IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

W.A. No. 3616 of 2019

Edelweiss Asset Reconstruction
Company Ltd.,
rep. by its Authorised Officer,
Edelweiss House,
Off: CST Road, Kalina,
Mumbai – 400 098. ..Appellant

Vs.

1. M/s. Nithin Ispat Private Limited
(NIPL),
rep. by its Authorised Signatory,
Mr. Masudul Hasan,
S/o. Shri. Abdul Samad,
Having its Registered Office at
No. 85/71, Agimkothi,
Kanpur – 208 003.

2. The Thasildar,

Cuddalore Taluk
Cuddalore District,
Cuddalore – 607 001.

3. The District Collector,
Cuddalore District,
Cuddalore – 607 001.

4. VLS (P) Ltd.
Thozhilalar Vazhvurimai Sangam,
rep. by its Secretary,
No.135, Kullakadai Street,
Pachayankuppam,
Cuddalore O.T.,
Cuddalore District.

5. Vardhman Life Sciences (P) Ltd.,
rep. by its Managing Director,
A-7, SIPCOT Industrial Complex,
Cuddalore – 607 005,
Reg.Off: 412-B-8, GDITL Tower,
Nethaji Subhash Place,
Pitampura, New Delhi 110 034. ..Respondents

Prayer: Writ Appeal as against the order dated 03.09.2019 passed in W.P. No. 6503 of 2019.

For Appellant :: Mr. Ravi, Senior Advocate for
Ms.S. Indumathi Ravi

For Respondents :: No appearance for R1
Mrs.C. Sangamithirai

Special Govt. Pleader for R2& R3
Mr.P.R. Thiruneelakandan for R4

J U D G M E N T

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present appeal has been preferred as against the order dated 03.09.2019 passed in W.P. No. 6503 of 2019 directing the appellant herein to deposit a sum of Rs.1 crore in any one of the Nationalised Banks to the credit of I.D. Nos. 47 to 61 of 2017 as the dispute between the workmen concerned and the 5th respondent Management was pending adjudication before the Labour Court and further, quashing the order dated 28.02.2019 passed by the Tahsildar, Cuddalore, preventing the 1st respondent/writ petitioner company from removing their goods already purchased from the appellant herein, which were are all lying in the 5th respondent company.

2. The gist of facts that led to the filing of the writ petition:

(i) The 5th respondent herein, namely, Vardhman Life Sciences Private Limited, involved in the manufcturing process of pharma products, had secured loans from various public sector banks to the tune of Rs.1,75,00,00,000 (One Hundred and Seventy Five Crores Only) for development and promotion of its business activity. The 5th respondent company had mortgaged its immovable property in SIPCOT Industrial Complex at Cuddalore along with all movable assets including plant, machinery, fixtures, vehicles,etc. As the said company had defaulted in repayment of loans, the loan accounts were classified as Non-Performing Assets (NPA).

(ii) Thereafter, the consortium of the public sector banks from whom the 5th respondent had availed loans, had assigned their loans to the appellant herein by executing a separate deed of assignment on different dates and the appellant became empowered to recover all the debts of the 5th respondent company under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI' Act in short). Accordingly, a public notice for sale under the provisions of SARFAESI ACT, 2002 for auction of movable and immovable secured assets of the 5th respondent company was issued by the appellant and bids were invited. The 1st respondent company participated in the auction and became the successful bidder and consequently, an order confirming the auction sale in favour of the 1st respondent company was also passed. The 1st respondent herein had entered in to a Memorandum of Understanding with the appellant in respect of modus of removal of movables from the unit and the time limit for lifting of movable assets and transportation etc. The appellant had handed over the physical possession of the site and movable assets on 22.09.2018 to the 1st respondent and a sale certificate was also issued in favor of 1st respondent company on the said date.

(iii) When part of movable assets had been removed from the site by the 1st respondent, some of the workers of the 5th respondent company had attempted to cause hindrance to the removal of remaining movables and made a demand for settlement of wage dues, which resulted in lodging of complaint by the 1st respondent company seeking police protection to lift the movable assets and on intervention of Police, the 1st respondent proceeded to remove the secured movable assets for sometime. While so, the 4th respondent Union, comprising of erstwhile workers of the 5th respondent company, had instituted a civil suit in O.S. No. 73 of 2018 before the Principal District Munsif Court, Cuddalore for the relief of permanent injunction restraining the 5th respondent company and the appellant herein from alienating and encumbering the suit property without settling the dues of the workers and for a further permanent injunction restraining the 5th respondent company from removing any machinery, materials from the suit property without settling the dues. Besides, the workers had also raised industrial dispute before the Labour Court, Cuddalore, for reinstatement and settlement of dues.

