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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **W.P.(C) 2685/2023 and CM APPLs. 10367-68/2023, 12924/2023**

Between: -

ASHOK TIWARI

S/O LATE HRIDYANAND TIWARI
ADDRESS: E-4 /6, SECOND FLOOR,
VASANT VIHAR,
NEW DELHI-110057

..... PETITIONER NO. 1

AMITA TIWARI

W/O SHRI ASHOK TIWARI
ADDRESS: E-4 /6, SECOND FLOOR, VASANT VIHAR,
NEW DELHI-110057

..... PETITIONER NO. 2

JITENDRA TIWARI

S/O SHRI ASHOK TIWARI
ADDRESS: E-4 /6, SECOND FLOOR,
VASANT VIHAR,
NEW DELHI-110057

..... PETITIONER NO. 3

(Through: *Mr. Navaniti P.D. Singh, Sr. Advocate, Mr. Ashutosh
Thakur, Mr. Prabhat Ranjan Raj and Mr. Sidharth Sarthi,
Mr. Anil Kumar and Mr. Gunjesh Ranjan, Advocates.*)

AND

CANARA BANK

HEAD OFFICE: 112, J C ROAD, HEAD OFFICE,
BANGALORE — 560002, KARNATAKA.
THROUGH ITS CHIEF MANAGER
STRESSED ASSET MANAGEMENT, DEFENCE COLONY
LAJPAT NAGAR,
NEW DELHI — 110024

..... RESPONDENT NO.1

IDBI BANK LTD.

REGD. OFFICE: IDBI TOWER, WTC COMPLEX,
CUFFE PARADE, COLABA,
MUMBAI, MAHARASHTRA — 400005.
THROUGH ITS DEPUTY GENERAL MANAGER
VIDEOCON TOWER, 1ST FLOOR, E-1
JHANDEWALAN EXTENSION,
NEW DELHI— 110055

..... RESPONDENT NO.2

UNION BANK OF INDIA

(ERSTWHILE CORPORATION BANK)
THROUGH ITS MANAGING DIRECTOR,
CORP. OFFICE: 239, VIDHAN BHAWAN MARG
NARIMAN POINT, MUMBAI-400021 (MAHARASHTRA)
THROUGH, ITS DEPUTY GENERAL MANAGER
OVERSEAS BRANCH (SAMV),
M-93, CONNAUGHT CIRCUS,
NEW DELHI-110001

..... RESPONDENT NO.3

BANK OF BARODA

(ERSTWHILE DENA BANK LTD.)
HEAD OFFICE: BARODA BHAWAN
R.C DUTT ROAD, ALKAPURI,
BARODA-390007 (GUJARAT).
THROUGH ITS CHIEF MANAGER,
ZONAL STRESSED ASSETS RECOVERY BRANCH,
13TH FLOOR, BANK OF BARODA BUILDING,
16, SANSAD MARG,
NEW DELHI-110001

.....RESPONDENT NO.4

AXIS BANK LTD.

REGD. OFFICE: TRISHUL, 3RD FLOOR,
OPP. SAMARTHESHWAR TEMPLE,
NEAR LAW GARDEN, ELLISBRIDGE,
AHMEDABAD, GUJARAT — 380006.
THROUGH ITS ASSISTANT VICE PRESIDENT
AXIS HOUSE, SECTOR-128 NOIDA EXPRESSWAY
NOIDA, DISTRICT-GAUTAMBUDHNAGAR
U.P-201304

..... RESPONDENT NO.5

(Through: Mr. P.B.A. Srinivasan, Ms. Prerana Sabharwal, Ms. Pooja, Ms.
Srishti Bansal and Mr. V. Arvind, Advocates.)

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Pronounced on: 03.05.2023

J U D G M E N T

1. This petition seeks to challenge the proceedings under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act, 2002') initiated by the respondents being SA No.15/2023, before the Additional Chief Metropolitan Magistrate- 01, New Delhi District, Patiala House Courts, New Delhi (in short 'ACMM').

2. It is noted that at the instance of respondent No.1-Canara Bank, the proceedings in SA No.15/2023 filed under Section 14 of the SARFAESI Act, 2002 have been initiated against the petitioners *vide* order dated 01.02.2023. The learned ACMM appointed Shri Virender Kumar, Advocate as the Receiver to take possession of the mortgaged property i.e. Residential Flat No. E-4/6, Ground Floor, Vasant Vihar, New Delhi.

