**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

127 **CWP-17223-2023**
Date of Decision: 08.08.2023

AGRI BEST INDIA LIMITED
... Petitioner

VERSUS

AGRIWISE FINSERV LIMITED AND ANOTHER

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Anil Mehta, Advocate and
Ms. Irvanneet Kaur, Advocate
for the petitioner.

Mr. Arvind Thakur, Advocate
for respondent No.1.

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<u>LISA GILL, J.(Oral)</u>

1. This writ petition has been filed by the petitioner for setting aside possession notice dated 23.03.2022 under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act issued by respondent No.1.

2. Learned counsel for the petitioner submits that Memorandum of Understanding (MoU) was executed between the parties on 03.03.2022 and CWP-22650 of 2021 filed by the respondent was disposed of on 21.03.2022 in view of the said MoU. Terms and conditions thereof are not being adhered to by the respondents and notice dated 23.03.2022 has been arbitrarily issued. Therefore, this writ

petition has been filed. Various other arguments have been raised by learned counsel for the petitioner which are sought to be countered by the respondents.

3. However, keeping in view the categoric judgment of Hon'ble Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, 2022 (5) SCC 345, no ground for interference is made out in exercise of jurisdiction under Article 226 of the Constitution of India as respondent No.1 is admittedly a Non Banking Financial Company. Relevant paragraph of above said judgment reads as under:-

> *"12. Even otherwise, it is required to be noted that a writ petition against the private financial institution – ARC – 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. Therefore, decisions of this Court in the cases of Praga Tools Corporation (supra) and Ramesh Ahluwalia (supra) relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

4. Keeping in view the facts and circumstances, we do not find any ground for interference in this matter. Writ petition is accordingly dismissed with liberty to the petitioner to avail the remedy/remedies as may be available to them in accordance with law.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

08.08.2023
Rimpal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No