(iv) Pending the suit, the 4th respondent Union had submitted a representation to the Tahsildar, Cuddalore District, to issue an order restraining the 1st respondent company from removing the secured assets until settlement of labour disputes and workmen's dues. The 1st respondent company submitted their objections in respect of the claim set out by the workmen before the Tahsildar. However, the Tahsildar, stating that there is a possibility of law and order problem while removing the immovable goods from the 5th respondent company and that the issues have got to be resolved between the workmen and the Management passed the order dated 28.02.2019 restraining the 1st respondent company from lifting the movable assets from the factory until adjudication of settlement of workers dues. Challenging the said order, the 1st respondent filed the writ petition.

3. The learned Single Judge, after hearing the rival submissions, by the order under challenge, set aside the order passed by the Tahsildar, Cuddalore and allowed the writ petition with certain directions. The operative portion of the order passed by the learned Single Judge is extracted hereunder:

> *"9. This apart, the industrial dispute is now pending before the Labour Court, Cuddalore. It is open to the parties to adjudicate and resolve the issues in the manner known to law. However, the interest of the writ petitioner is concerned, the same has no link with the disputes now pending before the Labour Court and therefore, their rights are to be protected by this Court without affecting the rights of the workman, who all are already before the Labour Court. Under these circumstances, this Court is inclined to pass the following order:*
>
> *"(1) The 1st respondent Company / EARC is directed to deposit Rs.1,00,00,000/- (Rupees One Crore*

only) in any one of the Nationalized Bank in the credit of industrial dispute now pending before the Labour Court in I.D. No. 47 to 61 of 2017. The said amount is directed to be deposited in an interest bearing deposit scheme within a period of six (6) weeks from the date of receipt of a copy of this order.

(2) The writ petitioner is permitted to remove the balance materials as per the certificate of sale issued in favour of the writ petitinoer and all the remaining goods are directed to be removed within a period of four weeks from the date of receipt of a copy of this order.

(3) In view of the order passed above, the impugned order passed by the Tahsildar, Cuddalore in proceedings Na.Ka.A2.281-2019 dated 28.02.2019 stands quashed. Further, the 4th respondent / Union is directed not to cause any hindrance or inconvenience to the writ petitioner Company for removal of the balance materials, which all are lying in the 5th respondent Company premises. "

Aggrieved by the said order, the present writ appeal has been preferred by Edelweiss Asset Reconstruction Company Limited.

4. According to the learned counsel for the appellant, the appellant is an Asset Reconstruction Company within the meaning of Section 2(v) of SARFAESI Act, 2002, which is a special type of institution that buys non performing assets or bad assets of the financial institutions at a mutually agreed value and attempts to recover debts or associated securities.

According to the learned counsel, as the 5th respondent defaulted in repayment of loans and its loan accounts were declared as NPA, the debts of 5th respondent were assigned by the Consortium Banks to the appellant, which draws its powers under Section 5 of SARFAESI ACT, 2002 and it had initiated steps under Sections 13(2) and 13(4) of the SARFAESI Act, 2002 in order to recover the huge amount of debt by taking over possession of the secured property and realising the debts through its sale. When there is no employer-employee relationship between the appellant and the workmen, the appellant cannot be held liable for payment of dues to the workmen. The appellant Company had also issued a clarificatory note on 21.12.2018 stating that they are in no manner involved in either management or in operation of 5th respondent company or exercises any control in the affairs of the company. The movable assets have been sold by way of e auction under the provisions of SARFAESI Act, 2002 and the workers cannot make any claim to the appellant. The learned counsel would further contend that when the writ petition was filed challenging the prohibitory order passed by the Tahsildar and when no relief was sought by the 1st respondent/writ petitioner, vis-à-vis the appellant, the learned Single

Judge ought not to have mulcted the appellant with the burden of workmen's dues by directing the appellant to deposit Rs.1 crore, more so, when there is no employer-employee relationship between the appellant and the workmen. Though it was stated before the learned Single Judge on behalf of the 1st respondent herein that the dispute with regard to the settlement of dues in respect of workmen could not be adjudicated in the writ petition as they were unconnected, the learned Single Judge had directed the appellant herein to deposit a sum of Rs.1 crore as stated supra and therefore, the order of the learned Single Judge needs to be interfered with.

5. On the other hand, according to the learned counsel for the 4th respondent Union, the 5th respondent company is under liquidation and that the rights of workmen are protected in terms of the provisions of Companies Act and SARFAESI Act, 2002. According to the learned counsel for the 4th respondent, the workmen have succeeded in the industrial dispute and computation petition is pending before the Labour Court in which the appellant is also a party. He would further submit that without depositing the money, as directed by this Court, if goods are removed, it would be in

violation of clause (1) of paragraph No.9 of the order passed by this Court.