3. Learned senior counsel appearing for the petitioners states that the initiation of the instant proceedings is completely without jurisdiction in as much as the respondents do not fall within the definition of 'secured creditor' as defined under Section 2(1) (zd) of the SARFAESI Act, 2002 as the entire debt has already been converted into equity resulting in the entire debt itself being discharged. Therefore, the proceedings under Section 14 of SARFAESI Act, 2002 cannot be initiated. He states that petitioner No.3 is the son of petitioner Nos.1 and 2. According to him, petitioner No.1, who is a renowned engineer, had set up the company, namely, M/s Vayam Technologies Limited. The said company was established to provide comprehensive IT services at macro and micro level and has a large clientele throughout the country. For the purpose of expansion of the business, the said company had taken loans from time to time from the respondent-Banks

who had formed a consortium. Pertinently, DBS Bank chose to stay out of the consortium. According to him, in the course of business, there were certain delays in payment by some clients to the company and the company went into financial distress. Owing to the same, there were certain lapses in maintaining the time line for repayment of the loans.

4. It is the case of the petitioners that they stood as guarantors to the loan advanced to the company and have also pledged their office and residential accommodation to secure the financial assistance from the respondent-Banks. Learned senior counsel states that for the purpose of settlement of the debt availed by the company, a Management Framework Agreement (in short 'MFA') was entered into between the parties on 22.12.2017. The petitioners, under the MFA, who were the then Directors of the company, were required to amend the Memorandum of Association (in short 'MoA') and the Articles of Association (in short 'AoA') of the company, providing for and authorising the lenders to convert their outstanding debt into fully paid up equity shares with the right to sell the converted shares to third parties and take all necessary steps in furtherance of the same.

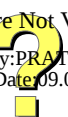
5. Learned senior counsel for the petitioners state that the MFA also stipulated that the lender-banks are required to appoint majority directors on the Board and change the management of the company. Accordingly, the MoA and the AoA of the company were amended providing for issuance of fresh share capital to the members of the consortium in proportion to their outstanding debt, without any monetary consideration, except the conversion of debt into equity as is envisaged in the minutes of the Joint Lenders Forum (in short 'JLF') meeting dated 27.12.2017. He states that if the minutes of the meeting of JLF dated 27.12.2017 are perused, the same clearly indicate that the entire outstanding dues were converted into equity. He, therefore, emphasizes that the minutes of the meeting give no indication that the

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conversion was only in respect of partial debt.

6. Learned senior counsel further submits that though the face value of the share of the company at the relevant point of time was Rs.10/- however, the market value was Rs.117/- per share. The market value assessed by IDBI Capital Markets & Securities, which is an agency of the respondent-Banks, was estimated to be Rs.97/- i.e. almost ten times of the face value and apparently the same covered the entire loan and obvious haircuts. According to him, under the Strategic Debt Restructuring Scheme (in short 'SDR') two steps were required to be taken; first, the conversion of debt into equity; and second, the procurement of new investors and change of management. He states that pursuant to the decision taken in the JLF meeting dated 27.12.2017, once the debt was converted into equity, the next step i.e. of finding new investors and change of management was to be discharged by the respondent-Banks. According to him, as a result of the conversion of debt into equity, the shareholding of the petitioners, which was earlier 81.92%, was reduced to 34.54% and that of the consortium of respondent-Banks, increased to the extent of 56.6%. In a nutshell, the petitioners state that the respondent-Banks became majority shareholders of the company from 27.12.2017 onwards.

7. Learned senior counsel for the petitioners further states that when the steps were being taken in accordance with the SDR Scheme, the Reserve Bank of India (in short 'RBI') *vide* circular dated 12.02.2018 provided that where the SDR package was not implemented, it shall stand revoked and the lenders were free to take action under the SARFAESI Act, 2002 and Insolvency and Bankruptcy Code, 2016. According to him, the circular of the RBI gravely prejudiced the company's rights, therefore, the company challenged the said circular in W.P.(C) 7221/2018 before this court.

