IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3752 of 2009

1. Pramod Choudhary s/o Dyaneshwar Choudhary,
Aged about 59 years, Occupation : Service.
R/o. Harioum Society, Plot No. 271,
Dattawadi, Amravati Road, Nagpur.

2. Sanjay s/o Madhukarrao,
Aged about 42 years, Occ. : Service
R/o. 223, Surendra Nagar, Nagpur.

3. Sunil s/o Punjaram Rewatkar,
Aged about 46 years, Occ. Service,
R/o. House No.634, Giripeth,
Nagpur- 440 010.

.... **PETITIONERS**

...V E R S U S...

1. State Bank of India, a banking
Company registered under the State Bank
of India Act, 1955 having its
Industrial Branch at Hingna Industrial Estate,
Nagpur through its Manager.

2. Asset Reconstruction Company (India) Limited,
a Company incorporated under the Companies Act, 1956
having its registered office at 17th floor, Express Towers,
Nariman Point, Mumbai - 400 021.
through its Authorized Officer.

3. M/s. Coventry Spring & Engineering Co. Ltd.,
a Company incorporated under the Companies Act, 1956
having registered office at
23, Ganesh Chandra Avenue,
Kolkata-700 013 and industrial establishment
at Plot No.D2, M.I.D.C., Nagpur.

Through its Executive Director-
Shri Narendramat Bafna,
R/o. 1476, Gawande Layout,
Sneh Nagar, Nagpur-15.

4. Additional Commissioner of Labour,
Office of the Additional Commissioner of Labour,
Bhonsala Chamber, Civil Lines,
Nagpur.

5. M/s.Galvanotek Industries Pvt. Ltd.
through its Managing Director,
C/o. Dinesh Kejriwal, Authorised Representative,
601, Padma Apartments, Farm Land,
Dagdi Park, Nagpur-440 010.

Name and Address corrected as per order dated 27.03.2019

.... **RESPONDENTS**

Shri J.L. Bhoot, Advocate for Petitioners.
Shri S.N. Kumar, Advocate for Respondent No.2,
Shri A.P. Wachasunder, Advocate for Respondent No.3.
Mr. M.G. Bhangde, Senior Advocate with Shri R.M. Bhangde, Advocate for Respondent No.5.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
ARGUMENTS WERE HEARD ON : 23.06.2022
JUDGMENT IS PRONOUNCED ON : 29.07.2022

JUDGMENT (Per A.S.CHANDURKAR, J.)

The petitioners claim to be in employment with the respondent no.3-M/s. Coventry Spring & Engineering Company Limited (for short, the Company), a Company incorporated under the Companies Act, 1956 (for short, the Act of 1956). The said Company had obtained finance from the respondent no.1-State Bank of India (for short, the Bank). Since the Company could not repay its dues and its manufacturing activities were affected, on 27.07.2006 the Company issued a closure notice under the provisions of Section 25-O of the Industrial Disputes Act, 1947 (for short, the Act of 1947). The petitioners alongwith some other employees approached the Industrial Court by filing a complaint bearing Complaint (ULPN) No.277 of 2006 challenging the said closure notice. The Industrial Court by an interim order dated 23.04.2007 directed the Company to pay unpaid salaries to the said complainants and continue to pay such salaries regularly during the pendency of the complaint. In the meanwhile, the Bank on 09.08.2004 issued a notice to the Company and thereafter took possession of the said Company on 27.07.2006. The respondent no.2-Asset Reconstruction Company (India) Limited (for short, ARCIL) having been appointed as a trustee issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the Act of 2002) on 26.07.2006. By issuing a notice on 25.08.2007 ARCIL took possession of the assets of the Company and thereafter restrained its employees from entering the premises. The petitioners as employees made a request to ARCIL to pay their dues and on refusal to do so, a legal notice came to be issued on their behalf on 27.02.2008 and 05.04.2008. The Assistant Commissioner of Labour on 31.05.2008 issued a notice to the Authorised Officer, ARCIL to attend the meeting that was convened with a view to resolve the issues raised by the employees of the Company. ARCIL filed its reply stating therein that since the Company was not wound up, there was no liability on ARCIL to satisfy the dues of the employees. Ultimately on 24.10.2007 a sale certificate was issued by the Authorised Officer, ARCIL in favour of the respondent no.5-Galvanotek Industries Private Limited (for short, the Purchaser). It is in this context that the petitioners have filed this writ petition seeking their dues from the ARCIL with a prayer that the Bank and ARCIL ought to comply with the "Apportionment of Workmen's Dues Guidelines, 2004" (for short, the Guidelines of 2004). By amending the writ petition recovery of dues from the Purchaser have also been claimed.

