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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 27th August, 2021

+ LPA 98/2021

IFCI LTD

..... Appellant

Through

Ms. Madhavi Divan, Additional
Solicitor General with Mr. Kush
Chaturvedi, Mr. Vishesh Kalra,
Ms. Priyashree Sharma and
Ms. Rushali Agarwal, Advocates

versus

M/S OPG POWER GENERATION PVT. LTD

..... Respondent

Through

Mr. Abhinav Sharma and Mr. Kamal
Budhiraja, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

Proceedings have been conducted through video conferencing.

CM APPL. 9327/2021

This is an application seeking condonation of delay of 23 days in filing the present appeal.

Learned counsel for the Respondent has no objection if the delay is condoned.

For the reasons stated in the application, the delay is condoned.

Application is allowed and disposed of.

LPA 98/2021

1. Being aggrieved and dissatisfied by the judgment and order dated 11.01.2021 passed in W.P.(C) 6267/2015, Appellant herein (Respondent in the writ petition) has preferred the present Letters Patent Appeal.
2. Learned Additional Solicitor General appearing on behalf of the Appellant submits that suffice it would be for the disposal of this appeal, if a suitable direction is given to the Debt Recovery Tribunal to decide the appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) in accordance with law, taking into account the pleadings and evidence on record and without being influenced by the observations of the learned Single Judge in the judgment and order dated 11.01.2021 (Annexure A-1 to the memo of this Appeal).
3. Learned ASG submits that by the impugned judgment, the learned Single Judge has correctly disposed of the writ petition on the preliminary objection taken by the Appellant to its maintainability on the ground of existence of equally efficacious alternate remedy available to the Petitioner therein, and granted liberty to the Petitioner to approach the learned DRT under Section 17 of the SARFAESI Act, 2002. However, instead of leaving the adjudication of the disputes between the parties in their entirety to the learned DRT, the learned Single Judge has made certain observations and rendered certain findings in para 13 of the judgment which touch upon the merits of the case. If the observations remain, the learned DRT would be naturally influenced by the same and would not be in a position to take an independent decision which may inure to the disadvantage of the Appellant.

4. It is further submitted that the learned Single Judge has also given directions in para 21 of the impugned judgment whereby the learned DRT has been directed to consider the Petitioner's application on merits uninfluenced by any question of delay. The contention is that the learned Single Judge having relegated the writ petitioner to avail of the statutory remedy, ought to have left all questions, including the question of delay and latches, open for adjudication before the learned DRT. Needless to state that either party aggrieved by the decision on delay or merits would have a recourse to file an appeal before the Appellate Authority.

5. We have heard learned ASG and counsels for the Respondent and also perused the relevant paragraphs of the impugned judgment.

6. We find merit in the contention of the learned ASG. On an objection taken by the Appellant herein to the maintainability of the writ petition, the learned Single Judge has relegated the original Petitioner to the alternate and efficacious remedy of approaching the learned DRT under Section 17 of the SARFAESI Act, 2002. However, the observations made in paragraph 13 and the direction given in paragraph 21 of the impugned judgment, as rightly pointed out by the learned ASG, could have an influence on the ultimate decision by the learned DRT, both on the question of delay and latches and the merits of the case. The Hon'ble Supreme Court has reaffirmed in several judgments that while dismissing a writ petition on the ground of alternate remedy, the High Court should not express any opinion on the merits of the case and it would be a sound exercise of jurisdiction to refrain from commenting on the merits, as the ultimate decision is to be taken by the alternative Forum. In this context, it would be useful to refer to paragraphs 4 and 5 from the judgment of the Hon'ble Supreme Court in *Tin Plate Co.*

of India Ltd. vs. State of Bihar and Ors., reported as (1998) 8 SCC 272, as follow:-