8. This court, while entertaining the said petition, *vide* order dated 16.07.2018 *prima facie* recorded that once it is acknowledged that the shares



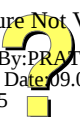
them, it follows that the debt no longer exists. This court further noted that the fact that the physical share certificates were not converted into a non-fungible form is only a matter of the manner of holding interest in such shares and does not change the nature of the investment. The writ petition being W.P(C) 7221/2018 got transferred at the instance of RBI before the Hon'ble Supreme Court and the Hon'ble Supreme Court *vide* its decision dated 02.04.2019 in ***Dharani Sugars and Chemicals Ltd. v. Union of India***¹ finally allowed the petition along with other connected matters and set aside the circular dated 12.02.2018 issued by RBI. It is, therefore, stated that the effect of the directions passed by the Hon'ble Supreme Court would be that the declaration of the company's account as a Non Performing Asset (in short 'NPA') based upon the RBI's circular, which was already set aside; and the plea of non-implementation of SDR became *non est*.

9. Learned senior counsel therefore, states that thereafter, the respondent-Banks being majority shareholders of the company started participating in the Annual General Meeting (in short 'AGM') of the company as majority shareholders. He further submits that since the first part of SDR was already complied with by the petitioners and the second part i.e. finding new investors to infuse capital and take over the management was to be done by the respondent-Banks, it was up to the respondent-Banks to comply with the aforesaid obligation.

10. However, the learned senior counsel for the petitioners states that without discharging their duty as per the SDR, the respondent-Banks started pressurizing the company to do the same and created, on the whole, an adverse financial environment which brought the company and the petitioner No.1 herein to this court in W.P(C) 3437/2020 which was then disposed of *vide* a decision dated 23.12.2020 holding that the consortium members, who are now the majority shareholders of the company, have to take their own

decisions as to whether the business of the company should be continued or whether they wish to pursue other remedies. Notwithstanding the aforesaid observations of this court, the company and the petitioners gave several proposals but the respondent-Banks did not accept it and the proceedings under Section 13(4) of the SARFAESI Act, 2002 were again initiated by the respondent No.1-Canara Bank, which were challenged by the petitioners once again in W.P.(C) 10961/2022. He, therefore, states that when the said writ petition was taken up for hearing on 21.07.2022, the respondent-Banks informed the court that they had withdrawn the action under Section 13(4) of the SARFAESI Act, 2002 and accordingly the petition became infructuous and the same was withdrawn.

11. It was also stated that respondent No.1-Canara Bank moved the National Company Law Tribunal, Delhi (in short 'NCLT') for the initiation of Corporate Insolvency Resolution Process (in short 'CIRP') in the case of the company, however, the said application remained under defect and in the meantime, DBS Bank, which is not a part of the consortium, filed an independent application before the NCLT, being a 'secured creditor' against the principal borrower i.e. the company. In the application filed by DBS Bank, the NCLT appointed an interim resolution professional to take over the company as a running concern. It is stated that thereafter, on 05.08.2022, respondent No.1-Canara Bank withdrew its application which was earlier under defect. It is, therefore, stated that the respondent No.1-Canara Bank deliberately avoided any order on its application on merit, realising the fact that at the instance of respondent No.1-Canara Bank, such an application would not be maintainable as respondent No.1-Canara Bank had lost the status of a 'secured creditor' and had instead become a shareholder of the company. Respondent No.1-Canara Bank, however, sought to intervene in the matter as an intervenor and to join the proceedings as a co-applicant with



DBS Bank in the proceedings pending before NCLT but again, the said application was withdrawn on 09.03.2023.

12. Learned senior counsel appearing for the petitioners also states that notwithstanding various proceedings which clearly indicate that respondent No.1-Canara Bank had already lost the status of a 'secured creditor', the last AGM dated 26.11.2022 of the company has also resolved that in view of the legal position emanating from the debt conversion into equity, no debt survives. It is, therefore, stated that the action of invoking the provisions under the SARFAESI Act, 2002 are *ex-facie* without jurisdiction.

13. Learned senior counsel appearing on behalf of the petitioner, to substantiate his submissions, has taken this court through various documents and orders passed by this court from time to time. While drawing the attention of this court to the minutes of the meeting of JLF held on 27.12.2017, he states that in none of those proceedings or even thereafter has any averment been made by the respondents that they would continue to enjoy the status of 'secured creditors'. He also seeks to rely on the observations made by this court in paragraph Nos.22 and 25 of the order dated 23.12.2020 passed in W.P.(C) 3437/2020. In addition, he places reliance on a communication dated 22.02.2023 made by respondent No.2-IDBI Bank Ltd. i.e. one of the consortium banks, inviting the petitioners to buy back their equity shares held by IDBI bank in the company.

