<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY,</u>
<u>NAGPUR BENCH, NAGPUR.</u>

<u>WRIT PETITION NO. 2653 OF 2021</u>

1) Smt. Aruna DTS Moorthy Wd/o.
Late DTS Moorthy,
Aged about 51 years, Occu. - Business,
R/oi. 401 & 402 Megh Apartment,
Yashodham Enclave, Prashant Nagar,
Nagpur-440 015

2) M/s AMGC Logistic Pvt. Ltd.,
a Company incorporated under the
provisions of India Companies Act
and having its registered office at
Flat No. E-2/603, Zenith Block,
"Kool Home Condominium",
Mouza Mova, Raipur (C.G.) through
its director Smt. Aruna DTS Moorthy
Wd/o Late DTS Moorthy
R/o 401 & 402 Megh Apartment,
Yashodham Enclave, Prashant Nagar,
Nagpur-440 015 .... **<u>PETITIONERS</u>**

// **VERSUS //**

1) UCO Bank, MID Corporate Branch
Ajni Square, Wardha Road,
Nagpur-440 015, through its
Authorized Officer.

2) Union of India
through its Chief Secretary,
Ministry of Finance. **....** **<u>RESPONDENTS</u>**

Shri S.S.Sanyal, Advocate for the petitioners.
Sau. Supriya Puntambekar, Advocate for respondent No.1.
Shri C. Deopujari, Advocate h/f Shri Aurangabadkar, ASGI for respondent No.2.

CORAM : SUNIL B. SHUKRE AND ANIL S. KILOR, JJ.

DATED : 30.07.2021

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard Shri Sanyal, learned counsel for the petitioners, Sau Supriya Puntambekar, learned counsel for respondent No.1 and Shri Deopujari, learned counsel holding for Shri Aurangabadkar, learned A.S.G.I. for respondent No.2.

2. **Rule**. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The petitioner, Director of petitioner No.2/Company has been aggrieved by the notice issued under Section 32 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “SARFAESI Act”), whereby two mortgaged properties creating security interest in favour of respondent No.1/Bank towards repayment of loan granted to petitioner No.2/Company have been put on auction sale.

4. The petitioners have filed an application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, Nagpur questioning

the said sale notice. It was filed on 26.07.2021. Copy of the said sale notice which has been impugned by the petitioners by filling an application under Section 17 of the SARFAESI Act has been annexed to the second set of this petition but, had not been annexed to the first set, although in the list of annexures, it is stated that this notice has been attached as Annexure 'A' from page No.37 to 39. These page numbers are missing from the first set. However, this notice is available for the perusal in the second set. We have gone through the copy of this notice filed on record of the second set.

5. The sale notice calls upon the petitioners to pay the outstanding dues amounting to Rs.5,87,10,380.23/- together with applicable interest and costs within 15 days on receipt of the notice, failing which, the notice further informs, that the respondent No.1/Bank would be constrained to sell the secured assets mentioned in the notice, one is an apartment bearing No.106, 'Nirman Enclave', situated at Gajanan Nagar, Ajani, Nagpur and the other is office/chamber No.301, 3rd floor, 'Lotus Plaza' situated at Gokulpeth Layout, Gokulpeth, Nagpur, for realisation of the dues. It appears that the petitioners did not pay the outstanding dues as demanded in this notice within the stipulated period of 15 days. It also appears that the petitioners did not question this notice for its validity immediately after its receipt and almost about 25 days thereafter, chose to knock at the doors of Debts Recovery

Tribunal, the Tribunal competent to hear the application under Section 17 of the SARFAESI Act on 26.07.2021. It is seen from the record of the case that the petitioners have made a request for urgent hearing on the application through video conference on 28.07.2021. But, the request was rejected on the ground that the petitioners approached the Tribunal at the last moment and time of four days had not elapsed since the physical filing of the application under Section 17 by the petitioners.

6. Now, the contention of the petitioners is that the petitioners in spite of having a right of hearing, are not being heard by the Debts Recovery Tribunal, the only forum available for redressal of grievances arising from the measures taken under Section 13 of the SARFAESI Act and which has affected the fundamental rights of the petitioners.

7. What we see from the rejection of the request of the petitioners to grant urgent hearing on 28.07.2021 by the Debts Recovery Tribunal, Nagpur made on 26.07.2021 is that urgent hearing has not been basically refused by the Debts Recovery Tribunal, Nagpur. The Debts Recovery Tribunal, Nagpur has refused to grant hearing on 28.07.2021 as requested by the petitioners. There is a difference between refusal to hear a matter on a particular date and refusal to hear the matter at all. In the instant case, it appears to us that Debts Recovery Tribunal has

not said that it would not hear the application and thus the request for grant of urgent hearing has not been altogether rejected by the Debts Recovery Tribunal, Nagpur. It is true that the rejection, on the face of it, has come from the Registrar of the Debts Recovery Tribunal and it has not come from the Presiding Officer of the Debts Recovery Tribunal. We are not aware of the rules and procedures being followed by Debts Recovery Tribunal. But, we find, considering the facts and circumstances of the case, that in this particular case, the Registrar of the Debts Recovery Tribunal, instead of taking a decision himself, ought to have placed the request for urgent hearing before the Presiding Officer of the Debts Recovery Tribunal and allowed the Presiding Officer to take appropriate decision in the matter. These facts and circumstances indicated that there was urgency pleaded and so the need of the situation was to let the Presiding Officer take a suitable decision.

