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

% *Date of Judgment: 11th January, 2021*

+ **W.P.(C) 6267/2015 and CM Nos. 11393/2015, 48006/2018
and 48007/2018**

M/S OPG POWER GENERATION PRIVATE
LIMITED

..... Petitioner

Through: Mr Kirti Uppal, Senior
Advocate with Mr Abhinav
Sharma, Ms Isha Bhalla, Mr
Sidharth Chopra and Mr Aditya
Raj, Advocates.

versus

IFCI LIMITED

..... Respondent

Through: Ms Vibha Mikhija, Senior
Advocate with Mr Kush
Chaturvedi and Ms Priyashree
Sharma, Advocates.

**CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU**

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying
as under:

- “a) Issue a writ of certiorari or any other writ, order or
direction of like nature quashing the auction and
sale of the assets of Bellary Steel & Alloys
Limited (Sponge Iron Division) initiated by the

Respondent through the public notice dated 08.12.2010 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, the “**SARFAESI Act**”) and the Security Interest (Enforcement) Rules, 2002 (hereinafter, the “**2002 Rules**”);

- b) Issue a writ of certiorari or any other writ, order or direction of like nature quashing the purchase by the Petitioner of the assets of Bellary Steel & Alloys Limited (Sponge Iron Division) initiated by the Respondent, under the SARFAESI Act and the 2002 Rules;
- c) Issue a writ of mandamus or any other writ, order or direction of like nature directing the Respondent to refund the sale consideration of Rs. 64.90 Crores paid by the Petitioner towards purchase of the assets of Bellary Steel & Alloys Limited (Sponge Iron Division), alongwith interest @ 18 % thereon and all other costs and expenditure incurred by the Petitioner;”

2. The respondent (hereafter ‘IFCI’) had issued a public notice inviting offers in the sealed cover on “AS IS WHERE IS BASIS AND WHATEVER THERE IS BASIS” for purchase of the assets of Sponge Iron Division of Bellary Steels and Alloys Limited (hereafter ‘BSAL’) located at Villages Bisalahalli and Haddinagundu, District Bellary in the State of Karnataka, which included land measuring 119.62 acres along with Building and Structures, Plant and Machinery and Miscellaneous Fixed Assets/Other Current Assets of Sponge Iron Division, Steel Melting Shop, Bar Rolling Mill, Merchant Rolling Mill, Oxygen Plant, Captive Power Plants of 2.5 MW and 12 MW. The assets were in three lots (Lot I, Lot II and Lot III). The reserve

price for each lot was fixed separately. The reserve price for the composite lot unit (Lot I, Lot II and Lot III) was fixed at ₹62,96,93,000/- (Rupees Sixty two crores ninety six lacs and ninety three thousand). The bidders were required to deposit an earnest money of ₹6,29,69,000/- (Rupees Six crores twenty nine lacs and sixty nine thousand).

3. The petitioner submitted its bid to purchase the composite unit for a sum of ₹64.90 crores and also deposited the earnest money (EMD) of ₹629.69 lacs being 10% of the reserve price. The petitioner's bid was found to be the highest. The same was accepted by IFCI on 10.01.2011 and the petitioner was advised to deposit the balance amount within a period of fifteen days. The petitioner paid the sum of ₹9,92,81,000/- on 11.01.2011 and the balance amount of ₹48,67,50,000/- on 25.01.2011. On 29.01.2011 IFCI issued a possession certificate with regard to the sale of both, movable and immovable, assets pertaining to the Sponge Iron Division of BSAL. Thereafter, on 29.04.2011, IFCI executed two separate sale certificates, one for movable properties and the other for immovable properties sold to the petitioner.

4. The petitioner is aggrieved as it endeavours to clean the plant and the commencement of work has been frustrated at various stages. First, the workers of BSAL had prevented the petitioner from commencing any work as their arrears of salaries and other dues had not been cleared. The petitioner states that the Employees' Union, namely, Karnataka United General Workers Union (KUGWU) Bellary

had prevented the petitioner from carrying on any work. In addition, one of the family members of the promoters of BSAL have filed a suit (OS No. 292 of 2014) before the Principal Senior Civil Judge, Bellary seeking cancellation of the sale in respect of 19.65 acres comprising in Survey No. 11A, 11B and 10 located at Bisalahalli Village. The plaintiff therein claimed that the property had been purchased by his grandfather Mr Nagappa and after his demise, the same had devolved on various members of the family arrayed as defendant nos. 1 to 11. The plaintiff claims that BSAL did not have any title over the said lands. In addition, the petitioner claims that the Gulbarga Electricity Supply Company Limited (GESCOM), which is the electricity provider in the area, has also declined to provide a connection to the petitioner as the power supply to BSAL had been disconnected on 06.05.2010 on account of non-payment of arrears, which are stated to be around ₹17.36 crores including interest.

5. The petitioner's application for mutating the property in its name was also rejected as 99.97 acres of the said property is shown as the land records as vested with the State Government of Karnataka.

6. The petitioner states that on further inquiries it was found that on 19.04.1997, the Deputy Commissioner, Bellary had passed an order holding that BSAL had acquired agricultural lands in violation of Section 79B(i) and 79B(ii) of the Karnataka Land Reforms Act, 1961 and had forfeited the said property in exercise of powers under Section 79C(3) of the Karnataka Land Reforms Act, 1961. The said order also indicates that the said land vested with the Government of Karnataka.

7. The petitioner contends that in view of the said order, IFCI did not have any right or title in the said land for the same to be auctioned.