14. Learned counsel appearing on behalf of the respondents strongly opposes the submissions made by learned senior counsel appearing on behalf of the petitioners and he states that the entire understanding of the petitioners with respect to the conversion of the entire debt into equity is misconceived. He states that at no point of time did the respondents agree or expressly accept such a proposal. The entire debt, according to them, had not been converted into equity and in the absence of there being any agreement, the

reliance on the RBI circular dated 08.06.2015 to state that the framework which was envisaged under the aforesaid circular is for ‘Revitalised Distressed Assets in the Economy -Guidelines on Joint Lenders Forum (JLF) and Corrective Action Plan (CAP)’. He has taken this court through various clauses of the said circular to indicate that if the JLF finds it viable, it may decide whether it would be appropriate to invoke the SDR i.e. to convert the whole or part of the loan and interest outstanding into equity shares in the borrower company.

15. According to him, there is a concrete timeline which is required to be adhered to in order to take the debt restructuring proposal to its logical end. He further states that the conversion of their outstanding debt into equity by the JLF shall be subject to the RBI circular. The statutory limit in terms of Section 19 (2) of the Banking Regulations Act, 1949 will also have to be complied with. He further states that the JLF needs to approve the SDR conversion package within 90 days from the date of deciding to undertake the SDR. In any case, according to him, the circular stipulates that on completion of the conversion of debt into equity, as approved under the SDR, the existing assets classification of the account, on the reference date will continue for a period of 18 months from the reference date.

16. He states that in reference to the invocation of SDR, the sanction letter dated 24.11.2017 specifically states that the date of sanction of the SDR is 16.11.2017 and tenability thereof was up to 01.06.2018. While referring to Clause 1(i)(1)(b), he states that the said clause specifically approves the conversion of debt of Rs.22.76 crore (respondent No.1-Canara Banks’s shares being Rs.7.19 crores) into equity of the company out of the outstanding debt of Rs.488.51 crore as on the reference date i.e. 31.05.2017. He also refers to pleadings made by the petitioners in the writ petition filed before this court being W.P.(C) 3437/2020 to indicate that the petitioners’ own understanding, at the time of filing of the petition was that the debt/loan

to the extent of Rs.22.76 crore only had been converted into equity by issuing 2,27,65,154/- shares at their face value. He then submits that with the aforesaid understanding, certain prayers were sought for in the writ petition and perusal thereto would clearly indicate that the arguments being raised in the instant writ petition are an afterthought. The learned counsel has also referred to certain paragraphs of the order passed by this court in the aforementioned writ petition and he indicates that this court had directed for certain measures to be taken and in case of failure thereto, the liberty was granted to lenders to proceed in accordance with law. He then states that since the measures, as noted by this court therein, could not fructify into any result, therefore, the lenders have resorted to pursuing a remedy in accordance with law.

17. After passing of the directions by this court there were various meetings conducted by the JLF. While referring to one of the minutes of the meeting dated 26.08.2020, which was attended by the petitioners as well, it was noted that the consortium had not received any concrete proposal, therefore, the lenders were left with no remedy except to take recourse to SARFAESI Act, 2002.

18. The learned counsel, in addition, submits that the entire debt has not been converted into equity and the lenders still enjoy the status of 'secured creditor'. He submits that the writ petition, under the facts of the present case, at the instance of the petitioners, is not maintainable as the petitioners have an alternative efficacious remedy. He states that he would have raised this objection at the very threshold; however, he wanted to satisfy the conscience of this court that the action of the respondent-Banks is not *de hors* the provisions of law. He has placed reliance on the decisions of the

Supreme Court of India in the cases of *United Bank of India v. Satyawati Tondon and Ors.*² and *Varimadugu Obi Reddy v. B. Sreenivasulu and Ors.*³

19. Learned counsel appearing on behalf of the respondents, while referring to the minutes of meeting of the consortium dated 26.08.2020, submits that the fact that the entire debt has not been converted into equity, has been specifically mentioned therein, which reinforces his submissions.

20. I have heard learned counsel appearing on behalf of the parties and perused the record.

21. Having heard learned counsel appearing on behalf of the parties, it is seen that there is a significant dispute between the parties on a question of fact, as to whether the conversion of debt into equity took place for the entirety of the total outstanding debt or a part thereof.

22. The fact that the respondents at no point of time have raised an objection in any of the proceedings carried out before various courts that the entire debt was not converted into equity, would not lead to an automatic presumption that the entire debt was converted into equity. The minutes of the JLF meeting held on 27.12.2017 being relied upon by the petitioners would indicate that the outstanding debt as on date was of Rs.463.25 crores. The amount of equity participation in the SDR is stated to be of Rs.22,76,51,541/-.

