified that the interim tagging arrangement was for a term of 6 months or till the date of implementation of the restructuring/resolution plan, whichever is earlier.

Being aggrieved by and dissatisfied with the failure and/or inaction on the part of the Respondent No.2 in restructuring the credit facilities of the Petitioner No.1 in terms of the mandatory rights of the petitioner's under the circular dated June 7, 2019 and August 6, 2020 and being further aggrieved by the proceedings initiated by the Respondent No. 2 under section 13(2) of the said Act while at the same time agreeing, inter alia by his letter dated September 6, 2021 to deduct a 10% from the earnings of the Petitioner No. 1 during the period of consideration of the restructuring package, the petitioners

have sought for interference of this Hon'ble Court in its Constitutional Writ Jurisdictional on the grounds stated in the writ petition.

At the outset, Mr. P. Chidambaram, learned Senior Counsel adverted my attention to annexure P-1 at page 54 which relates to prudential framework for resolution of stressed assets dated June 7, 2019 issued vide RBI/2018-19/203 and DBR No. BP.BC.45/21.04.048/2018-19 to submit that this framework has been formulated by the Reserve Bank of India, the respondent no. 1 herein for arriving at a resolution of stressed assets for the purpose of restructuring of the accounts.

In this context, my attention is invited to page no. 57 relating to repayment schedule in regard to term loan. Reserve Bank of India, by its Covid 19 Regulatory Package vide its letter dated March 27, 2020 RBI/2019-20/186 and DOR. No.BP.BC.47/21.04.048/2019-20 which provides for rescheduling of payment term loans and working capital facilities by issuing a statement of development and regulatory policies providing certain regulatory measures to mitigate the burden of debt service brought about by disruption on account of Covid 19 pandemic and to ensure the continuity of viable business and detailed instructions have been provided thereunder in respect of terms including housing finance companies lending institutions which are permitted to grant a moratorium of three months on payment of all installments falling due between March 1, 2020 and May 31, 2020.

Thus, it is pointed out by Mr. P. Chidambaram, learned Senior Counsel that the period of moratorium was provided till May 31, 2020. The payment reschedule for such loans and also the residual tenor will be shifted across the board by three months after the moratorium period and interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

The challenge in this writ application is three-fold. Firstly, that there was moratorium, so, it cannot be said that the petitioners were in default. Secondly, that the account of the petitioners was not declared as Non-Performing Asset as such there was no justification for the respondent no. 2, Bank to issue the said notice under Section 13(2) of the SARFAESI Act, 2002 declaring the account of the petitioners as a non-performing asset. Thirdly, that the Respondent No. 2 has no jurisdiction to issue such a notice under Section 13(2) of the SARFAESI Act when the proposal for restricting the account of the petitioner was in place for its consideration by the Respondent No. 2. Learned Senior Counsel adverts my attention to page no. 495 being the letter dated 13.8.2021 bearing reference no. PNB/FPPL/407/2021-22 and further to annexure P-28 at page 496 to show that notice dated August 19, 2021 was issued to the petitioners under Section 13(2) of SARFAESI Act, 2002 whereby in respect of account nos. – (1) 0573009300008571, (2) 057300IC20052158, (3) 057300IC20052167 and (4) 057300CF00000152 credit facilities have been availed by M/s.

Fabworth Promoters Pvt Ltd from LCB, Kolkata Branch (parent branch). Since the account is now classified as NPA w.e.f. 13.09.2020, the account has been shifted to Zonal SASTRA, Kolkata. Further notice dated 06.09.2021 under Reference No. PNB/FPPL/486/2021-22 was issued to the petitioners calling upon them to take note of the fact that the competent authority on 13.8.2021 had allowed 'Holding on Operations'/Tagging Arrangement' with 10% cut back for a total period of six months till the date of implementation of the restructuring/Resolution plan subject to certain terms and conditions as mentioned in the said letter dated 13.8.2021.