2. Shri J. L. Bhoot, learned counsel for the petitioners after referring to the aforesaid facts and the documents on record submitted that the Authorized Officer, ARCIL was a trustee for the amount of sale consideration received by ARCIL pursuant to the sale of assets of the Company to the Purchaser. Referring to the provisions of Section 13(7) of the Act of 2002 it was submitted that the Purchaser having entered into the shoes of the Company and being the successor-in-interest, it was also liable alongwith the Company to settle the dues of the employees. Reference was made to the statement indicating the amounts due to the workmen. Placing reliance on the decisions in *Allahabad Bank vs. Canara Bank and anr.* ***[2004(4) SCC 406]****, Federal Bank Limited vs. Sagar Thomas* ***[(2003) 10 SCC 733]****, D.S.Veer Ranji vs. Ciba Specialty Chemicals (I) Limited* ***[2002 (1) BCR 29]****, Asset Reconstruction Company (India) Ltd. vs. M.H.Mills and Industries Ltd. and others* ***[2012(1) DRTC 807]*** and *Union Bank of India vs. General Workers Union and another* ***[2009 (2) CLR 772]****,* it was submitted that

the dues of the workmen would have a charge alongwith the dues of a secured creditor - the Bank. Even assuming that the Company was not wound up, it was still the liability of the Purchaser to satisfy such dues and unless those dues were satisfied, it would not be permissible for the Authorised Officer, ARCIL to give a clear title to the Purchaser. Since the Bank and the Authorized Officer, ARCIL were discharging statutory duties, the writ petition as filed was maintainable. Moreover, the records pertaining to the employees dues were available with the said Bank and Authorised Officer, ARCIL and hence outstanding dues ought to be paid. It was thus submitted that the prayers as made deserved to be granted.

3. Shri S. N. Kumar, learned counsel for the respondent no.2-Authorized Officer, ARCIL at the outset submitted that insofar as compliance with the Guidelines of 2004 was concerned, those Guidelines had been framed pursuant to the decision of this Court in *Pandurang Keshav Gorwardkar and another vs. Paper and Pulp Conversions Ltd. and others* ***[2004 (4) Mh.L.J. 932].*** However, the said judgment was challenged before the Honourable Supreme Court and by the decision in *Bank of Maharashtra vs. Pandurang Keshav Gorwardkar and others* ***[2013 (3) Banker's Journal 36]*** the judgment of the Division Bench had been set aside. Consequently, the Guidelines of 2004 were no longer in operation. He further submitted that since the Company was not placed under liquidation, ARCIL was not obliged to distribute the sale proceeds received by it pursuant to the sale of the Company in favour of the Purchaser. He referred

to the provisions of Section 19(19) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the Act of 1993) as well as Section 13(9) of the Act of 2002. The liability of ARCIL would arise only when an order of liquidation of the Company would be passed. ARCIL had sold the Company on "as is where is basis" and therefore the liability to pay the dues of the employees could not be saddled on ARCIL. Moreover, ARCIL was not a 'State' within the meaning of Article 12 of the Constitution of India and hence the writ petition against it was not maintainable. It was thus submitted that the writ petition was liable to be dismissed.

