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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
29.07.2021	09.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.18194 and 19301 of 2020 and
W.M.P.Nos.22598, 23890 and 23891 of 2020

W.P.No.18194 of 2020

M/s.Jaihind Spinning Mills Limited,
P.M.P.Ngar, Pachal Village,
Pudchatiram (PO),
Namakkal-637 018
Rep. by its Director

... Petitioner

-vs-

1.The Assistant Provident Fund Commissioner
Regional Office, Salem,
Employees' Provident Fund Organisation,
S.J.Plaza, Swarnapuri,
Salem-636 004.

2.The Assistant Provident Fund Commissioner &
Recovery Officer,
Regional Office, Steel Plant Road,
Dalavaipatti,
Salem-636 302.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing 2nd Respondent to accept the representation of the petitioner dated 29.03.2019 without insisting on any condition and to further grant reasonable instalments to remit the sum of Rs.97,17,826/- ordered in terms of proclamation of Sale Notice dated 06.11.2020 in proceedings No.CB/SLM/ 34925/RECY/KI/2020 of the 2nd respondent.

For Petitioner : Mr.Haroon
For M/s.T.S.Gopalan & Co.

For Respondents: Mr.R.Thirunavukkarasu



W.P.No.19301 of 2020

The Authorized Officer,
The South Indian Bank Ltd.,
Regional Office, No.43,
Ground Floor, Hameedia Centre,
Haddows Road, Nungambakkam,
Chennai-6.

... Petitioner

-vs-

1.Assistant PF Commissioner & Recovery Officer,
Employees' Provident Fund Organisation,
Regional Office, Steel Plant Road,
Dalavaipatti, Salem - 636 302.

2.M/s.Jaihind Spinning Mills Limited,
No.235, Mint Street, Park Town,
Chennai-600 003.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to recall the letter dated 30.11.2020 sent through email on 01.12.2020 to the petitioner Bank.

For Petitioner : Mr.M.L.Ganesh
For R1 : Mr.R.Thirunavukkarasu
For R2 : Mrs.P.V.Rajeswari

C O M M O N O R D E R

The Writ Petition in W.P.No.19301 of 2020 has been filed for a direction to the 1st Respondent to recall the letter dated 30.11.2020 sent through email on 01.12.2020 to the petitioner Bank. In W.P.No.18194 of 2020, the relief sought for was for a direction to the 2nd Respondent to accept the representation of the petitioner dated 29.03.2019 without insisting on any condition and to further grant reasonable instalments to remit the sum of Rs.97,17,826/- ordered in terms of proclamation of Sale Notice dated 06.11.2020 in proceedings No.CB/SLM / 34925/Recy/KI/2020 of the 2nd respondent.

2. Since the issue involved in these Writ Petition is one and the same, they are taken up together for joint disposal. For the sake of brevity, the parties are, in short, referred to as Bank, EPFO and the Management respectively (for, South Indian Bank Limited, Employees' Provident Fund Organisation and Jaihind Spinning Mills Limited).



Facts in W.P.No.18194 of 2020:

3. It was the case of the Management that it is a Limited Company, registered under the Companies Act, 1956 and is engaged in manufacturer of cotton yarn fabric, providing employment to around 250 employees, including casuals and temporary worker. Due to financial crunch, it incurred loss and came to a standstill with effect from August, 2019. The Management borrowed loan from South Indian Bank Limited to recover from the loss and as on date, it owed a sum of Rs.13.5 Crores to the said Bank.

3.1. It was further case of the Management that it was unable to pay salary to its employees and there was also delay in remittance of contributory amount to the EPFO from March, 2015 to August, 2017, pursuant to which, the Commissioner, EPFO passed an order dated 03.10.2018, claiming a sum of Rs.96,27,301/- as contribution in respect of its employees. Though the amount claimed was higher, the Management did not challenge the said order and thereafter, a recovery notice dated 30.01.2019 was issued by the Commissioner, thereby authorizing the Recovery Officer, EPFO to forcibly recovery the contributions.