Thus, it is contended that when the proposal of the restructuring of the account under stressed asset was under consideration, there was no justification for the Respondent No. 2 to issue the said notice dated August 19, 2021 under section 13(2) of the said Act of 2002 declaring the petitioner's account as NPA which is in clear violation of the directives issued by the RBI, Respondent No. 1 and so also the directions and the guidelines as given by the Hon'ble Supreme Court in an unreported decision in Gajendra Sharma versus Union of India & Anr. passed in civil writ petition no. 825 of 2020 providing that the accounts which were not declared as NPA till 31.8.2020 shall not be declared as NPA until further orders.

To support the contention put forth on behalf of the petitioners reference to a decision in the case of *Central Bank Of India Vs.*

Ravindra & Ors. reported in (2002) 1 SCC 367 has been made adverting to observations in paragraph 55(5) and 56 of the said decision that “power conferred by Section 21 and 35A of the Banking Regulation Act, 1949 is coupled with duty to act. The Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having a statutory force in the interest of the public in general and preventing banking affairs from deterioration and prejudice as also to secure the property management of any banking company generally and further that R.B.I. directives have not only statutory flavour, in contravention thereof or in default in compliance therewith is punishable under Sub-Section (4) of Section 46 of Banking Regulation Act 1949. The Court can act on an assumption that transaction or dealings have taken place and accounts maintained by banks in conformity with RBI directives.” Thus, it is submitted that Respondent No. 2 acted in derogation of the directives so made by the R.B.I., Respondent No.1 and so also direction given by the Hon’ble Apex Court in the cited case inasmuch as the petitioner’s account was not declared NPA prior to the cut off date as provided by the Hon’ble Supreme Court.

Mr. P. Chidambaram, learned senior counsel appearing for the petitioner submits that the impugned notice under Section 13(2) of SARFAESI Act, 2002 is ex facie illegal without jurisdiction, non-est and

nullity in law and is required to be set aside. In view of the fact, on the premises that issuing of such notice viz. the declaration of petitioner no. 1's account as NPA is in flagrant violation of the orders passed by the Hon'ble Supreme Court of India and is not sustainable in law.

It is further submitted that in case of *Balvant N. Viswamitra Vs. Yadav Sadashiv* reported in (2004) 8 SCC 706, the Hon'ble Supreme Court has held that where an authority lacks of jurisdiction to issue an order then the same is *non-est* and *void ab initio*. The same has also been observed by the Hon'ble Apex Court in *Deepak Agro Foods Vs. State of Rajasthan & Ors.* reported in (2008) 7 SCC 748.

It is pointed out that classification of an account as 'non performing asset' is a primary requisite for issuance of notice under Section 13(2) of SARFAESI Act, and the Hon'ble Court in the case of *Gajendra Sharma Vs. Union of India & Ors.* as discussed above has passed interim order September 03, 2020 vide which it had directed Banks not to classify any account which was not NPA as on August 31, 2020 as NPA till further orders. Pertinently, the order dated September 03, 2020 stood vacated only upon the pronouncement of the judgment in the said matter on March 23, 2021. The Petitioner No. 1 and respondents were party to the said proceedings and the order applied to both the parties as declaration under Article 142 of the Constitution and *inter parties*.

The Petitioner No. 1's account was standard as on March 01, 2020. Between March 01, 2020 and August 31, 2020, the Petitioner No. 1 had availed the moratorium under the first interim relief package and the second interim relief package respectively. Furthermore, between September 03, 2020 and March 23, 2021 the Petitioner No. 1's account could not have been classified as NPA account due to interim order dated September 03, 2021. Lastly, in any event, between August 17, 2020 and July 27, 2021 the Petitioner No.1 has in aggregate paid a sum of Rs. 10.34 crores towards the credit facility. Additionally, since the Petitioner No.1 was affected by Covid-19 pandemic and consequent lockdowns, Petitioner No.1 had been regularly corresponding with Respondent No. 2 for restructuring of the credit facility and in fact, a resolution proposal as amended vide the addendum is pending consideration with Respondent No. 2. Therefore, there was no occasion for the Respondent No. 2 to have classified or to declare Petitioner No.1's account as NPA.