4. Shri A.P.Wachasunder, learned counsel for the respondent no.3-Company took the stand that with the sale of the Company, there was no liability to clear the dues of the employees. The Company having been sold by the Bank and ARCIL, they were liable to pay the dues since they were in possession of the sale consideration. It was submitted that in view of the provisions of Section 13(9) of the Act of 2002, the Company stood wound up. He also referred to the provisions of Section 25FF of the Act of 1947 to urge that the dues of the Company were liable to be paid by the Purchaser. The possession of the Company having been taken under Section 14 of the Act of 2002 and the establishment of the Company having been transferred in favour of the Purchaser, the Company was not liable to pay the dues in any manner whatsoever. Moreover, the judgment of the Industrial Court dated 19.08.2019 passed in the

complaint preferred by the various employees had not attained finality since a challenge to the same was pending before this Court. It was thus submitted that the Purchaser ought to satisfy the petitioners liability. The learned counsel relied upon a decisions in *Valliamma Champaka Pillai vs. Sivathanu Pillai and others* ***[(1979) 4 SCC 429]***, *M/s. Power Control Appliances and others vs. Sumeet Machines Pvt. Ltd.* ***[(1994) 2 SCC 448]***, *Federal Bank Ltd.* (supra) in support of his submissions.

5. Shri M.G.Bhangde, learned Senior Advocate for the respondent no.5-Purchaser opposed the aforesaid submissions. According to him, the writ petition was preferred by three employees of the Company while the chart referred to by the learned counsel for the petitioners annexed to the writ petition pertained to the dues of 191 employees. It was also his submission that out of 103 employees 78 had resigned leaving only 25 employees. It was not clear from the averments in the writ petition as to whether the petitioners had resigned or had continued in employment. The complaint before the Industrial Court had been filed by 25 employees which did not include the petitioners. The Company had been purchased on 24.10.2007 on as is where is basis. The complaint as filed against the Company was allowed on 19.08.2019 and the closure notice issued by the Company had been set aside. Since reinstatement and payment of salaries from 27.07.2006 had been directed, it was the liability of the Company to satisfy the same. It was then submitted that the Purchaser was a Private Limited Company

not discharging any statutory duty. Hence the writ petition against it was not maintainable and the remedy under Industrial Law was available to the petitioners. Moreover, it was for the Assistant Commissioner of Labour to consider the dues of the employees. Since the petitioners have sought to rely upon the Guidelines of 2004 which now cease to exist, no relief could be granted in the writ petition. Further the Authorised Officer, ARCIL was also not discharging any statutory duty and hence on this count too, the writ petition was not maintainable. None of the prayers as made in the writ petition could be granted and to substantiate the aspect of non-maintainability of the writ petition, reliance was placed on the decision in *K.K.Saksena vs. International Commission on Irrigation and Drainage and others* ***[(2015) 4 SCC 670]***. In absence of any public duty or positive obligation of public nature being discharged by the Purchaser, no relief could be granted against it. It was thus submitted that the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties at length and with their assistance we have perused the documents placed on record. After giving due consideration to the rival submissions, we find that the writ petition as filed seeking relief against ARCIL, the Company and the Purchaser would not be maintainable and the petitioners would not be entitled to any relief whatsoever.

7. As per prayer clauses (i) and (ii) of the writ petition, the petitioners seek compliance with the Guidelines of 2004 in the matter of release of the dues

of the petitioners as per the statement of dues annexed. It is also prayed that the Bank and ARCIL be directed to withdraw the registration of the Securitization Company-the Purchaser as being in breach or inviolation of the Guidelines of 2004. In this regard, it is to be noted that the aforesaid Guidelines of 2004 were framed pursuant to the directions issued by the Division Bench in *Pandurang Keshav Gorwadkar* (supra). This is clear from the title of the Guidelines of 2004 as framed by the Chairperson of the Debts Recovery Appellate Tribunal. This judgment of the Division Bench was the subject matter of challenge before the Honourable Supreme Court in *Bank of Maharashtra* (supra). The Honourable Supreme Court by its judgment dated 07.05.2013 was pleased to set aside the judgment of the Division Bench. As a result of this judgment, the Guidelines of 2004 ceased to operate thereafter. This judgment of the Honourable Supreme Court was delivered when the present writ petition was pending. In the light of this judgment, prayers (i) and (ii) in the writ petition cannot be granted.