3.2. It was also the case of the Management that though a request was made to the EPFO to accept the amount in instalment on 29.03.2019, EPFO further imposed several conditions vide communication dated 14.05.2019 for grant of such facility. When things stood thus, the Commissioner issued yet another notice demanding damages and interest to the tune of Rs.15,56,672/- for belated payment for the period from 2013 to 2015 and subsequently, an order under Section 14B was issued by the Recovery Officer, EPFO, besides the claim of contribution by way of 7A proceedings by the Commissioner to the tune of Rs.24,34,321/- for the period between February, 2018 and December, 2018.

3.3. It was stated by the Management that though the Management preferred an appeal against 14B proceedings and 7Q order dated 10.10.2019 before the Central Government Industrial Tribunal, due to Covid-19 situation, it was not taken up for admission. In the meantime, the Recovery Officer, EPFO issued a proclamation of sale certificate on 06.11.2020, attaching three machineries of the Management roughly estimated at Rs.2.25 Crores. In the sale notice, the reserve price has been fixed at Rs.89,77,500/- by duly fixing the date of sale as 04.12.2020. The Management, on a wrong notion that the sale certificate was issued in respect of 14B and 7Q order dated 10.10.2019, requested its counsel to bring the pending appeal for hearing and out of two appeals, one alone was numbered as EPFA 115 of 2020, in which, on 02.12.2020, the Tribunal directed the



Commissioner not to take any coercive steps till the next date of hearing.

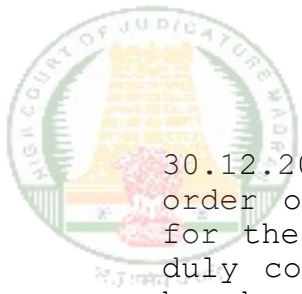
3.4. It was further stated that subsequently, a mention was made before the Tribunal by the counsel for EPFO that the sale certificate was issued against the earlier 7A order datd 03.10.2018 and not against 14B proceedings and 7Q order and on coming to know of the sake fact, the Tribunal recalled the interim order without hearing the Management. It was the stand of the Management that there was no misrepresentation of facts before the Tribunal and it would have clarified the facts to the Tribunal, if an opportunity had been given by the Tribunal. Since the sale proceedings were likely to take place on 04.12.2020, the Management is before this Court, with an undertaking to deposit a sum of Rs.5,00,000/- within two weeks and to pay the balance sum within prescribed instalments to be fixed by this Court.

Facts in W.P.No.19301 of 2020:

4. The case put forth by the Bank in this Writ Petition was that the Bank extended credit facility to the Management against the security of hypothecation of stock of raw materials, stock-in-process, finished goods, etc., and as the Management defaulted in repayment of loan, the loan account was classified as Non Performing Assets (NPA) on 29.06.2018 in terms of RBI guidelines. The Bank issued a demand notice under Section 13(2) of the SARFAESI Act on 11.07.2018 and since the Bank and its guarantors failed to react to the demand notice, a symbolic possession of the secured property was taken by the Bank under Section 13(4) of the Act, which was duly published in two dailies on 28.09.2018 as required under the SARFAESI Rules and Regulations.

4.1. The further case of the Bank was that the Bank filed an application under Section 14 of the SARFAESI Act for physical possession of the secured property before the Collector, Namakkal on 24.10.2018 and since there was no response on said application, the Bank also filed a Writ Petition in W.P.No.15537 of 2019 for a suitable direction and pursuant to the order of this Court dated 10.06.2019, the Collector disposed of the application on 06.02.2020. After the orders passed by the District Collector, physical possession was duly taken over by the Bank, consequent to which, the Bank issued a letter on 22.10.2020 and 03.11.2020 in terms of Section 13(8) of SARFAESI Act for bringing the property for auction.