Section 2(1)(o) of the SARFAESI Act defines "non-performing asset" as an account of a borrower which has been classified by bank as sub-standard, doubtful or loss in accordance with the guidelines issued by Respondent No.1. Respondent No.1's Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated July 01, 2015 define a "Non-Performing Asset" is a loan/advance where inter alia interest and/or

installment of principal on a term loan remain overdue for a period of more than 90 days. However, Clause 4.2.6 of the Master Circular provide that where solitary or few credits are made before the balance sheet date then the same ought to be handled with care. Pertinently, such accounts ought to be classified as NPA only in case where there is inherent weakness. In genuine cases, banks ought to provide satisfactory evidence about the manner of regularization of the account to eliminate the doubt of performance. Relevant portion of the master Circular is extracted as under:-

*“4.2.6 Accounts regularised near about the balance sheet date
The asset classification of borrowal accounts where a solitary or a few credits are recorded before the balance sheet date should be handled with care and without scope for subjectivity. Where the account indicates inherent weakness on the basis of the data available the account should be deemed as a NPA. In other genuine cases, the banks must furnish satisfactory evidence to the Statutory Auditors/Inspecting Officers about the manner of regularisation of the account to eliminate doubts on their performing status.”*

The Petitioner No.1 had regularly been making payments/ servicing the debt to respondent no.2. In fact, Petitioner No.1 has paid an aggregate of Rs.11.84 crores to respondent no.2 between August 2020 and September 7, 2021. This is in addition to the fact that the Petitioners have regularly been corresponding with respondent no.2 for restructuring of the Credit Facility under the Final Covid Relief Package

and the Prudential Framework for regularization of their account and the same is pending consideration with Respondent No.2. Accordingly, the question of classification of Petitioner No.1's account as NPA does not even arise. Thus, Respondent No.2 could not have issued the Impugned Letter and the same ought to be set aside.

In the case of *Signal Apparels Pvt. Ltd. v. Canara Bank* [Reported at (2010) 5 CTC 337], the Hon'ble Madras High Court has inter alia held as under:-

"15. The decision of the secured creditor should not be arbitrary, since such decision would necessarily lead to drastic consequences, especially when the borrower has no right to question the notice under Section 13(2) except a right to make representation or objection. While considering an asset of a borrower to be declared as Non-Performing Asset, a secured creditor should act judicially supported by materials and there must be transparency in arriving at such decision. In that sense, the bank must strictly follow the directions or guidelines relating to the asset classification issued by the Reserve Bank of India from time to time. The Apex Court in the judgment rendered in Sardar Associates v. Punjab & Sind Bank, 2009 (2) DRTC 409 (SC), has held that the Reserve Bank of India is a statutory authority and it exercises supervisory powers in the matter of functioning of the scheduled Banks. The matter relating to supervision of scheduled banks is also governed by the R.B.I. Act and for the enforcement of the aforementioned purpose, it is entitled to issue guidelines from time to time. With the above observation, the Apex Court ultimately held that such guidelines issued by the Reserve Bank of India is binding on every banking Company. Hence, it is mandatory for the bank to strictly follow the guidelines or directions issued by the administering or regulatory authority of such bank or the Reserve bank, as the case may be and a breach of such directions or guidelines would invalidate the

classification itself and can render illegal the further steps towards securitisation or asset reconstruction.

16. To put it precisely, for invocation of provision of Section 13(2) of the Act, the declaration of an asset or account to be a Non-Performing Asset is a condition precedent. In the event such declaration is not in accordance with the R.B.I. guidelines and the account of a borrower is a performing account, Section 13(2) may not be pressed into service, as such account cannot be brought under Section 2(o) of the Act. Equally, going by the scheme of the Act, the discretion conferred on the bank to declare an asset to be a Non-Performing Asset is in order to tackle the issue of increase of Non-Performing Asset to high level. That is why, the legislature had left the discretion to the Bank while declaring a debt as a Non-Performing Asset, qualifying such Bank to follow the directions or guidelines issued by the Reserve Bank of India while classifying the assets to be sub-standard, doubtful or loss assets to be known as Non-Performing Assets. This discretion is on national policy and all that requires for the secured creditor is to exercise the discretion judicially. In the wake of the right of the right of the secured creditor to declare a debt as a Non-Performing Asset, to show the application of mind for such declaration, it may indicate the reasons thereof in the notice under Section 13(2) and the Section does not contemplate that in all case such reasons should be indicated in the notice. The application of mind could be culled out from the materials that were existed on the date of such declaration.”