23. The discussion with respect to the conversion of debt into equity as per SDR package in the minutes of the JLF meeting held on 27.12.2017 reads as under:-

“Conversion of Debt Into equity as per SDR package

Representative of Corporation Bank confirmed their approval of conversion of debt into equity under SDR by their sanctioning authority. However, he informed that their sanctioning authority did not agree to

² (2010) 8 SCC 110

³ (2023) 2 SCC 168

take up the share of DBS Bank. JLF informed the Corporation Bank that as per SDR guidelines of RBI any bank which does not support the majority decision on the CAP may exit subject to substitution within the stipulated time line, failing which it shall abide the decision of the JLF and the bank shall implement the JLF decision without any additional condition. Hence, the action of Corporation Bank at this stage is not in the spirit of JLF, as per RBI guidelines.

Lead Bank requested other JLF members to take additional shares to cover the share of DBS Bank not taken by Corporation Bank. After deliberation, other ILF members, agreed to take additional shares within 10% contingencies approved by their respective authorities.

The final sharing pattern of share allocation agreed as under:

S.No.	Name of the Banks	o/s as on May 31, 2017	No. of shares	Amount of Equity Participation in SDR	%Share
1.	Canara Bank	154.20	76,09,652	7,60,96,520	33.29%
2.	IDBI Bank	96.66	47,70,097	4,77,00,970	20.87%
3.	Axis Bank	86.97	42,91,903	4,29,19,029	18.77%
4.	Dena Bank	90.53	44,67,586	4,46,75,862	19.54%
5.	Corporation Bank	34.89	16,25,916	1,62,59,160	7.53%
	Total	463.25	2,27,65,154	22,76,51,541	100.00%

Lead Bank informed the JLF that Canara Bank is also holding shares of the company under pledge as a security as per restructuring scheme approved in 2015. Now, after allotments 76,09,652 shares by converting debt as per SDR scheme, the total equity holding of Canara Bank in the company would exceed 30% which is in contravention of Banking Regulation Act.

Matter was discussed with JLF members and advise sought from legal team of IDBI Capital. After deliberation, it was decided by the JLF that out of total 17917388 shares of the company pledged to JLF, 2,06,394 shares out of Canara Bank's share pledged to be released and kept under negative lien. Company was advised to comply with the statutory requirements and other formalities in this regard.

After agreement on share allocation, company executed relevant documents and issued share certification to JLF members in physical form. Company assured the JLF to complete dematerialisation of share process immediately.

Since there was no other matter for discussion, the meeting ended with a vote of thanks.”

24. With respect to the arguments made by the petitioners that a judicial determination by a court has already taken place *qua* the question of whether a part or whole conversion of debt into equity took place, the same is found to be not acceptable. The order dated 16.07.2018 passed by this court in W.P. (C) No.7221/2018 records only a *prima facie* view. Neither has this court adjudicated upon whether the entire debt was converted into equity nor was the question posed therein. Paragraph 5 of the order dated 16.07.2018 passed in W.P. (C) No.7221/2018 reads as under:-

“5. The learned counsel appearing for respondent no.6 (Dena Bank) submits that SDR has not been implemented as the shares allotted are not in dematerialised form. Prima facie, this contention seems untenable. The conversion of debt into equity shares is not dependent on the form of shares. The conversion of physical share certificates into a dematerialised form does not change the rights of the allottee in any manner; the allottee continues to hold the beneficial interest in such shares. Once, it is acknowledged that the shares were allotted to the banks by conversion of the debt owed to them, it follows that the debt no longer exists. The fact that physical share certificates have not converted in a non fungible form is only a matter of form of holding interest in such shares and does not change the nature of the investment.”

25. On the contrary, in W.P.(C) No.3473/2020 *vide* order dated 23.12.2020, this court recorded in paragraph 25 that the petitioners do not have any legal right of which enforcement can be sought in that writ petition. The consortium members, who were the majority shareholders of the company, had to take their own decisions as to whether the business of the company should be continued, or they wish to pursue another remedy. The observation made therein, cannot be construed to mean that this court has decided that the entire debt has been converted into equity.

26. None of the proceedings mention that the conversion of debt into equity has completely discharged the debt. The determination of the fact whether the market value of the company shares was Rs.117/- or otherwise, cannot be gone into in the instant proceedings.