4.2. It was stated by the Bank that though EPFO is said to have issued a notice to the Bank for payment of Rs.96,27,301/- towards PF dues in respect of the Management, no such letter was received at their end and EPFO sent a show cause notice on



30.12.2019, seeking explanation from the Bank, as to why an order of attachment of salary shall not be issued against them for the default to the tune of Rs.81,61,154/-. In reply, it was duly communicated to the EPFO that no amount of the Management has been lying with them and in fact, the Management had to pay more than Rs.11 Crores towards credit facilities availed by them. EPFO also sent a letter dated 30.11.2020 through email only on 01.12.2020, informing the Bank to unlock the premises in order to enable the intending bidders to inspect the moveable properties.

4.3. It was further stated that EPFO, without serving any sale notice on the Bank, proposed to conduct e-auction and the stand of the EPFO, that the properties were not hypothecated to the Bank, is highly incorrect, as there was a hypothecation agreement as early as on 30.12.2016 in respect of the facilities availed from the Bank. When the Bank has been struggling to recover the amount of Rs.14,12,62,847.80/- from the Management, the action of the EPFO to bring the hypothecated moveable for auction on 04.12.2020 is prejudicial to the interest of the Bank, its creditors and public. EPFO attached the moveable assets on 13.03.2019, which was not served on the Bank and the said exercise was done without providing an opportunity to the Bank. The judgment of the Apex Court and this Court relied upon by EPFO to justify their act were rendered prior to the notification dated 26.12.2019 issued by the Ministry of Finance.

4.4. It was the stand of the Bank that it had already initiated SARFAESI proceedings to bring the moveable and immovable properties of the Management for auction to recover the outstanding loan amount of Rs.17.03 Crores, payable not only to the Bank, but also to the State Bank of India, which had given mandate to the Petitioner Bank. EPFO, subsequent to the email dated 01.12.2020, entered into the secured property at Namakkal with an assistance of Police force and overlocked the factory premises like private parties, thereby indulged in unlawful activities and the said act is nothing, but usurping the powers of the Court in an arbitrary manner. Aggrieved by the highhandedness of the EPFO, the Bank is before this Court for a direction to the EPFO to recall the letter dated 30.11.2020.

5. A counter affidavit has been filed by the EPFO to the Writ Petition filed by the Bank in W.P.No.19301 of 2020, wherein, it has been, inter alia stated as follows:

i) The Bank had received the notice dated 08.01.2019 of EPFO for payment of Rs.96,27,301/- towards PF dues, which was acknowledged by the Bank and the attachment of three machineries was done by EPFO on 13.03.2019 and executed on 25.03.2019 for non-remittance of PF dues by the Management, which predated the



attachment, if any, made by the Bank. By virtue of Section 11 (2), EPFO has got first charge over the properties.

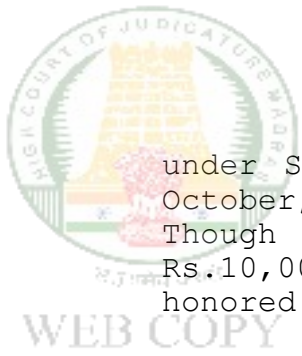
ii) EPFO had sent several communications to the Bank for remittance of the dues and mere existence of hypothecation will not create any right, unless the said attachment is enforced and due process has been followed by EPFO for attachment of the property and Sections 8B to 8B r/w Second Schedule of Income Tax Act, 1961 were complied with. Since notice had been sent to the Bank, no necessity arose for hearing the Bank, especially when the auction notice was published in leading newspapers in Tamil and English.

iii) In the counter, EPFO stated that there was a delay of five years for employees to get their due benefits and in order to comply with Article 43 of the Constitution of India to safeguard the interest of all workers, attachment was made by the EPFO to recover the outstanding dues from the Management, as the Management is a habitual violator of law and the existence of dues was also duly intimated to the bank vide communication dated 08.01.2019 and notice dated 19.12.2019 and 30.12.2019 and 11.02.2020. In the auction bid conducted on 04.12.2020, a successful bidder was willing to pay the bid amount. Though the total outstanding due was Rs.97,74,052/-, the Management had initially paid Rs.2,00,000/- and thereafter, Rs.8,00,000/- as per the direction of this Court. Finally, it was stated that there was no intention on the part of the EPFO to overlock the properties, rather, Bank made an attempt to take over the property already attached for the purpose of PF dues and thus, prayed for dismissal of the Writ Petition filed by the Bank.

