Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.193 OF 2021

Swift Boutique Hotels Pvt. Ltd.
Through its Director. …. Petitioner.

Versus

The District Magistrate & 2 others. ….. Respondents.

Mr. Parag Rao, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Govt. Advocate for Respondents Nos. 1 and 2.

Mr. S. N. Joshi, with Ms. S. Rawal, Advocates for Respondent No.3.

Coram:- ***DIPANKAR DATTA,CJ &***
M. S. SONAK, J

Date:- ***23rd March 2021***

P.C.:-

This writ petition calls in question the measures taken by the respondent no.3, Small Industries Development Bank of India (hereafter "the Bank", for short), under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "the Act", for short). Conscious of the fact that the Act provides an alternative efficacious remedy before the Debts Recovery Tribunal under Section 17 thereof, the petitioners have challenged the proceedings on the ground of want of jurisdiction and brazen violation of the provisions of the Act by the Bank which are recognized exceptions for entertaining a writ petition despite the availability of an alternative efficacious remedy. In order to persuade us to entertain the writ petition, Mr. Parag Rao, learned Counsel appearing for the petitioners contended that after the petitioners received a demand notice dated August 27, 2019 under Section 13(2) of the Act, a reply/objection (appears to be undated) was dispatched to the Bank on 24/9/2020; however, despite the statutory mandate contained in sub-section (3A) of Section 13 of the Act, such reply/objection was not decided/disposed of, and that without such recourse being taken, the Bank had acted without jurisdiction and/or the authority of law in proceeding to take measures under Section 13(4) of the Act.

2. We find from paragraph 4(u) of the writ petition acknowledgment by the petitioners of receipt of a communication dated 9/11/2020 from the Bank conveying to them that their reply/objection was rejected by a communication dated 8/11/2019 and that symbolic possession of the secured assets had been taken on 15/1/2020.

3. The factual position, considered in the light of the statements made in paragraph 4(u) of the writ petition, would lead us to believe that after receipt of the demand notice dated August 27, 2019, the petitioners had submitted a representation/objection, copy of which is not part of the records. It is such representation/objection

that came to be rejected by the communication of the Bank dated 8/11/2019. The petitioners' contention that their reply/objection (the undated one), which was dispatched on 24/9/2020, had not been decided/disposed of by the Bank is, therefore, of little significance. That apart, the Bank having taken symbolic possession of the secured assets on 15/1/2020 and the petitioners having been called upon to hand over physical possession thereof on 4/12/2020 by the communication dated 9/11/2020, remedy of moving the Tribunal under Section 17 of the Act was available to the petitioners, which they chose not to avail of.

4. A contention was sought to be raised by Mr. Rao that remedy under Section 17 of the Act is not available unless the debtors lose possession of the secured assets and, therefore, the remedy before the Tribunal, before the physical possession of the secured assets is taken, cannot be regarded as providing to the petitioners an alternative and efficacious remedy.

5. The contention can draw support from the decision of the Supreme Court in ***Standard Chartered Bank vs. V. Noble Kumar and ors.*** reported in **(2013) 9 SCC 620**. However, in a decision of recent origin in ***Hindon Forge Private Limited and anr. vs State of Uttar Pradesh through District Magistrate, Ghaziabad***, reported in **(2019) 2 SCC 198**, the Supreme Court after considering ***V. Noble Kumar*** (supra) has held as follows :

*"26. *** The scheme of Section 13(4) read with Rule 8(1) therefore makes it clear that the delivery of a possession notice together with affixation on the property and publication is one mode of taking 'possession' under Section 13(4). This being the case, it is clear that Section 13(6) kicks in as soon as this is done as the expression used in Section 13(6) is 'after taking possession'. Also, it is clear that Rules 8(5) to 8(8) also kick in as soon as 'possession' is taken under Rules 8(1) and 8(2). The statutory scheme, therefore, in the present case, is that once possession is taken under Rules 8(1) and 8(2) read with Section 13(4)(a), Section 17 gets attracted, as this is one of the measures referred to in Section 13(4) that has been taken by the secured creditor under Chapter III.*

27. *Rule 8(3) begins with the expression 'in the event of'. These words make it clear that possession may be taken alternatively under sub-rule (3). The further expression used in sub-rule (3) is 'actually taken' making it clear that physical possession is referred to by Rule 8(3). Thus, whether possession is taken under either Rules 8(1) and 8(2), or under Rule 8(3), measures are taken by the secured creditor under Section 13(4) for the purpose of attracting Section 17(1)."*

6. In view of such authoritative pronouncement of the Court, it can no longer be contended that the remedy under Section 17 of the Act becomes available only after physical possession is taken over by the secured creditor exercising the powers under Section 13(4) independently or under Section 13(4) read with Section 14 of the Act. In our reading of the Act and the Security Interest (Enforcement) Rules, 2002 (hereafter "the Rules", for short) as well as the detailed discussion thereof in ***Hindon Forge Private Limited***

(supra), the remedy under Section 17 of the Act before the Tribunal can be pursued once a secured creditor takes symbolic possession of the secured asset by taking recourse to Rule 8(1) and (2) of the Rules and affixes a notice in Appendix IV, which would amount to a measure under Section 13(4)(a) of the Act.

7. Having realized that we are inclined to refuse relief, Mr. Rao has prayed for some breathing time so as to enable the petitioners to approach the Tribunal for appropriate relief. We are of the considered opinion that the writ petition itself not being maintainable and not having been admitted, no such protection, as prayed for, ought to be or can be granted in view of the decision of the Constitution Bench of the Supreme Court in ***State of Orissa vs. Madan Gopal Rungta***, reported in **AIR 1952 SC 12**. It has, *inter alia*, been held there that Article 226 cannot be used only for the purpose of giving interim relief as the only and final relief and that the Court while declining to decide the rights of the parties and relegating them to a civil suit cannot, for facilitating institution of such suit, issue directions in the nature of a temporary injunction. The prayer is, thus, refused.

8. We, therefore, find no merit in the writ petition which, accordingly, stands dismissed. There shall be no order as to costs.

9. This order of dismissal shall not preclude the petitioners

from pursuing their remedy before the Tribunal in accordance with law. If the remedy is pursued, the Tribunal shall proceed to decide the claim before it uninfluenced by dismissal of this writ petition.

M.S. SONAK, J. ***CHIEF JUSTICE***

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL
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