

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

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

Review Application No.152 of 2021
in W.P.No.19939 of 2021

M/s.Marg Limited,
having its registered office at
Sri Sai Subhodhaya Apartments,
Basement No.57/2B, East Coast Road,
Thiruvanmiyur, 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: Review Application filed under Article 226 of the Constitution to
review the order dated 20.09.2021 passed in W.P.No.19939 of 2021.

For the Petitioner : Mr.Satvic Varma
Senior Counsel
for Mr.V.Suresh

For the Respondents : Ms.N.Mala
Government Pleader (Pondy)
for respondent No.1

: Mr.Satish Parasaran
Senior Counsel
for Mr.Rahul Balaji
for respondent No.4

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petition is for review of an order dated September 20, 2021
by which a writ petition challenging the transfer of the loan by an asset
reconstruction company to another was sought to be challenged.

2. The order of September 20, 2021 was carried to the Supreme Court by way of a Special Leave Petition. However, as is recorded in the relevant order of October 8, 2021, the petitioner was permitted to file a review of the order dated September 20, 2021.

3. During the interregnum and since this review petition was received, time was afforded to the petitioner on at least two occasions to settle the dues with the fourth respondent asset reconstruction company. It is irrelevant that the settlement has not taken place as it is equally irrelevant as to the circumstances cited by the petitioner in not being able to discharge the debt due to the secured creditor. There is little dispute that a sum in excess of Rs.2,000 crore is due and owing to the fourth respondent and there is little by way of money that the petitioner has been able to show to repay even a part thereof.

4. Instead, the petitioner has resorted to a rather hyper-technical argument to question the very authority of the fourth respondent to undertake a sale, even though the fourth respondent suggests that the sale that it wants to conduct is approved by circulars issued by the Reserve Bank of India. The petitioner also questions the

authority of the Central Bank, as the Reserve Bank is, to issue such circulars and makes some murmurs that the circulars of 2014 and 2019 issued by the Reserve Bank of India may be contrary to the scheme, scope and provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as modified in 2016.

5. There is no doubt that this petition is a time-wasting measure adopted by the petitioner herein to delay the recovery of the dues that it plainly cannot afford to pay. In essence, the fourth respondent asset reconstruction company invited offers for transfer of the account to another asset reconstruction company or a bank or a financial institution for such transferee to realise the dues from the petitioner herein. According to the fourth respondent, it has an offer of about Rs.1,500 crore and it issued a subsequent advertisement for any other asset reconstruction company or bank or financial institution to match the offer that it already has so as to obtain the best price in course of the transfer.

6. At the time that the petition was moved on September 20, 2021, it was the methodology of the transfer that was sought to be challenged. However, there is no doubt that this court misconstrued the purport of the petition and perceived the challenge to be in respect of a measure adopted by the concerned secured creditor under Section 13(4) of the Act of 2002 instead of noticing that it was a sale under Section 5 of the said Act.

7. Section 5 of the Act permits an asset reconstruction company, which is the new compendious form of describing entities referred to as securitisation companies and reconstruction companies in the original statute, to acquire the financial assets of any bank or financial institution. Unlike Section 13 of the Act which permits, inter alia, the secured creditor to access the secured asset and conduct a sale thereof, Section 5 of the Act permits the “financial assets” of a bank or financial institution to be transferred to an asset reconstruction company. As to what an asset reconstruction company may do upon acquiring the financial assets of any bank or financial institution is governed by Section 9 of the Act, but it is completely unnecessary in the present context, despite the copious reference to parts thereof and

to circulars issued by the Reserve Bank thereunder. In the present case, the asset reconstruction company which holds the financial asset seeks to transfer it to another entity entitled to receive the same in terms of the Act of 2002. There is no dispute in such regard. The totality of the assets that the fourth respondent holds includes the debt due which is in excess of Rs.2,059 crore and the shares which have been indicated in the relevant advertisement.

8. Ordinarily, the "financial assets" that a bank or a financial institution may hold in respect of credit facilities granted would be the amount outstanding together with the securities furnished. In the present case, the shares may have been the securities furnished or such shares may have been issued against a part of the debt due. There was an elaborate agreement between the parties that contemplated that the concessionaire appointed at the Karaikal Port may even be changed at the instance of the secured creditor upon an event of default on the part of the borrower taking place. Again, such aspect of the matter is completely irrelevant in the present context.

9. The further feature of the matter that has been referred to on behalf of the petitioner is the perceived prejudice that may be occasioned to the petitioner upon a loan of a much higher value together with the corresponding assets being sold at a reduced price. The petitioner complains that though the fourth respondent may take a haircut – as the jargon goes – in the present case, the haircut is not passed on to the petitioner as borrower. The argument is, with respect, fallacious and exceptionable. A may owe a sum of Rs.100/- to B and B is perfectly justified to transfer the debt due from A to C upon receiving Rs.80/-; but that will not affect C's right to realise the entirety of Rs.100/- from A. The prejudice argument canvassed by the petitioner is beyond comprehension.

10. In the present case, the matter pertains to an infrastructure project, substantially funded by the Government of Puducherry. The closure of the project or the stalling thereof as a result of the lockdown may be a good ground for the default; but it still does not absolve the petitioner of its obligation to service the debt. The fourth respondent secured creditor does not want to carry on with the burden and desires to transfer the financial asset to some other upon getting what such

secured creditor perceives to be a fair value therefor. It is completely within the domain of the fourth respondent to settle the reserve price and to determine the extent of the loss or perceived loss it is willing to suffer. The borrower cannot have any grievance in such regard.

11. Notwithstanding the obvious error on the part of the court in perceiving the impugned transaction to be a measure under Section 13(4) of the Act in the order dated September 20, 2021, the legal position remains unaltered that a secured creditor resorts to a process permitted under the Act of 2002 which the borrower seeks to challenge. Even though such a challenge may not be carried to any Debts Recovery Tribunal under Section 17 of the Act, there does not appear to be any basis thereto or merit therein.

12. This order has been made without going into the issue as to whether the present petition under Article 226 of the Constitution would at all be maintainable against the actions taken by the fourth respondent asset reconstruction company.

13. Accordingly, the judgment and order of September 20, 2021 is reviewed and upon re-consideration substituted by the above. However, despite the review petition being allowed in a sense, W.P.No.19939 of 2021 is still dismissed and W.M.P.Nos.21189 and 21190 of 2021 are closed. Review Application No.152 of 2021 is disposed of. W.M.P.Nos.23995 and 23996 of 2021 in Review Application No.152 of 2021 are closed.

14. The petitioner will pay costs assessed at Rs.1,50,000/- to the fourth respondent secured creditor.

Index : Yes/No
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(S.B., CJ.)

(P.D.A., J.)

10.11.2021

WEB COPY

To:

- 1.The Under Secretary,
Government of Puducherry,
Department of Industrial Development (Port)
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Puducherry.
- 2.Karaikal Port Private Limited,
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P.D.AUDIKEVALU, J.

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