HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 34205 OF 2021

Date: 02.02.2023

Between:

Genesis Poweronics India Private Limited
Regd Office at H No A - 46 Madhura Nagar Ameerpet
Hyderabad - 500 038 Rep by its Managing Director Mr
Venkata Chary Shivakot.

.....Petitioner

And

The Debts Recovery Tribunal II
151 Floor Triveni Complex Abids
Hyderabad 500 001 and others.

.....Respondents

The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 34205 OF 2021

ORDER: (Per Hon'ble Sri Justice P.Naveen Rao)

Heard learned counsel Sri C.H.Srinivasa Raju for petitioner, and learned counsel Sri V.V.S.N.Raju for respondent No.2.

2. Respondent No.3 in the writ petition secured loan from the Canara Bank. As respondent No.3 defaulted in repayment of loan, the loan account was classified as non-performing asset and the Canara Bank has taken recourse to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI ACT, 2002'). Later, the loan account of respondent No.3 was transferred to the Asset Reconstruction Company (India) Limited – respondent No.2. The secured asset was subjected to sale and as respondent No.2 was successful bidder in the sale conducted, the sale was confirmed in its favour and on payment of full sale consideration, a sale certificate was also issued to him. Respondent No.4 is claiming to be the co-applicant and was

also the Director of the respondent No.3 – Company. Respondent Nos.3 and 4 filed Securitization Application No.20 of 2018 before the Debts Recovery Tribunal – II, at Hyderabad, challenging the e-auction sale scheduled on 23.03.2018 pursuant to the e-auction sale notice dated 07.03.2018. The Tribunal by order dated 21.06.2021, impugned in this writ petition, allowed the Securitization Application No.20 of 2018 and set aside the e-auction held on 23.03.2018 and directed the respondent No.1 therein, who is respondent No.2 herein to take back the possession of the secured asset from the respondent No.2 – auction purchaser. The Tribunal also gave liberty to the respondent No.2 to put the secured asset to auction afresh, strictly in accordance with the provisions of the SARFAESI ACT, 2002. The petitioner herein is respondent No.2 in the Securitization Application No.20 of 2018. He contested the claim of applicants therein against the confirmation of sale in favour of respondent No.2. Overruling the objections raised by petitioner herein, the Securitization Application No.20 of 2018 was allowed.

3. Learned counsel for the petitioner sought to contend that in September, 1998, the respondent No.4 filed financial

statement and balance sheets for the year 1997-1998 on behalf of respondent No.3. Thereafter, the Registrar of the company categorized the company as inactive, and consequently, the Directors of respondent No.3 – Company were disqualified as being Directors. He further contended that none of the Directors were having locus or competency to represent the respondent No.3 – Company and thus, all the proceedings made in the name of respondent No.3 were illegal and are not valid. It was further contended that the issue raised is crucial as it goes to the root of the matter and in view of the same, the order of the Tribunal is *ex-facie* illegal. Therefore, petitioner need not be compelled to avail the remedy provided under Section 18 of the SARFAESI ACT, 2002, and this Court can entertain the writ petition and decide the issues raised.

4. In support of the said contentions, learned counsel for the petitioner placed reliance on the decisions of the Hon'ble Supreme Court in **Surya Dev Rai Vs. Ram Chander Rai and Others**[1], **ABL Internathional Limited and Another Vs. Export Credit Guarantee Corporation of India Limited and**

---

[1] (2003) 6 SCC 675

Others[2], **Balakrishna Ram Vs. Union of India and Another**[3], **State of Rajasthan and Others Vs. Lord Northbrook and Others**[4] and **Union of India and Others Vs. Tantia Construction Private Limited**[5]**.**

5. Per contra, according to learned counsel appearing for respondent No.2, the last contention of the learned counsel for petitioner was not raised before the Tribunal and at any rate, this issue can as well be urged in the form of appeal under Section 18 of the SARFAESI ACT, 2002, before the DRAT. Therefore, while an effective and efficacious remedy is available to the petitioner, he ought to have availed the said remedy before filing writ petition before this Court.

6. There is no dispute that the jurisdiction of this Court under Article 226 of the Constitution of India is very wide but ordinarily writ Court does not entertain writ petition filed under Article 226 of the Constitution of India when an aggrieved person has an effective and efficacious alternative remedy in the form of appeal.

---

[2] (2004) 3 SCC 553
[3] (2020) 2 SCC 442
[4] (2019) SCC Online SC 1117
[5] (2011) 5 SCC 697

7. As held by the Hon'ble Supreme Court in **L.Chandrakumar Vs. Union of India and Others**[6], whenever there is an alternative remedy available, the writ Court shall not entertain the writ petition and shall relegate the parties to avail the alternative remedy provided.

8. Against the decision of the Tribunal in an application filed under Section 17 SARFAESI ACT, 2002, Section 18 of the SARFAESI ACT, 2002, provides remedy in the form of appeal before the Debts Recovery Appellate Tribunal (for short 'DRAT'). The said remedy is an effective and efficacious remedy where all pleas can be raised in the form of appeal before the DRAT. Since DRAT is an Appellate Tribunal, it can go into all aspects, re-appreciate the evidence and decide the issue on due consideration of the respective submissions. As consistently held by the Hon'ble Supreme Court and this Court, the remedy of appeal provided under Section 18 of the SARFAESI ACT, 2002, is an effective and efficacious remedy and an aggrieved person has to avail the said remedy before taking recourse to the provisions of the Article 226 of the Constitution of India.

---

[6] AIR 1990 SC 2263

9. Even otherwise, for the first time the petitioner is seeking to raise the contention of competency of respondent No.4 to represent the respondent No.3 as the Director and also to file the Securitization Application before the Tribunal and the said contention was not raised before the Tribunal for the reasons best known to the petitioner. It is not a straight forward issue but may require the parties to lead evidence in support of the respective claims and based on the evidences brought on record to decide the issue. Therefore, even assuming that the petitioner came to know about the aspect raised in paragraph No.5 of the affidavit filed in support of this writ petition, for the first time after the disposal of the Securitization Application, nothing precluded the petitioner from raising this plea before the DRAT and inviting a decision on due contest. Therefore, it is not a straight jacket case of the petitioner to accept without giving due opportunity to counter the said plea. Thus, necessarily the matter requires consideration on the disputed claim. Whenever there is serious dispute on any issue and where leading of evidence is necessary, the party should avail the remedy provided in civil law or under a statute. Therefore, we are not inclined to entertain this writ petition at this stage and relegate the

petitioner to avail the remedy provided by Section 18 of the SARFAESI ACT, 2002. Accordingly, the Writ Petition is disposed of.

10. This Court by order dated 17.12.2021 granted interim stay of the order impugned dated 21.06.2021 with the further clarification that possession of the petitioner over the secured asset should be maintained. Learned counsel appearing for respondent No.2 submits that possession was already taken and the amount paid by the petitioner was refunded with 6% interest whereas, now petitioner is claiming higher amount with higher interest. Since, stay was granted on 17.12.2021 which is in operation till date, we are inclined to continue the stay for a further period of six (6) weeks to enable the petitioner to avail the remedy of appeal within six (6) weeks. Having regard to the fact that this writ petition was filed on 14.12.2021 and is pending consideration by this Court till date, the DRAT is requested to exclude the period spent before this Court till date from 14.12.2021 and for further period of six (6) weeks from today towards computation of period of limitation.

Pending miscellaneous petitions, if any, shall stand closed.

P. NAVEEN RAO, J

NAGESH BHEEMAPAKA, J

Date: 02.02.2023
PT

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 34205 OF 2021

Date: 02.02.2023

PT