6. EPFO also filed yet another counter affidavit to defend their case in the Writ Petition filed by the Management in W.P.No.18194 of 2020, by stating as under:

i) The Management failed to pay the Provident Fund dues in respect of all eligible employees from October, 2015 onwards and therefore, a summon under Section 7A of the Act was issued on 06.06.2018 and afforded an opportunity of hearing on 20.06.2018. Though initially one P.Muthusamy, one of the Directors appeared for hearing, on 14.08.2018, there was no representation on the side of the Management and therefore, show cause notice under Section 32 of CPC was issued.

ii) Subsequently, one Ramakrishnan, one of the Directors appeared on 28.08.2018 for personal hearing and had not produced the profit and loss account and balance sheet for the year 2015-2016 and 2016-2017. On 18.09.2018, the Enforcement Officer submitted a supplementary report and after several sessions of enquiry and verification of records, EPFO levied Rs.96,27,301/-



under Section 7A of the Act as PF dues for the period between October, 2015 and January, 2018 by an order dated 03.10.2018. Though the Management undertook before this Court to pay Rs.10,00,000/- before 09.12.2010, such commitment was not honored by the Management and only remitted Rs.2,00,000/-.

iii) The Writ Petition filed by the Management is not maintainable before this Court, as the order of the Tribunal dated 03.12.2020 has not been challenged before any Forum. The Management in their reply dated 14.05.2019 requested the EPFO to grant 30 instalments to pay the dues, but, however, the conditions imposed by EPFO for such payment in instalments have not been fulfilled. As per Central Board of Trustees' decision, instalments can be granted only upon commitment of the Management to pay the statutory dues under Section 14B and such facility would also attract interest under Section 7Q. As per Section 14B of the EPF Act, penal damages will have to be levied, whenever there is a default and the said provision will immediately come into force in case of default.

iv) As per the direction of the Tribunal, an auction was conducted on 04.12.2020 and one Ravi intended to deposit the amount of Rs.90,18,000/- and as directed by this Court on 04.12.2020, EPFO stopped the proceedings and requested the Agency appointed by the Tribunal to maintain status quo. Since the Management has been continuously adopting dilatory tactics and making every attempt to delay the remittance of the statutory dues, the Management is not entitled to any relief and the Writ Petition is liable to be set aside.

7. EPFO filed an additional counter affidavit dated 28.03.2021, stating that the request made by the Management for payment of dues in instalments was acceded to by imposing certain conditions and as per the said conditions, though the Management submitted 30 Post Dated Cheques, the first cheque on deposit got bounced for insufficient funds and the EPFO issued a show cause notice dated 08.08.2019 for taking action under Sections 138 and 147 of the Negotiable Instruments Act. The order of this Court for remittance of dues to the extent of Rs.10,00,000/- had been belatedly complied with and since the cheque had been returned for want of fund by the concerned Bank, the undertaking given by the Management cannot be accepted by the EPFO.