8. Ms Vibha Makhija, learned Senior Counsel appearing for IFCI contended that the petitioner has an equally efficacious remedy under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter 'SARFAESI Act') to challenge the auction conducted by IFCI since the same was a measure under Section 13(4) of SARFAESI Act. She referred to the decisions of the Supreme Court in *United Bank of India v. Satyawati Tondon and Ors.*: (2010) 8 SCC 110 and *Agarwal Tracom Private Limited v. Punjab National Bank and Ors.*: (2018) 1 SCC 626 and on the strength of the said decisions contended that since an equally efficacious remedy was available to the petitioner, it would not be apposite for this Court to entertain the present writ petition.

9. Mr Kirti Uppal, learned Senior Counsel appearing for the petitioner countered the aforesaid submissions. He submitted that the remedy under Section 17 of the SARFAESI Act would not be available as the dispute in the present case does not concern in the measures taken under Section 13(4) of the SARFAESI Act but relate to the question whether IFCI had any title in the immovable property sold/transferred by it. He submitted that, essentially, the dispute in the present case is that IFCI has sold a property which did not vest with it, but with the State Government of Karnataka.

10. Mr Uppal also referred to the decision of the Division Bench of the Allahabad High Court in *Rakesh Kumar Kaushal v. State of U.P.*

thru. Prin. Secy. Finance and Anr.: 2018 SCC OnLine All 5757 in support of his contention.

11. It is relevant to note that IFCI has not disputed that 99.97 acres forming a part of the immovable assets sold/transferred by it had vested with the State Government of Karnataka by virtue of the order dated 19.04.1997. Concededly, IFCI has not taken any steps or action to challenge the said order. This Court had pointedly asked Ms Makhija whether there was any dispute as to the existence of the said order or the forfeiture of the said property (99.97 acres) and vesting the same with the State Government of Karnataka under the Karnataka Land Reforms Act, 1961. She had fairly admitted that there was no dispute as to the existence of the said order or that the said property (99.97 acres) had vested with the State of Karnataka. However, she submitted that the same did not affect the IFCI's right to take action under Section 13(4) of the SARFAESI Act and to auction the said property for enforcement of its right under the SARFAESI Act and the Rules made thereunder.

12. Ms Makhija submitted that the land in question (99.97 acres) situated at Bisalahalli and Haddinagundu, District Bellary, Karnataka was mortgaged in favour of the lead Bank (IDBI) by deposit of title deeds on 29.12.1993. Subsequently, the mortgage was extended to other lenders including IFCI. She stated that the first mortgage on the said lands was created on 29.12.1993 and the same was also extended in favour of IFCI on 04.06.1997. Therefore notwithstanding that the said property had vested with the State Government of Karnataka on

19.04.1997, the IFCI would have rights in the said property as the mortgage was created prior to the said order dated 19.04.1997. She further contended that since the property was sold auctioned on “AS IS WHERE IS BASIS AND WHATEVER THERE IS BASIS”, the sale/transfer could not be challenged on the ground of any defect in the title of the said property.

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).

14. As noted above, the principal issue to be addressed is whether on the said dates (08.12.2010 and 10.01.2011) IFCI had any title, right or interest in the property in question, notwithstanding that the said property had vested with the State Government of Karnataka. And, whether the term of the invitation to bids, “AS IS WHERE IS BASIS AND WHATEVER THERE IS BASIS”, would absolve IFCI of any defect or lack of title in the said property.

15. Having stated the above, it is apparent that the essential dispute

arises from the action of the IFCI in inviting bids for the property in question and selling/transferring it to the highest bidder (the petitioner herein). A plain reading of the Public Notice dated 08.12.2010, indicates that the same had been issued “*In terms of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) read with Rule 6, 7, 8 & 9 of Security Interest (Enforcement) Rules, 2002*”.

16. In ***United Bank of India v. Satyawati Tondon and Ors.*** (*supra*), the Supreme Court had expressed concerns regarding the High Court interfering with actions taken under the SARFAESI Act despite availability of statutory remedies under the said statute.

17. There is merit in Ms Makhija’s contention that the petitioner has an efficacious remedy under the Section 17 of the SARFAESI Act against any measure taken by IFCI under Section 13(4) of the SARFAESI Act or any of the Rules made thereunder.

18. In ***Agarwal Tracom Private Limited v. Punjab National Bank and Ors.*** (*supra*), the Supreme Court had observed as under:

“27. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression “*provisions of this Act and the Rules made thereunder*” occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words,

the measures taken under Section 13(4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Sections 17(2), (3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?

28. We also notice that Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction-purchaser in case the auction-purchaser commits any default in paying instalment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5). In our view, the measures taken under Section 13(4) commence with any of the action taken in clauses (a) to (d) and end with measures specified in Rule 9.

29. In our view, therefore, the expression “any of the measures referred to in Section 13(4) taken by secured creditor or his authorised officer” in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).

30. The auction-purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The appellant, therefore, falls within the expression “any person” as specified under Section 17(1) and hence is entitled to challenge the action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act.”

19. Although in the above-mentioned case, the Supreme Court was concerned with the dispute regarding a secured creditor forfeiting the

earnest money of an auction purchaser; the principles enunciated in the said case would be applicable in the present case as well. This is so because the petitioner being an purchaser is, essentially, aggrieved of IFCI's action to invite bids and sell the immovable properties (which vested with the state Government of Karnataka). This sale/transfer was a measure taken by IFCI under Section 13(4)(a) under the SARFAESI Act and the Rules made thereunder.

20. This Court is, respectfully unable to concur with the decision of the Allahabad High Court in holding that Section 17 of the SARFAESI Act would be inadequate to redress the grievance of an auction purchaser who had not been handed over the possession of the property sold to him.

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.

22. The petition is disposed of with the aforesaid terms. All the pending applications are also disposed of.

VIBHU BAKHRU, J

JANUARY 11, 2021/RK