8. The urgency of the matter had arisen from the auction sale that was scheduled to be held on 28.07.2021 between 01.00 pm. to 05.00 pm. If this auction sale was to go ahead and finalization of the sale of the properties in the auction had indeed taken place, it would have resulted into adversely affecting the rights of the petitioners even without hearing the petitioners and the further consequence would

have been of another grievance of violation of principles of natural justice.

9. In the case of *Mardia Chemicals Ltd. Etc. Vs. Union of India and Ors.,* ***AIR 2004, SC 2371***, the Hon'ble Supreme Court has held that the central theme of the provisions made in the SARFAESI Act is of fairness and transparency in the procedure adopted while taking such drastic measures as taking over of the possession of the secured assets and they being sold in realization of the dues payable to the banks, without any intervention of any judicial authority. So, it was necessary for the Registrar of the Debts Recovery Tribunal, Nagpur to either grant urgent hearing to the petitioners or at least place the matter for its appropriate consideration and decision before the Presiding Officer of Debts Recovery Tribunal, Nagpur. This was all the more necessary as Section 34 of the SARFAESI Act excluded jurisdiction of Civil Court from entertaining any suit or proceedings in respect of any matter which the Debts Recovery Tribunal or the Appellate Tribunal would be empowered by or under the SARFAESI Act to determine. It also raises an embargo upon the power of the Civil Court to grant injunction in respect of any action taken or to be taken in pursuance of the powers conferred by under this Act or under the Recovery of Debts and Bankruptcy Act, 1993. Thus, the mandate of Section 34 leaves a party aggrieved by the action of the Bank taken under Section 13 of the

SARFAESI Act with only one forum to raise its grievance before it. This would further underline the need for any Debts Recovery Tribunal to be careful in denying urgent hearings to the parties.

10. After all, opportunity of hearing is an integral part of our constitutional philosophy and it is well embedded in Articles 14 and 21 of the Constitution of India. Urgency of hearing is of course determined by the facts and circumstances of a particular case. Therefore, it becomes necessary for a competent judicial authority to judiciously apply its mind to the facts and circumstances of each case to determine as to whether or not there is any case for urgent hearing made out by the parties. Such authority is also required to take into consideration the consequences that may ensue if such hearing is denied to the party. All these aspects of the matter would only indicate the onerous nature of responsibility of Register of the Debts Recovery Tribunal and as said earlier, in the present case, this responsibility required Registrar of the Debts Recovery Tribunal to place request for grant of urgent hearing made by the petitioners before the Presiding Officer of the Debts Recovery Tribunal. The Registrar of the Debts Recovery Tribunal, Nagpur, however, has failed to perform his duty in the matter and, therefore, the order passed by him on 26.07.2021 denying hearing on 28.07.2021 would have to be held as illegal.

11. There is one more reason why this order has to be held as illegal. While rejecting such a request for granting urgent hearing on 28.07.2021, the Registrar of Debts Recovery Tribunal, Nagpur has not taken care to grant hearing within a reasonable time frame. The hearing that he has granted is on 25.08.2021, which is a date falling about a month after holding of the auction sale of the secured assets. Such hearing granted by Registrar of Debts Recovery Tribunal is unrealistic, rather illusory, in the facts and circumstances of this particular case. Since all these facts noted above are a matter of record, we do not think that any reply of respondent Bank would have been necessary in the present case and, therefore, the request made on behalf of respondent Bank to grant a week's time to file reply in the matter need not be considered by us.

12. In the result, we partly allow the petition. The impugned order passed by the Registrar, Debts Recovery Tribunal, Nagpur is quashed and set aside.

13. Debts Recovery Tribunal, Nagpur is directed to hold urgent hearing on the application of the petitioners which is S.A. No. 95 of 2021 and request made for interim relief on 02.08.2021 at 11.00 am. The petitioners and respondent Bank are directed to appear before the incharge Presiding Officer of Debts Recovery Tribunal, Nagpur on

02.08.2021 at 11.00 am. The incharge Presiding Officer of Debts Recovery Tribunal, Nagpur is further directed to grant effective opportunity of hearing to the petitioners and respondent Bank and to take a decision on the prayer for grant of interim relief, if any, in accordance with law.

14. Meanwhile, we direct respondent No.1/Bank to not finalize the auction sale of the properties, if any, till decision is taken by Debts Recovery Tribunal, Nagpur on the prayer of the petitioners for grant of interim relief or till 08.08.2021, whichever is earlier.

15. Rule is made absolute in the above terms.

16. Authenticated copy of the order be furnished to the learned counsel for the petitioners and learned counsel for respondent No.1/Bank.

(ANIL S. KILOR, J.) **(SUNIL B. SHUKRE J.)**

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