OD 4

WPO/1588/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

TAMOJIT SEN
VS
AUTHORISED OFFICER SMFG
INDIA CREDIT COMPANY LIMITED AND ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 6th October, 2023.

Appearance:
Mr. Dulal Dey, Adv.
Mr. Amalaksha Jana, Adv.
...for the petitioner

The Court: Affidavit of service filed today be kept on record.

Learned counsel for the petitioner contends that as per the Government Notification annexed at page 18 of the writ petition, for the purpose of invoking the jurisdiction of the Debts Recovery Tribunal, the secured debts have to be of a minimum of Rs.50 lakhs or above.

In the present case, it is argued, four different debts between the petitioner and the financial institution have been clubbed together without the consent of the petitioner. Although two of the said debts are more than Rs.50 lakhs, the other two are to the tune of Rs.10,60,766/- and Rs.10,64,744/,- being much below the said stipulated limit. Accordingly, the measures taken against the petitioner under Section 3 (4) of the SARFAESI Act, 2002, it is argued, are bad in law.

Despite service, none appears for the respondent no.1 who is the principal contesting party.

The question raised by the petitioner is arguable.

In the event the wider perspective is taken in the light of the Order II of the Code of Civil Procedure and the principles involved therein, the creditor may very well club several claims against the petitioner in the same proceedings. Proceeding from such premises, the clubbing of the separate debts in one action, taking measures under Section 13(4) of the SARFAESI Act, 2002 on such premise, is valid. However, from an different perspective, in so far as two of the individual debts fall admittedly below Rs.50 lakhs, it is arguable as to whether the Tribunal has jurisdiction.

Be that as it may, even questions of jurisdiction of the Tribunal can very well be challenged before the Tribunal itself. Since the premise of the challenge of the petitioner is that the respondent no.1 did not have the authority within the contemplation of the 2002 Act to initiate proceedings under Section 13(4) which is a valid ground of challenge under Section 17 of the said Act, it would only be appropriate if the petitioner is permitted to approach the appropriate forum.

Learned counsel for the petitioner submits that a tenant of the premises has already approached the Debts Recovery Tribunal where the petitioner is also a party. Be that as it may, the petitioner may himself also prefer an independent challenge under Section 17 of the said Act before the Tribunal on the ground taken herein.

Accordingly, WPO/1588/2023 is disposed of by granting liberty to the petitioner to approach the Debts Recovery Tribunal having jurisdiction, to canvass the issues as raised herein.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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