8. The Management, in its counter affidavit dated 13.02.2021, stated that the Bank had taken symbolic possession of the immovable property through a possession Notice dated 26.09.2018 for non payment loan amount and they have been taking all earnest efforts to settle the dues. On account of forcible physical possession of the secured assets, namely, land,



building, machineries, etc., by putting lock and seal on the running industry on 22.10.2019 by the Recovery Officer, it incurred severe financial loss and after payment of a sum of Rs.11,60,00,000/- under One Time Settlement (OTS), their other company, namely, PMP Textiles Spinning Mills Ltd., was allowed to be opened in October, 2020. It was further stated that though a Sale Notice was issued by the Bank on 15.12.2020 in respect of sale of the secured assets on 05.02.2021, the same was stayed by the Debt Recovery Tribunal-II, Chennai in S.A.No.30 of 2021, pursuant to which, sale has not taken place on 05.02.2021. It was also stated that the attempt of the Authorities in sale of machineries in piecemeal will, not only hamper the revival process, but also be prejudicial to the interest of more than 250 families.

9. Learned counsel for the Bank submitted that EPFO cannot insist the Bank to remit the EPF contributions payable by the Management and the act of the EPFO in double locking the premises, which were already in the custody of the Bank cannot be accepted. When there was a hypothecation arrangement in existence between the Management and the Bank, and the Bank also has first lien over the secured properties of the Management, EPFO unnecessarily pokes its nose into the functioning of the Bank and prevents the Bank to secure its loan amount from the Management. Sections 31B of the Recovery of Debts and Bankruptcy Act, 1993 (in short 'the Act, 1993) and Section 26E of SARFAESI Act contemplate that the interest of secured creditors should be safeguarded at the first instance. He further submitted that the judgments relied upon by the EPFO were all rendered prior to the notification dated 26.12.2019, which prescribed the date as 24.01.2020 in respect of the provisions of SARFAESI Act and the Act, 1993 and those judgments are irrelevant to the present case on hand.

10. Learned counsel for EPFO contended that admittedly, there was a delay in payment of PF dues by the Management and therefore, they proceeded to recover the dues after following due procedures applicable to such cases so as to protect the interest of all workers. The plea taken by the Bank that it had already mortgaged the properties of the Management no longer holds good in the light of the judgment of the Supreme Court in the case of Dattatraya Shanker Mote and others vs. Anand Chintaman Datar and others, reported in (1974) 2 SCC 799, holding as under:

"...It is apparent from the provisions of the above section that a charge does not amount to a mortgage though all the provisions which apply to a simple mortgage contained in the preceding provisions shall, so far as ,may be, apply to such charge. While a



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charge can be created either by act of parties or operation of law, a mortgage can only be created by act of parties. A charge is thus a wider term, is it includes also a mortgage, in that every mortgage is a charge, but every charge is not a mortgage. The Legislature while defining charge in indicated specifically that it does not amount to a mortgage. It may be incongruous and in terms even appear to be an anti-thesis to say on the one hand that a charge does not amount to a mortgage and yet apply the provisions applicable to a simple mortgage to it as if it has been equated to a simple mortgage both in respect of the nature and efficacy of the security. This misconception had given rise to certain decisions where it was held that a charge created by a decree was enforceable against a transferee for consideration without notice, because of the fact that a charge has been erroneously assumed to have created an interest in property reducing the full ownership to a limited ownership. The declaration that "all the provisions herein before contained which apply to a simple mortgage shall., so far as 2 33 may be, apply to such charge" does not have the effect of changing the nature of a charge to one of interest in property."

11. Learned counsel for EPFO further went on to contend that the dues payable by the Management were duly intimated to the Bank by way of communication dated 08.01.2019 so also by Notice dated 19.12.2019, 30.12.2019 and 11.02.2020 and therefore, no question of over locking arises in this case, as it was the Bank, which attempted to take charge over the properties of the Management attached by EPFO. This Court in the case of UCO Bank vs. Recovery Officer, EPFO in W.P.No.21976 of 2019 decided on 27.11.2019 observed as follows:

7. Inclusion of Section 31B does not change the position insofar as primacy of claim under the provisions of the EPF Act is concerned. The mention of Government dues which would include revenues, taxes, cesses and rates due to the Central Government, State Government or local authority would not take into its fold, the first charge created by operation of law in the form of Section 11 (2) of the EPF Act."