The Respondent No.2 has never issued any letter/ correspondence to Petitioner No.1 inter alia intimating that its account has been classified as NPA or calling upon Petitioner No.1 to regularize its loan account. Thus, the Impugned Letter suffers from material irregularity and ought to be set aside. In this regard, the Hon’ble Jharkhand High Court has in the case of *M/s. Stan Commodities Pvt.*

Ltd. v. Punjab & Sind Bank [Reported at 2008 SCC OnLine Jhar 169]

inter alia held as under:-

“28. In view of the provisions of the guidelines of the RBI, the petitioner was entitled to be informed and any doubt or dispute was to be settled between the creditor and the borrower through any specific internal channel within one month from the date on which the account would have been classified as an NPA. Even if there was no internal channel to settle such dispute/doubt, the petitioner was entitled to be informed and to get an opportunity to explain or represent against the intended classification of his account as NPA.

29. The provision of the guidelines provide some specific internal channel for setting the doubt in asset classification is akin to the requirement of the principles of the natural justice, which according to the Supreme Court in Smt. Maneka Gandhi v. Union of India, (AIR 1978 SC 597), must be read and followed even if the provision is silent in that regard. The respondent being a Public Sector Bank are expected to follow the just, fair/prescribed procedure to meet the requirement of law and Article 14 of the Constitution of India.”

The Respondent No.2 failed to follow the mandatory procedure for declaration of an account as NPA under the Prudential Framework i.e. classification of an irregular account as SMA-0, SMA-1 and SMA-2 prior to classifying it as NPA. Thus, the action of the Respondent No.2 is *ex facie* bad in law.

Clause 9 of the Prudential Framework inter alia mandatorily require a lender to review the loan account upon default and borrower

in relation to resolution strategy upon occurrence of default. Relevant portion of Clause 9 of the Prudential Framework is extracted as under:-

“All lenders must put in place Board-approved policies for resolution of the stressed assets, including the timelines for resolution. Since default with any lender is a lagging indicator of financial stress faced by the borrower, it is expected that the lenders initiate the process of implementing a resolution plan (RP) even before a default. In any case, once a borrower is reported to be in default by any of the lenders mentioned at 3(a), 3(b) and 3(c), lenders shall undertake a prima facie review of the borrower account within thirty days from such default (“Review Period”). During this Review Period of thirty days, lenders may decide on the resolution strategy, including the nature of the RP, the approach for implementation of the RP, etc. The lenders may also choose to initiate legal proceedings for insolvency or recovery.”

Thus, by inviting my attention to the above cited decision, the learned counsel for the petitioners submits that the Respondent No. 2 issued impugned letter in an inconsiderate manner and without appreciation of material facts. It is an undisputed fact that the Petitioner No.1 had been servicing its debt regularly prior to pandemic situation due to Covid-19 and the fact ought to have been considered that the petitioner is professing in hospitality sector, one of the vast affected business sectors due to Covid-19 pandemic and the support from Banking Industries is now required more than ever rather than providing a long rope and assisting Petitioner No.1 in enduring this time Respondent No. 2 has issued a baseless and frivolous impugned letter.

As regards, efficacious alternative remedy available to the petitioner, it is submitted that the conduct of the Respondent No. 2 is *mala fide*. It is submitted that the remedy under Section 17 of the SARFAESI Act can be exercised only after an action under Section 13(4) of the SARFAESI Act is taken by the Respondent No. 2, however, given the delicate economic position in which the Petitioner No.1 is operating, it will not be possible to withstand such illegal assault on its operation and management. Accordingly, the intervention of this Hon'ble Court has been sought for.