6. In response, learned counsel for the appellant would submit that the 5th respondent company is not under liquidation and it is a live company. The learned counsel for the appellant would state that the contention of the workmen that the dues payable to them shall be given priority is absolutely untenable inasmuch as the 5th respondent company is not under liquidation. Unless the company is under liquidation, the workmen would remain as unsecured creditors and they cannot seek payment of their dues, that too, from the appellant, who is not their employer. The learned counsel for the appellant would further contend that even the suit filed by the workmen before the District Munsif Court at Cuddalore in O.S. NO. 73 of 2018 seeking permanent injunction to restrain the appellant from exercising its statutory right under the SARFAESI Act, 2002 has been rejected by the Civil Court observing that when action has been taken under SARFAESI Act, 2002, Section 34 of the said Act expressly bars civil court's jurisdiction and the workmen will acquire status of secured creditor only when the company is wound up. The learned counsel would add that even assuming that the

company is going to be wound up, the remedy is to make an application before the Official Liquidator requesting for payment of amount in Form 66. He would reiterate that the company is not wound up and that it is a live company. He drew the attention of this Court to paragraph Nos. 40 & 41 of the order dated 12.01.2021 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in C.A. No. 490/2019 & I.A. No. 42/2020 in C.P. (IB) No. 2/Chd/CHD/2018, which are as follows:

> *"40. On the basis of discussion made above and in view of the provisions of Section 30(4) of the Code and subject to the observations made in Paras 33 to 39, we approve the resolution plan submitted by DPB Antibiotics Private Limited as approved by the CoC. The resolution plan so approved shall be binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues or owned, guarantors and other stakeholders involved in the resolution plan. We may add that as discussed supra, the RP has stated that the total amount recovered by corporate debtor during CIRP (after payment of CIRP cost) would be distributed amongst the secured financial creditors in*

proportion to their shares.

41. Under the provisions of 31(3) of the Code, we also direct as under:

a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 25.09.2016 shall cease to have effect; and

b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its dabatase."

He also drew the attention of this Court to the judgment of the Hon'ble Supreme Court in ***Central Bank of India V. Siriguppa Sugars & Chemicals Ltd and Others*** reported in ***(2007) 8 SCC 353*** wherein the Hon'ble Supreme Court while considering *Workers V. Rohtas Industries Ltd. reported in 1987 Supp SCC 462* rendered a finding that it is not correct law and that the said judgment has been rendered in the peculiar facts and circumstances of the case at that point of time and the same is extracted hereunder:

"13. In Workers V. Rohtas Industries Ltd. a direction was made for payment of the workers' dues by stating that such dues will have priority over other banks and financial institutions. On going through the facts, it is seen that it was

a case where proceeding for liquidation of the company was going on and obviously Section 529 of the Companies Act was attracted. Moreover,it is not seen that the rights of a pawnee vis-a-vis the rights of the workmen is discussed. Since a liquidation had intervened there, which is not the case here, the said decision cannot be of any assistance to support the order passed by the High Court. In fact, in Workers V. Rohtas Industries Ltd[10]. rendered while clarifiying the earlier order,it was stated that the earlier order of the Court was made under peculiar circumstances obtaining in the case and was not to be taken as a precedent. Hence, even apart from the distinction, no value as a precedent can be attached to that decision."

7. In response, learned counsel for the 4th respondent Union drew the attention of this Court to the provisions of Insolvency & Bankruptcy Code (I & B Code in short) and the Companies Act, 1956 and stated that the 5th respondent company is a subsidiary company of M/s. Vardhaman Chemtech Limited against which corporate insolvency process is already instituted before the National Company Law Tribunal, Chandigarh. According to the learned counsel, the prohibition order, moratorium under

Section 14 of I & B Code, 2016 also would apply to the subsidiary company in view of Section 18(f)(v) and 36 of I & B Code and that the secured creditor of the 5th respondent could not enjoy the absolute right over the seured assets and its sale proceeds without compliance of Section 13(9) of SARFAESI Act, 2002 as well as Section 53 of I & B Code, 2016. Therefore, the conditional order issued by the learned Single Judge to protect the interest of the workmen as well as secured creditors cannot be found fault with. The learned counsel for the 4th respondent relied on the judgments rendered in ***Bank of Maharashtra V. Pandurang Keshav Gorwardkar & Others*** reported in ***CDJ 2013 SC 422 and Pegasus Asset Resconstruction P.Ltd. V.M/s.Haryana Concast Ltd. and another*** reported in ***CDJ 2015 SC 1101*** and submitted that it was clearly held in the aforecited decisions that *"when the company is under liquidation or windup the secured creditor who opts to realize his security instead of relinquishing his security and proving his debt under proviso to sub section (1) of Section 529 of Companies Act, 1956 may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with provisions of Section 529A of the Companies Act,1956."*

