



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.19939 of 2021

and W.M.P.Nos.21189 and 21190 of 2021

M/s.Marg Limited,
Regd. Office at Sri Sai Subhodaya
Apartments, Basement No.57/2B,
East Coast Road, Thiruvannamiyur,
Chennai 600 041, Rep. by its
Authorised Signatory.

...Petitioner

Vs.

1. Government of Puducherry,
Rep. by the Under Secretary,
Department of Industrial Development
(Port), Chief Secretariat, Puducherry.
2. Karaikal Port Private Limited,
Khezhavanjoor Village, T.R.Pattinam,
Karaikal 609 602.
3. Reserve Bank of India,
Fort Glacis, No.16, Rajaji Salai,
Chennai 600 001.
4. Edelweiss Asset Reconstruction Company
Limited, 1st Floor, Edelweiss House,
Off CST Road, Kalina, Mumbai 400 098.
5. E-procurement Technologies Ltd -
Auction tiger, B-705, Wall Street-2,
Orient Club, Ellisbridge,
Ahmedabad-380 006.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records and quash the impugned auction notice dated 16.08.2021 as and against the circular Nos.RBI/2015-16/94 DNBR.(PD). CC.No.03/SCRC/26.03.001/2015-16 issued on July 1, 2015 of the 3rd



4. There is no dispute in the present case that the fourth respondent has resorted to a measure under Section 13(4) of the Act in seeking to auction the secured assets. Though the grievance of the petitioner is that the secured creditor may be acting without jurisdiction, it is a matter of perception in degrees and not a case where a bystander seeks to invoke the provisions of the Act of 2002 in respect of an asset without having any right in such regard.

5. Quite inarguably, the fourth respondent herein as the successor in interest of the original secured creditor and as an asset reconstruction company can take steps to realise the dues by taking measures under Section 13(4) of the Act. The only subtle issue is as to whether the auction may be conducted by the Swiss challenge mode or otherwise. Even if it is accepted at face value that the fourth respondent may not be governed by the guidelines issued by the Reserve Bank since the fourth respondent is not a bank, there does not appear to be any express statutory embargo preventing the fourth respondent from adopting the same methodology. More importantly, when a statutory body is tasked with the duty of entertaining grievances against measures taken by a secured creditor under the said Act of 2002, the methodology proposed to be adopted in course of the relevant measure would also be amenable to a challenge under Section 17 of the Act before the jurisdictional Debts Recovery Tribunal.

6. Article 226 of the Constitution is wide enough for any appropriate challenge to be received in such jurisdiction. The fact that there is a statutory remedy does not prohibit the constitutional court to exercise its authority under Article 226 of the Constitution. However, a constitutional court exercises a degree of self-restraint in not receiving matters that can be conveniently carried to an alternative forum and it is not burdensome to the party to approach the statutory forum. It is true that the self-imposed restraint is subject to exceptions and the three principal situations of exception are when there is gross violation of the principles of natural justice or when the act complained of is completely without jurisdiction or the same is manifestly unreasonable so as to appear unjustified to the meanest mind. However, when fine distinctions are sought to be made on the perceived lack of authority or the exercise of jurisdiction, the Writ Court ought, ordinarily, to yield to the recognised jurisdiction of a statutory forum in such regard.

7. Accordingly, since there is an efficacious alternative remedy available to the petitioner under the said Act of 2002 before the jurisdictional Debts Recovery Tribunal, the petition is not entertained in this extraordinary jurisdiction and the



petitioner is left free to approach the appropriate forum in accordance with law.

W.P.No.19939 of 2021 is disposed of without getting into the merits thereof. W.M.P.Nos.21189 and 21190 of 2021 are closed. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To:

1. The Under Secretary to Government of Puducherry,
Department of Industrial Development
(Port), Chief Secretariat, Puducherry.
2. Karaikal Port Private Limited,
Khezhavanjoor Village, T.R.Pattinam,
Karaikal 609 602.
3. Reserve Bank of India,
Fort Glacis, No.16, Rajaji Salai,
Chennai 600 001.

Copy to

The Debts Recovery Tribunal I,
Spencer Tower, 4th, 5th, 6th Floor,
770-A-Mount Road,
Annasalai, Chennai- 600 002.

+1cc to the Government Pleader, Sr.47966

W.P.No.19939 of 2021

VSN-II[co]
NSK 24/09/2021