

27th July,
2023
(AK)
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W.P.A 17357 of 2023

Blueberry Thought Works Private Limited
Vs.
Reserve Bank of India and others

Mr. Amritam Mandal
Mr. Abhishek Dey

...for the petitioner.

Mr. Sourojit Dasgupta
Ms. Niharika Singh
Ms. Shubhangini Singh
Ms. Rupal Singh
Mr. Ashok Kumar Singh

...for the respondent no.3.

Affidavit-of-service filed in court today be kept on record.

Learned counsel for the petitioner submits that the petitioner was declared to be a winner in an auction held by the respondent no.3/Asset Reconstruction Company.

However, the very next day it was intimated online that there was allegedly a glitch in the tender process, for which the tender was declared cancelled.

The respondent no.3 is on the verge of holding a fresh auction.

It is contended that, after having declared the petitioner to be the successful bidder, the respondent no.3 could not, in law, resale from such position subsequently.

Learned counsel further submits that the mere fact that the reserve price was Rupees Twenty Nine Lakh but the same was increased subsequently to Rupees Twenty Nine Lakh Ninety Thousand, clearly indicates that there was substantial participation by other bidders, which negates the plea of the respondent no.3 that there was insufficient participation from other bidders, which leads to the allegation of the glitch in the portal.

Learned counsel appearing for the respondent no.3 controverts the submissions and argues that the auction was done by a third party.

That apart, the declaration of the petitioner as a successful bidder/winner was an automated process, over which the respondent no.3 did not have any direct control.

Immediately upon detection of the glitch, which is that the portal froze for a considerable period during the auction, which might have curtailed other bidders from participating, the respondent no.3 publicized that there was a glitch, which action cannot be faulted.

More importantly, learned counsel for the respondent no.3 objects to the maintainability of the present writ petition on two scores:

First, the respondent no.3 is not the Government or an instrumentality of the State coming within the purview

of Article 12 of the Constitution of India and, as such, the writ petition cannot be maintained against it.

Secondly, the relief of the petitioner lies under Section 17 before the concerned Debts Recovery Tribunal and it has been held time and again by the Supreme Court as well as High Courts that, under normal circumstances, the High Court ought not to interfere in such cases under Article 226 of the Constitution.

Learned counsel for the petitioner, in reply to the objection as to maintainability, submits that the respondent no.3 is substantially governed by the Reserve Bank of India and, as such, is an instrumentality discharging public duty coming within the purview of Article 12.

Insofar as the alternative remedy under Section 17 of the SARFAESI Act, 2002 is concerned, it is argued that there is little time left to prefer such a challenge, at least during which period the petitioner ought to be protected.

Since the respondent no.3 has sought to make out an arguable defence, the matter cannot be resolved in a flash.

As such, the writ petition, if entertained, would otherwise have to be heard on merits prior to arriving at any conclusion.

However, the question of objection regarding maintainability comes in here, since the respondent no.3

is justified in contending that an equally, if not more, efficacious alternative remedy is available to the petitioner by way of an application under Section 17 of the SARFAESI Act, the scope of consideration of which, on facts and law, is rather wider than the limited window of interference under Article 226 of the Constitution.

Secondly, it is arguable as to whether the present writ petition is maintainable by treating the respondent no.3, against whom the main relief has been sought, to be an entity under Article 12 of the Constitution of India.

This court chooses to abstain from exercise of jurisdiction under Article 226 of the Constitution, primarily on the ground of availability of an equally efficacious alternative remedy under Section 17 of the 2002 Act.

Such stand of the court obviates a further enquiry on facts, thereby rendering the direction of affidavits, which is contemplated in a similar factual case, redundant.

Accordingly, WPA 17357 of 2023 is disposed of by granting liberty to the petitioner to approach the concerned Debts Recovery Tribunal for the reliefs as sought herein.

If so approached, the tribunal shall consider the said matter and all issues involved independently, in

accordance with law, without being influenced in any manner by any of the observations made herein.

Parties shall act on a server copy of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)