8. Heard both sides.

9. It may be true that the Holding Company of the 5th respondent had gone before the National Company Law Tribunal, but the subsequent order dated 01.02.2021 would make it very clear that the proposal to revive the company has been accepted and that the prohibition under Section 14 of I & B code is no longer there. In the present case, we are not concerned about the dispute or the computation petition pending before the Labour Court. That apart, in the computation petition, the present appellant has been made as a party and the said proceedings are stated to have been stayed by this Court. We do not want to advert to other submissions made by the learned counsel appearing for the 4th respondent Union as in case, we render any finding touching upon the merits of the matter, the relief that is claimed by the workmen before the Labour Court would be affected. However, the submissions made on behalf of the 4th respondent Union based on Section 13(9) of SARFAESI Act, 2002 read with Section 529A of Companies Act, 1956, to the effect that the settlement of workmen's dues should be given priority over secured creditors are not acceptable as the 5th respondent

company is not under liquidation. We are unable to acept the contention of the Union tha Section 13(9) of SARFAESI ACT, 2002 and Section 529A of Companies Act, 1956, *pari materia* interdependent on each othr as we are of the view that both the provisions are independent of each other.

10. Admittedly, there is no employer-employee relationship between the appellant and the workmen of the 4th respondent Union. There is no award against the 5th respondent so as to render the 5th respondent liable to implement the award. This Court in ***A. Sachidanandam, Macneil and Magor Kilburn Group Companies Employees' Union Vs. S. Srinivasan & Others*** reported in ***(2011) 5 LLN 696*** has passed an order that the employer's properties can be attached and if the employer has no property, then the properties of Directors can be attached**.** The said decision has been rendered in contempt proceedings.The principle laid down by the Division Bench is that property of the persons falling under Section 32 of I.D. Act, 1947 can be attached. The Division Bench has categorically held that employer's property can be attached and be consolidated by way of public auction for the purpose of recovery of dues payable to the employee.

11. The contention of the workmen that without making the Company as a party, the Directors cannot be proceeded against cannot be accepted. Only under the Negotiable Instruments Act, Section 141 specifically contemplates that a Company shall be made as a party. The word "as well as the Company" mentioned under Section 141 of Negotiable Instruments Act is absent in Section 32 of Industrial Disputes Act, 1947 ('I.D. Act' in short) which means, even without making the Company as a party, the individual Directors or the person, who is liable to implement the award or a settlement can be prosecuted. One of us (SVNJ) has also passed an order in W.P. No. 2869 of 2021 dated 11.02.2021 in this regard. Even assuming for the sake of argument that the Company is under liquidation, as stated supra, the only remedy is to file an application under Form 66 to claim the money due and the said application can be made only before the Official Liquidator. Even if a Company is wound up, still, it is open to the employees to proceed with the complaint under Section 29 of I.D. Act as for non-implementation of the award, punishment will have to be imposed and recovery of money is completely different from one seeking prosecution. We

are of the view that for the Government to sanction prosecution under Section 29 of I.D. Act, the Company need not be made as a party, whether it is a live Company or one under liquidation. Since Section 32 of I.D. Act and Section 141 of Negotiable Instruments Act are not in pari materia, we are of the view that the Company need not be made as a party. Learned counsel for the workmen also referred to Sections 14 and 36 of I & B code, 2016. A reading of these two provisions would show that these provisions may not be applicable to the facts of this case as the 5th respondent Company is not under liquidation.

12. ***Therefore, the writ appeal stands allowed and the order passed by the learned Single Judge is set aside.*** It is open to the employees to make a complaint under Section 29 of I.D. Act, either individually or through Union, which shall be taken up by the Government and prosecution shall be sanctioned against persons falling under Section 32 of the I.D.Act and we reiterate that the Company need not be made as a party to the proceedings in the light of the discussion made supra.

13. The appellant has been made as a party in the computation petition before the Labour Court and pursuant to the writ petition filed before this Court, the proceedings have been stayed. It is open to the workmen to give up the claim against the appellant herein and enable the Labour Court to proceed with the computation petition on a day to-day basis. The other issues with regard to claim of monetary benefits and other benefits due to the employees are not gone into pursuant to the orders passed by us in this writ appeal. No costs.

(S.V.N.J.) (R.K.M.J.)
11.04.2023

nv

To

1. The Thasildar,
Cuddalore Taluk
Cuddalore District,
Cuddalore – 607 001.

S. VAIDYANATHAN,J.

AND

R.KALAIMATHI,J.

nv

2. The District Collector,
   Cuddalore District,
   Cuddalore – 607 001.

W.A. No. 3616 of 2019

11.04.2023