12. The statutory obligations cast upon EPF Authorities under Article 43 of the Constitution of India to protect the rights of the employees of the Management are being stalled by the Bank and though a successful bidder came forward to settle the outstanding dues, it was curtailed by the Bank, as a result of which, the non-obstante clause under Section 11(2) of the EPF and MP Act, 1952 could not be implemented by the EPFO.



13. Learned counsel for the Management, by relying on the affidavit of one M.Rajeswari, Director of the Management, submitted that the Management undertakes that it will not either transfer or dispose of its immovable properties till completion of the payment of instalments of PF contribution dues with interest in 30 equal instalments. It was further undertaken that as against the demand of payment of damages, an appeal is pending before the EPF Appellate Tribunal and therefore, there was no undertaking given in respect of the said claim. It was brought to the notice of this Court that the Management has already deposited a sum of Rs.10,00,000/- as ordered by this Court and the PF contribution and interest dues would be paid to EPFO in 30 monthly instalments on or before a date to be fixed by this Court every month.

14. Heard the learned counsel for the respective parties and perused the material documents and judgments, including various provisions of the Act.

15. On circumspection of the facts involved in these cases, the issue to be decided is, as to who has the first charge over the secured properties, whether it is Bank or EPFO and the double lock put up by the EPFO is justified? On this score point, there is a fight between two Central Government Wings, namely, Bank and EPFO, as a result of which, it has become entertainment for the Management in terms of the Tamil proverb "ஊரு இரண்டு பட்டால் கூத்தாடிக்கு கொண்டாட்டம்" literally meaning that if there is a fight between two brothers, it becomes an entertainment for others. Though the relief sought for in these cases is for a simple Mandamus, the interior part of the issue grows longer and longer like Hanuman's tail.

16. Admittedly, the Management committed default both in payment of dues to EPFO and remittance of loan amount to the Bank. The Bank declared the loan account of the Management as Non Performing Assets (NPA) on 29.06.2018 as per RBI guidelines. The Bank, after issuance of a demand notice under Section 13(2) of the SARFAESI Act and on the failure of the Management to repay the loan amount in respect of the demand notice, had taken over the symbolic possession of the secured property in consonance with Section 13(2) of the SARFAESI Act, after publication of such factum in two dailies. For the sake of convenience, Section 13(2) of the SARFAESI Act is reproduced hereunder:

"(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-



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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)."

17. The foremost contention of the EPFO was that the term 'charge' is wider than the term 'security interest' and has overriding effect on the latter and therefore, by invoking Section 11(2) of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "EPF and MP Act, 1952" and on the basis of the non-obstante clause specified therein, the Recovery Officer proceeded to recover the PF contributions from the Management by way of attachment of properties with the sole intention to protect the rights of poor workmen guaranteed under the Constitution of India. Section 11(2) of the EPF and MP Act, 1952 reads as under:

"2. Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect of the employees contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts."

18. EPFO relied upon a judgment of the Supreme Court in the case of Maharashtra State Co-operative Bank Limited vs. Assistant Provident Fund Commissioner, reported in (2009) 10 SCC 123, in justifying their stand in respect of attachment of the properties. The relevant portion of the judgment is extracted hereunder:

".....Therefore, there is no plausible reason to give a restricted meaning to the expression 'any amount due from the employer' and confine it to the amount determined under Section 7A or the contribution payable under Section 8. If interest payable by the employer under Section 7Q and damages leviable under Section 14 are excluded from the ambit of expression "any amount due from an employer", every employer will conveniently refrain from paying contribution to the Fund and other dues and resist the efforts of the concerned authorities to recover the dues as arrears of land revenue by contending that the movable or immovable property of the establishment is subject to other debts."