8. As regards the maintainability of the writ petition in the context of the reliefs sought against ARCIL, the Company and the Purchaser are concerned, we may note that the Company and the Purchaser are Companies incorporated under the Act of 1956. They are private entities and cannot be termed to be 'State' or an authority, within the meaning of Article 12 of the Constitution of India. Insofar as ARCIL is concerned, it is also a Company incorporated under the Act of 1956. A somewhat similar question as regards maintainability of a writ

petition against an Asset Reconstruction Company has been recently considered by the Honourable Supreme Court in *Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others* ***[(2022) 5 SCC 345]***. The facts therein indicate that the Asset Reconstruction Company informed the borrowers that as they had failed to pay outstanding dues, it would proceed to take possession of the mortgaged properties after expiry of period of 15 days from the date of such letter. The borrowers filed writ petition against the Asset Reconstruction Company under Article 226 of the Constitution of India challenging that letter which was in the nature of a possession notice under Section 13(4) of the Act of 2002. The High Court of Karnataka entertained the writ petition under Article 226 of the Constitution that was filed against the Asset Reconstruction Company and passed an interim order directing it to maintain status quo with regard to possession of secured assets which it had obtained under the Act of 2002. The Asset Reconstruction Company challenged the aforesaid order before the Honourable Supreme Court. On the question of maintainability of the writ petition against the Asset Reconstruction Company, the Honourable Supreme Court in paragraph 18 observed as under:

> "18. *Even otherwise, it is required to be noted that a writ petition against the private financial institution – ARC - the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such*

> *cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable." .....*

9. Learned Senior Advocate for the Purchaser has relied upon the decision in *K.K.Saksena* (supra) wherein it was held that for a private body to come within the purview of Article 12 of the Constitution of India, it should be one that is run substantially on State funding or discharge public duty/positive obligation of public nature or must be under a liability to discharge any function under any statute to compel it to perform such a statutory function. Since these requirements are missing in the present case insofar as ARCIL, the Company and the Purchaser are concerned, it is clear that the writ petition under Article 226 of the Constitution of India against the said respondents would not be maintainable.

10. Another relevant aspect that requires to be taken into consideration is that on 27.07.2006 the Company had issued a closure notice under Section 25-O of the Act of 1947. This closure notice was challenged by some employees of the

Company by filing a Complaint (ULP) No.277 of 2006 under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court by its judgment dated 19.08.2019 allowed that complaint and set aside the closure notice dated 27.07.2006. The Company was directed to reinstate the complainants therein and also pay them salaries from 27.07.2006 until due process for closure was followed. It is informed that the aforesaid order of the Industrial Court is the subject matter of challenge in separate writ petition that has been preferred by the Company and the same is pending. It is thus clear that the closure of the Company has not attained finality and that question is sub-judice. The liability of the Company as determined by the Industrial Court in the aforesaid complaint is still not worked out. In such a situation, the prayer to direct the Company or the Purchaser to pay the dues of the present petitioners in writ jurisdiction cannot be granted since the liability in that regard has not yet been decided.

Another declaration sought by the petitioners is with regard to apportionment of the dues in terms of Section 13(9) of the Act of 2002 by seeking a declaration that the Company has gone into liquidation. Presently there is no order of liquidation passed against the Company. As per the provisions of Section 19(19) of the Act of 1993, an order directing sale proceeds of secured assets of such Company under liquidation can be directed by the Tribunal. Similar is the position with regard to Section 13(9) of the Act of 2002. That stage has thus not yet been reached.

11. For all these aforesaid reasons, we find that no relief as sought by the petitioners can be granted against ARCIL, the Company and the Purchaser. In the facts of the case since it is not possible to adjudicate the dues of the present petitioners, they would be free to approach the Additional Commissioner of Labour, Nagpur to seek settlement of their lawful dues. It would be open for the Additional Commissioner of Labour to consider the entitlement of the petitioners in accordance with law. Subject to what has been stated hereinabove, the writ petition stands dismissed. Rule stands discharged with no order as to costs.

(URMILA JOSHI-PHALKE, J.) **(A.S.CHANDURKAR, J.)**

Andurkar..