I fully agree with learned senior counsel for the petitioner in respect of the submission in regard to efficacious alternative remedy to the petitioner under Section 17 of the SARFAESI Act that will apply only when there is proceeding under Section 13(4) of the SARFAESI Act which can lay before the Debts Recovery Tribunal under Section 17 of the Act [see. *Indian Bank of India Vs. Satyavati Tandon and Ors.* reported in 2010(8) SCC 1110] .

Therefore, it is settled law by the Hon'ble Court that a borrower can challenge the action of the secured creditor taken under Section 13(4) of the SARFAESI Act, 2002 by filing an application under Section 17(1) of the Act only when there is an action taken by the secured creditor and not otherwise. Yet, this Court is mindful of the fact that it is equally a settled principle of law by a Constitution Bench of the Hon'ble Supreme Court of India that Article 226 of the Constitution

confers on all the High Court's very wide powers in a matter of issuing writs. Although, said powers are limited but the remedy under writ jurisdiction is discretionary remedy to be granted by the writ Court. In the hour of need in order to do justice reliefs can be given on equitable principle as there is something beyond rule in order to render justice.

It would be apt to take notice of decision of a Constitution Bench of the Hon'ble Supreme Court in *Union Bank of India Vs. T.R. Varma* reported in *AIR 1957 SC 882*, wherein it has been held that existence of alternative remedy does not affect the jurisdiction on the High Court to issue a writ but the existence of adequate legal remedy is a think to be taken into consideration before grant of writ where the statutory remedy has not been exhausted. This Court is of the view that it is no doubt a settled law that writ jurisdiction should not be invoked merely because it is lawful to do so because a person has to exhaust a statutory alternative remedy in law before invoking a jurisdiction of the Hon'ble Court. Now, it would be profitable to notice the provision of Section 13(2) of SARFAESI Act which relates to enforcement of security interest which reads thus—

“(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 installment 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 (4).

Section 13(4) in The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; 2[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset: 2[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset\:" Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

On bare reading of the provision under Section 13(2) of the Act reproduced above, a notice under Section 13(2) of SARFAESI Act can be issued by a secured creditor to the borrower only after his account is classified as NPA. Then only, the borrower is required to discharge his full liabilities within 60 days from the date of notice failing which the secured creditor becomes entitled to exercise all or any of the rights under Section 13(4) of the Act. Therefore, the secured creditor is bound

by law to stay hand for 60 days before exercising any of his rights under Section 13(4) of SARFAESI Act, 2002.

In the instant case, having regard to the discussion above, and in consideration of submission made on behalf of the petitioners, this Court clearly finds that the notice under Section 13(2) of the Act on the threshold is bad in law in the sense that the notice has been issued without classifying the petitioner's account as NPA rather in the same notice the declaration has been made for classifying the account of the petitioner as NPA. This is no doubt in derogation of the directives of the Reserve Bank of India and so also the directives given by the Hon'ble Supreme Court as discussed above.

This court is of the view that the Writ Court has to deal with issues relating to SARFAESI Act, 2002 very sparingly because the SARFAESI Act is a complete code. If a person is aggrieved of any notice under section 13(2) of the said Act of 2002 issued by the Bank, he has a remedy under the provisions of Section 17 of the Act and if further, he is aggrieved, he has a forum of appeal under the provision of Section 18 of the said Act.

But this cannot be an inexorable formula in the matter of invocation of writ power in case of existence of efficacious alternative remedy available to the petitioner to consider in the given facts of the case. This is not so, that the bank has taken over the possession of the assets of the petitioners or has taken steps for an order for possession

of such secured assets. I have discussed with regard to settled principle of law that the writ would not lie merely because Writ Court has the power to do so as one has to exhaust the statutory or alternative remedy available to him in law prior to it. But at the same time this Court has found in unequivocal term that the present case is differently situated as there has been a notice under Section 13(2) of the SARFAESI Act by declaring the account of the petitioner as NPA given by the Respondent No. 2 in violation of the directives of R.B.I. and so also the Hon'ble Supreme Court which were enforce during the pandemic situation due to Covid-19.