19. To controvert the above contention of the EPFO, it was argued on the side of the Bank that the judgment cited by the EPFO (2009) 10 SCC 123 (supra) was rendered as early as on 08.10.2009 and subsequently, there was a notification dated 26.12.2019 issued by the Ministry of Finance (Department of Financial Services), fixing a cut off date as 24.01.2020 to press into service the provisions of Section 26E of SARFAESI Act and Section 31B of the Act, 1993, which are replicated hereunder:

"26E - Priority to Secured Creditors- Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any Secured Creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government of State Government or local authority.

Explanation: For the purposes of this Section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the Borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

Section 31B: Priority to secured creditors.

31B - Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation.-For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

20. On a careful scrutiny of the aforesaid provisions coupled with Sections 13(2) & (8) and 14 of the SARFAESI Act, I find much force in the submissions raised by the learned counsel for the Bank, inasmuch as the Bank cannot be compelled to initiate proceedings once again on the issue, which already attained finality, namely, after direction by the Division Bench



of this Court dated 10.06.2019, the District Collector, Namakkal passed an order in terms of Section 14 of the SARFAESI Act, permitting the Bank to take over the physical possession of the secured properties, consequent to which, the same were brought for public auction, by invoking the provisions of Section 13(8) of SARFAESI Act. Despite the Bank giving sufficient opportunity to the Management, they failed to repay the loan amount. The apprehension of the secured creditors of the Bank, that in the event of attachment of the secured properties of the Bank by the EPFO, they have no means to recover the amount from the Management, cannot be slightly brushed aside, as this Court has to see the balance of convenience of either side, while giving quietus to the issue. Once the proceedings under the provisions of SARFAESI Act attained finality, permitting the employer to hold on the properties is an abuse of process of law and the Management is only a trespasser. If the Management is allowed to continue in the premises that has already gone to the hands of the Bank on account of the fault of the Management itself, it would merely be construed as a mockery of the judicial system. Similarly, if the EPFO's act of overlocking is vindicated, it would amount to repeated beating of a dead snake.

21. It is also pertinent to point out that the Apex Court, in catena of cases, such as in Maharashtra Tubes Ltd. vs. State Industrial and Investment Corporation of Maharashtra Ltd. and another, reported in (1993) 2 SCC 144, Sarwan Singh and another vs. Kasturi Lal, reported in (1977) 2 SCR 421, Allahabad Bank vs. Canara Bank and another, reported in (2000) 4 SCC 406, etc., categorically held that the later enactment alone will prevail and therefore, it leaves no manner of doubt that the notification dated 26.12.2019 issued by the Ministry of Finance (Department of Financial Services), pressing into service the provisions of Section 26E of SARFAESI Act and Section 31B of the Act, 1993 by fixation of cut off date, can only be taken into account in this case. Moreover, as rightly contended by the Bank, priority should be given to the secured creditors to take charge over the properties, as laid down by a Full Bench of this Court in the case of Assistant Commissioner (CT), Anna Salai-III Assessment Circle vs. Indian Overseas Bank, reported in (2016) 6 CTC 769. By applying the ratio laid down the Apex Court as well as this Court, if the present case on hand is analyzed, this Court has no other option, but to come to the rescue of the Bank and that the argument advanced by the Bank appears to be very logical.

22. At the time of argument, it was stated by the parties across the bar that against the interim order dated 22.04.2021, a Writ Appeal in W.A.No.1579 of 2021 has been preferred, wherein it has been stated by the Management that they have no unencumbered properties to give as collateral security and this



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Court do not want to say anything on the said contention, as an appeal is stated to be pending before the Central Government Industrial Tribunal / Appellate Tribunal. In the midst of advancement of submissions, though an interim stay has been granted by the Division Bench on 06.07.2021, the parties stated in one voice that there is no prohibition for final hearing of these Writ Petitions that are now decided, as the entire operation of the interim order has not been stayed. Subsequently, on verification with the Registry, it was found that the said Writ Appeal has been disposed of in the interregnum period on 04.08.2021, by extending the interim order till an appropriate order is passed in these cases. The relevant paragraphs of the judgment are extracted below:

"2. It is submitted by both the learned counsel that the main writ petition itself has been taken up for hearing and orders have been reserved by the learned Single Judge.

