

2023:PHHC:166097-DB

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

Civil Writ Petition No. 20622 of 2023
Date of Decision: December 12, 2023.

Jagmeet Agro Foods Pvt. Ltd. And others PETITIONER (s)
Versus
Union of India and others RESPONDENT (s)

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

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

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 19.05.2021 and 01.11.2021 under Section 13(2) and 13(4), respectively, of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'SARFAESI' Act) as well as order dated 14.02.2023 under Section 14 of the said Act, passed by Additional Deputy Magistrate, Ludhiana. Further prayer is for declaration of Assignment agreement dated 28.03.2014 being inoperative qua petitioners being time-barred, besides, being violative of provisions of SARFAESI Act.

2. Petitioners are further aggrieved of order dated 23.05.2023 passed by learned DRT-III, Chandigarh, in SA No.94 of 2023 filed by petitioners. They seek stay of proceedings under SARFAESI Act initiated against them as well as

abovesaid SA, pending decision of CWP No.26867 of 2021 (Krish Refineries Ltd. And others v. Union of India and others).

3. It is a matter of record that CWP No.18027 of 2023 filed by petitioners with similar prayers, challenging proceedings under SARFAESI Act initiated against them as well as order dated 23.05.2023 passed by learned Presiding Officer, DRT-III, Chandigarh, besides, seeking setting aside of assignment agreement dated 28.03.2018 was disposed of on 21.08.2023 while relegating petitioners to their remedy of appeal in terms of Section 18 of SARFAESI Act. Subsequent Appeal No.186 of 2023 filed by petitioners was, however, dismissed by learned DRAT vide order dated 29.08.2023 due to non-compliance of condition of pre-deposit. Present writ petition has, thus, again been filed with the prayers as above.

4. It is to be noted that petitioners have not as such challenged order dated 29.08.2023 passed by learned DRAT. It is argued by learned counsel for petitioners that entire controversy including the legality or otherwise of proceedings under SARFAESI Act at hand should be decided by this Court itself while exercising jurisdiction under Article 226 of Constitution of India. Learned counsel for petitioners submits that respondent-company is raising a time-barred claim and there has been illegal assignment of debt in question. Learned counsel for petitioners further submits that petitioners are not even liable to deposit anything because respondent No.2 does not have an actionable claim as petitioners were not party to the Assignment agreement and that no charge has been registered with CERSAI. Moreover, respondent No.2 cannot recover any amount without adjudication regarding the debt by learned DRT. Therefore, in

this situation it would be unjust and unfair to deny adjudication of the matter on the ground that pre-deposit has not been made by petitioners. Learned counsel for petitioners has also referred to pendency of CWP No.26867 of 2021 (Krish Refineries Ltd. And others v. Union of India and others), which is pending adjudication for 24.01.2024, though with no interim relief having been granted therein. It is submitted that petitioners No.2 to 4 are parties in the said writ petition and the same question/issue is involved for adjudication in the said writ petition.

5. Having heard learned counsel for petitioners, we do not find any ground, whatsoever, to interfere in this writ petition, which is clearly misconceived.

6. At this stage, it is useful to refer to Section 18 of SARFAESI Act, which reads as under:-

“18. Appeal to Appellate Tribunal.—

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

7. It has been held by Hon’ble Supreme Court in ***2021(3) SCC 549, Kotak Mahindra Bank Pvt. Ltd. v. Ambuj A. Kasliwal and others*** that statutory condition of pre-deposit cannot be waived. Waiver of pre-deposit in its entirety would be against statutory provisions and not sustainable in law.

8. There is no merit in the argument that learned DRAT should have waived the condition of pre-deposit. Learned DRAT, in terms of the specific statutory provisions, can only reduce the amount of pre-deposit to the extent of 25% for reasons to be recorded. Learned counsel for petitioners is unable to point out any such prayer seeking reduction of pre-deposit amount as has been discussed in the foregoing paras. Reliance by learned counsel for petitioners on pendency of CWP No.26867 of 2017 (Krish Refineries Ltd. And others v. Union of India and others), in our considered opinion, is of no avail. Said writ petition is pending adjudication after issuance of notice of motion for 24.01.2024 by Coordinate Bench, with no interim relief having been granted therein.

9. In the given factual matrix, learned counsel is unable to point out as to how present writ petition is maintainable for adjudication of the issues as raised on merits after dismissal of their appeal by learned DRAT vide order 29.08.2023 pursuant to order dated 21.08.2023 passed in CWP No.18027 of 2023. It is not open to petitioners to agitate the matter on merits in this manner.

10. Keeping in view the facts and circumstances as above, this writ

petition is accordingly dismissed with liberty to petitioners to take all available pleas before learned DRT, Chandigarh in their pending SA No.94 of 2023 and avail their remedy(ies) in accordance with law.

(LISA GILL)
JUDGE

December 12 , 2023.
'om'

(RITU TAGORE)
JUDGE

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