At this stage, Mr. Abhishek Banerjee, learned Counsel for the Respondent No. 2 pressed in service a letter dated 18th September, 2021 under reference PNB/FPPL/507/2021-22 dated 18.09.2021 relating to restructuring proposal in respect of M/s. Fabworth Promoters Private Limited & Ors. being the writ Petitioner No. 1. It admitted that such proposal was submitted by the petitioner and a meeting was held on 14th September, 2021 which were duly conveyed with the observation and requested the petitioner to send reply at the earliest by providing point wise information in respect of following clauses –

1. Provide detailed 'Information Memorandum' of the proposed restructuring and also promoters' contribution for the same.

2. Please inform the sacrifice amount of Bank on account of proposed restructuring and also promoters' contribution for the same.
3. Please explore the possibility to provide additional collateral security as the proposed debt to be restructured is of Rs.661 crores (approx.)
4. Please inform propose date of implementation of the restructuring proposal.
5. The proposed repayment period is starting from FY 22 to Fy 36 which is quite longer and hence you are requested to reduce the same.
6. Provide by which period the 10% repayment of restructured debt for the purpose of upgradation of the account is proposed i.e. by which month and year the account is proposed to be upgraded.
7. Please inform the reason for waiver of DSRA account.
8. The proposed average DSCR is 1.27. However, as per the RBI guidelines the DSCR for 10 years repayment should be above 1.33. Please justify.
9. Please explore the possibility of sale of non-core assets to reduce the debt obligation of the company.
10. Please inform ROCE. Gap between IRR and Cost of capital and LLR.
11. Please provide audited balance sheet for FY 2020-21 and provisional 6m balance sheet for FY 2021-22.
12. Promoters' contribution to be infused mentioned as Rs.10.00 crore which is proposed in FY 2023-24. However, the amount should be upfront as per our Bank's guidelines based on sacrifice. Hence upfront promoter's contribution is required. Further, source of promoters' contribution needs to be submitted.
13. Please inform latest status of sale of unsold units of "Vivara" unit and apprise the utilization of the cash flows from the sale proceeds of the same.
14. Our Bank has allowed Tagging arrangement in the account on 13.08.2021. As per terms, a Chartered Accountant certificate was to be obtained on monthly basis to ascertain end utilization

of funds to Branch and our office. In this context, you are requested to provide the same.

Therefore, it emerges that the issue of restructuring proposal made by the writ petitioner is still in progress and under consideration, ergo, I find no hesitation in observing that the impugned notice is not tenable in law and facts of the case in as much as the proposal for restructuring of the account of the petitioner in respect of its assets under stress within the scheme of the R.B.I., is indubitably under consideration of the Respondent No.2.

Apart from that, Mr. Banerjee, learned Counsel for the Respondent No. 2 candidly submits that the whole of the proposal can be settled provided the point wise information is furnished by the petitioners within two weeks from the date of the order. At this, the petitioners are agreeable to submit point wise information as set out in the said letter dated September 18, 2021 issued by Respondent No. 2 and it is further submitted that the petitioners are ready to top up a sum of Rs. 50 crores within next six months to improve the proposal in addition to restructuring of the petitioner's account. Hence a fortnight time is given to the petitioners to submit point wise information in response to the letter dated 18.09.2021 under reference and the Respondent No. 2 PNB Bank is directed to settle the issue relating to restructuring proposal of the account of

the petitioners in respect of assets under stress by another six weeks.

In the context of what has been discussed above, the impugned notice dated August 19, 2021 under SARFAESI Act, 2002 is treated as not tenable in law and cannot be acted upon, ergo, the proposed action in terms of the said notice is hereby quashed.

Accordingly, the writ application being WPO 841 of 2021 is decided and disposed of.

There shall be no order as to cost.

The parties to act on a copy of this order downloaded from official website of this Hon'ble High Court.

(SHIVAKANT PRASAD, J.)

S.Chandra/GH.