3. In view of the aforesaid factual position, the interim order granted by this Court on the earlier occasion would get extended till appropriate orders are passed in the writ petition by the learned Single Judge.

4. With the above observation, the writ appeal stands disposed of...."

23. In view of what is stated herein-above, the Writ Petition filed by the Bank in W.P.No.19301 of 2020 is allowed and the Bank is entitled to hold over the charge of secured properties. A direction is issued to the EPFO to recall the letter dated 30.11.2020 sent by way of an email dated 01.12.2020 to the Bank and remove the lock put up over and above the lock and seal of the Bank. In case of any default made by the Management, the Bank guarantee can be invoked by the EPFO as per Paragraph No.6 of the affidavit of Mr.V.K.Srikumar, Chief Manager of the Bank dated 18.02.2021.

24. Insofar as the Writ Petition of the Management in W.P.No.18194 of 2020 is concerned, in view of the continuous default made by the Management, no indulgence can be shown to them, in view of the fact that a finality has already been reached in this case in terms of Sections 13 & 14 of the SARFAESI Act. Hence, W.P.No.18194 of 2020 is disposed of, with a direction to the Management to abide by the undertaking dated 17.03.2021, given by one of the Directors, viz., M.Rajeswari and the Management shall pay the contributions and interest dues in 15 equated monthly instalments payable on or before 5th of every month, commencing from October, 2021 to the EPFO, in addition to complying with other conditions imposed vide interim order dated 22.04.2021.



25. After pronouncement of this Order, it was brought to the notice of this Court by some of the Lawyers, practising in the Labour side that the present Presiding Officer, posted at the Central Government Industrial Tribunal is irregular in attending the Tribunal, as a result of which, important cases are moving in a snail paced manner. However, this Court cannot give any opinion on this aspect now. Earlier, the Industrial Disputes, pertaining to Central and State Governments were heard and tried by the Industrial Tribunal constituted under the I.D.Act, 1947, situated within the premises of the High Court. After constitution of the Central Government Industrial Tribunal in 2000, the cases, pertaining to Banks and others are now being heard by the Central Government Industrial Tribunal. Earlier, the EPF Tribunal was situated only at Delhi, besides holding Camp sittings at various places, causing hardships to the litigants. Now, the Central Government Industrial Tribunal has been notified as Appellate Tribunal to hear the EPF matters. If the Central Government Industrial Tribunal does not function properly, then there will be huge backlog of cases and the purpose of constitution will not be achieved. Though the Central Government Industrial Tribunal is situated just 6 kms away from the High Court premises, Advocates are made to run from pillar to post just to know of the fact that there was no Presiding Officer on the particular date. Therefore, the Central Government may think of abolishing the Central Government Industrial Tribunal and merging it with the Tamil Nadu Industrial Tribunal. The Tribunal will have to conduct cases physically in order to enable the verbal and documentary evidence to be marked and cases cannot be conducted through Video Conference or Hybrid mode till the same are posted for argument.

26. This Court directs the Central Government Industrial Tribunal to take up the Appeal filed by the Management and bring the issue to a logical conclusion, without adjourning the matter beyond 10 workings days at any point of time. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Provident Fund Commissioner
Regional Office, Salem,
Employees' Provident Fund Organisation,
S.J. Plaza, Swarnapuri,
Salem-636 004.

2. The Assistant Provident Fund Commissioner &
Recovery Officer,
Regional Office, Steel Plant Road,
Dalavaipatti
Salem-636 302.

Copy to
The Presiding Officer
Central Southern Industrial Tribunal
Chennai

W.P.Nos.19301 and 18194 of 2020

RGN(CO)
SP(09/09/2021
SP(20/09/2021)