“4. Learned counsel appearing for the appellant urged that the High Court has committed a grave error in making various observations touching upon the merits of the case while dismissing the writ petition on the ground of alternative remedy and thereby prejudicing the case of the appellant to be taken up before the appellate authority who was bound to decide the case in terms of the observations made by the High Court. The argument is well substantiated. It is no doubt true that when an alternative and equally efficacious remedy is open to a person, he should be required to pursue that remedy and not to invoke extraordinary jurisdiction of the High Court under Article 226 of the Constitution and where such a remedy is available, it would be a sound exercise of discretion to refuse to entertain the writ petition under Article 226 of the Constitution. In the present case, admittedly, the appellant had an alternative and equally efficacious remedy by filing an appeal before the appellate authority against the order of assessment and in view of such a remedy being available to the appellant, the High Court was right in dismissing the writ petition on the ground that the appellant has an alternative remedy available under the Bihar Sales Tax Act, 1959. However, we do not subscribe to the view of the High Court when it made a number of observations touching upon the merits of the case while dismissing the writ petition on the ground of alternative remedy. If the writ petition under Article 226 is to be dismissed on the ground of alternative remedy, the High Court is not required to express any opinion on the merits of the case which is to be pursued before an alternative forum. It is true that in the present case, the appellant's counsel in his effort to get over the objection of existence of an alternative remedy, addressed the Court on the merits of the case and thereby invited the observations on the merits of the case by the High Court. But in such a situation, if the High Court is to dismiss the writ petition on the ground of

alternative remedy, it would be a sound exercise of jurisdiction to refrain itself from expressing any opinion on the merits of the case which ultimately is to be taken up by a person before an alternative forum.

5. In the present case, in view of the observations made by the High Court, the appellate authority has rejected the appellant's appeal at the threshold and the appellant has been left without any remedy under the law. In such circumstances, we are of the view that the observations made by the High Court in its judgment on the merits of the case were totally uncalled for and deserve to be set aside. Consequently, we set aside the observations made by the High Court in the judgment under appeal to the extent they relate to the merits of the case which was the subject-matter of appeal before the Sales Tax Appellate Authority. Since the appellate authority under the Act observed that delay could have been condoned and also the fact that the appellant has deposited 20% of the tax, we set aside the order of the appellate authority dated 22-6-1996 and restore the appeal to the file of the Joint Commissioner of Commercial Taxes (Appeals), who shall decide the appeal expeditiously on its own merit without being influenced by any of the observations made by the High Court in the writ petition.”

7. Paragraphs 13 and 21 of the judgment and order dated 11.01.2021 in W.P.(C) 6267/2015 read as under:

“13. The contention that since the property in question was mortgaged to IDBI in the year 1993 – which was prior to the order dated 19.04.1997 vesting the part of the mortgaged property to the extent of 99.97 acres, with the State Government of Karnataka – IFCI would have the right to auction the same is unpersuasive. The question whether IFCI had any right, title or interest in the said lands (99.97 acres of land located in villages Bisalahalli and Haddinagundu) would have to be examined not with reference to the date when the title deeds of the said land was deposited with IDBI but on the date of inviting bids (that is, on 08.12.2010) and

on the date of accepting the petitioner's bid (that is, on 10.01.2011).

21. In view of the above, the present petition is disposed of with liberty to the petitioner to approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. If the petitioner files such an application within a period of two weeks from date, the concerned Debt Recovery Tribunal shall consider the petitioner's application on merits uninfluenced by any question of delay and dispose of the same as expeditiously as possible and preferably within a period of three months."

8. In view of the settled law, we hereby direct the Debt Recovery Tribunal to decide the Appeal of the Respondent herein, under Section 17 of the SARFAESI Act, 2002, in accordance with law and on the basis of the pleadings and evidence on record, without being influenced by the observations of the learned Single Judge in paragraph 13 as well as the direction in paragraph 21 to the extent the learned Single Judge has directed the concerned DRT to consider the application of the writ petitioner on merits, uninfluenced by question of delay in the judgment dated 11.01.2021, passed in W.P.(C) 6267/2015. The question with respect to the date of vesting of the title in IFCI / Appellant would also be examined by the DRT, on its own merits and uninfluenced by the observations of the learned Single Judge.

9. With these observations, the appeal is hereby disposed of.

CHIEF JUSTICE

JYOTI SINGH, J.

AUGUST 27, 2021/rd