

2023:PHHC:110744-DB

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

CWP-18027-2023

Date of Decision: August 21, 2023

Jagmeet Agro Foods Pvt. Ltd. and others

..... Petitioners

Versus

Asset Reconstruction Company (India) Ltd. and another

..... Respondents

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

Present: Mr. Yogesh Jain, Advocate for the petitioners.

Mr. Nitin Grover, Advocate for respondent No.1.

LISA GILL, J.

1. This writ petition has been filed for setting aside notice dated 19.05.2021 under Sections 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’); notice dated 01.11.2021 under Section 13(4) of SARFAESI Act as well as notices dated 26.04.2023 and 08.05.2023 issued pursuant to order dated 14.02.2023 under Section 14 of the SARFAESI Act passed by learned Additional Deputy Magistrate exercising the powers of District Magistrate, Ludhiana besides order dated 23.05.2023 passed by learned Presiding Officer, DRT-III, Chandigarh in SA-94-2023. It is also prayed that assignment agreement dated 28.03.2014 be declared inoperative against the petitioners and that no coercive action under SARFAESI Act be taken qua the petitioners.

2. It is submitted that credit facilities were availed of by petitioner No. 1 from Punjab National Bank, which was taken over by respondent No. 2 – IDBI Bank Limited. Sanctioned export credit limit of petitioner No. 1 is stated to be to the extent of Rs.731.93 lakhs. Petitioner No. 1, it is stated, never authorized respondents No. 2 to collect the title deeds of the secured assets and neither carried out any overt act for creating any equitable mortgage in favour of respondent No. 2. OA-803-2012 thereafter re-numbered as OA-2327-2017 was filed for issuance of recovery certificate. Reply to said OA was filed by the petitioners. Thereafter, proceedings under the SARFAESI Act were initiated against the petitioners with notices under Sections 13(2) and 13(4) of SARFAESI Act being issued. Order under Section 14 of SARFAESI Act was also passed pursuant to which notices dated 26.04.2023 and 08.05.2023 were issued.

3. Petitioners admittedly filed SA-94-2023, which is pending adjudication before the learned DRT-III, Chandigarh. Prayer for interim relief was also addressed in the said SA on behalf of the petitioners, however, the same has admittedly been declined vide order dated 23.05.2023 (Annexure P16). Learned counsel for the petitioners claims violation of Section 26(D) of SARFAESI Act as well.

4. When faced with the question of entertainability of this writ petition, in view of categorical provisions of the SARFAESI Act, apart from pendency of SA-94-2023 filed by the petitioners besides the fact that order dated 23.05.2023 is an appealable order, learned counsel for the petitioners vehemently argued that remedy of appeal under Section 18 of SARFAESI Act is not efficacious remedy available to the petitioners. They should not be compelled to fulfill the requirement of pre-deposit of the amount in question

while filing the appeal. It is contended that petitioners are prima facie not liable to deposit any amount whatsoever, therefore, requirement of pre-deposit for filing the appeal to challenge order dated 23.05.2023 is unjustified and interference of this High Court is, thus, called for.

5. Heard learned counsel for the petitioner and have gone through the paper book with his assistance.

6. It is undeniable that order dated 23.05.2023 passed by the learned DRT-III, Chandigarh is an appealable order in terms of Section 18 of SARFAESI Act. It is a settled position that once an alternate efficacious remedy of appeal is available to the petitioners, there is no justification for entertaining the present writ petition. It is a matter of record that all the pleas and arguments, as have been raised in the present writ petition, have been raised in SA filed before learned DRT. Interim relief has not been afforded to the petitioners by learned DRT vide order dated 23.05.2023, which is an appealable order. Merely because there is a condition of pre-deposit while filing an appeal under Section 18 of the SARFAESI Act, is not a ground for entertaining the present writ petition. It would not be appropriate for this Court to express any opinion, at this stage, regarding liability or otherwise of the petitioners to deposit any amount, especially when the matter is pending adjudication before learned DRT.

7. Keeping in view the facts and circumstances of the case, we find no ground to entertain this writ petition. Present writ petition is accordingly disposed of with petitioners being relegated to the remedy of challenging order dated 23.05.2023 passed by learned DRT-III, Chandigarh before the Appellate Forum in terms of Section 18 of SARFAESI Act.

8. There is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

August 21, 2023
rts

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