27. The order dated 23.12.2020 in W.P. (C) No.3437/2020 also records that this court gave various opportunities to the petitioners therein (including the present petitioners) to come up with proposals or to obtain expressions of interest from third party investors to present the same to the JLF, however, there was no positive outcome. In paragraph 28 thereof, the following directions were issued:-

“i) The Petitioners are given time till 31st January to submit any other proposal for the restructuring of or investment in the Company.

ii) Before the end of January 2021, a meeting shall be held between the Petitioners, all the third parties who may have expressed interest in the Petitioners' business and who have submitted their expressions of interest to the consortium, along with all the Bankers forming part of the consortium and any other bank which has taken legal proceedings against the Petitioners for recovery of dues. The said meeting shall be held under the supervision of the lead Bank i.e., Canara Bank. If in the said meeting any proposals for restructuring are materialized, then an agreement shall be entered into between the parties.

iii) The parties may by mutual consent agree to extend the said period, but not beyond a further period of three months.

iv) If there is no resolution which is possible between the parties, then the consortium and their members are left to avail of their remedies in accordance with law.”

28. It is rightly pointed out by learned counsel appearing on behalf of the respondents that, thereafter, various meetings were conducted, and no workable solution was arrived at. Therefore, the respondent-Banks have proceeded in accordance with the provisions of SARFAESI Act, 2002.

29. Even according to sanction letter dated 24.11.2017, the total debt of the consortium was of Rs.488.51 crores and only Rs.22.76 crores of the debt

was converted into equity by the lenders. The conversion of the entire debt i.e. Rs.488.51 crores into equity has to be specific and it cannot be inferred on the basis of some observations made in a different context.

30. This court is consciously avoiding making any further observation as to whether the entire debt, or a part of the debt, was converted into equity. Since this is a fundamental question of fact, which needs to be gone into in its entirety, therefore, the same being the disputed question of fact, this court is not inclined to enter into this domain under Article 226 of the Constitution of India.

31. It is not in dispute that the petitioners have an alternative efficacious remedy. However, what has been argued is that the respondents have lost their status of being 'secured creditors'. Therefore, they cannot invoke the provisions of the SARFAESI Act, 2002. This court has considered the material on record and based on which, it has recorded its *prima facie* finding that it cannot be indisputably held that the entire debt was converted into equity. Therefore, it cannot be presumed that the respondents have lost their status of 'secured creditor'. 'Secured Creditor' is defined under Section 2 (zd) of SARFAESI Act, 2002, which reads as under:

"secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes-

(i) debenture trustee appointed by any bank or financial institution; or

(ii) securitisation company or reconstruction company; or

(iii) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance"

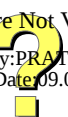
32. Admittedly, the respondent-Banks as on date hold the right, title and interest upon financial assets as specified in Clause (1) of Section 2 of SARFAESI Act, 2002, for due repayment of the financial assistance. The

liability of petitioners will have to be specifically discharged, which is not found to have been done in the instant case.

33. The Hon'ble Supreme Court in the case of *United Bank of India (supra)* has held that the rule of effective alternative remedy applies with greater rigour in matters involving recovery of taxes, cess, fees and other types of public money and the dues of bank and other financial institutions. It has been observed that in cases involving the recovery of such dues, the High Court must insist that before availing remedy under Article 226 of the Constitution of India, a person must exhaust the remedies available under the relevant statute. Paragraph Nos.43, 44, 45 and 55 of the said verdict are reproduced as under:-

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we



cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the Sarfaesi Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

34. The same principles have been followed in various subsequent pronouncements and recently in the case of ***Varimadugu Obi Reddy (supra)***.

35. No doubt, the power to issue prerogative writ under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provisions of the Constitution, however, such a discretion to entertain or not to entertain a writ, must be exercised sparingly.

36. As has been held by the Hon’ble Supreme Court in the case of ***‘Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai’⁴***, the alternative remedy is not a bar to operate at least under three contingencies, namely, where a writ petition has been filed for the enforcement of any of the fundamental rights; or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the *vires* of an act is challenged.

37. In the instant case, none of the aforesaid contingencies are involved. So long as the respondent-Banks are 'secured creditor', they are entitled to invoke the provisions of SARFAESI Act, 2002.

38. The Hon'ble Supreme Court in the case of ***South Indian Bank Ltd. and Ors. v. Naveen Mathew Philip and Anr.***⁵, while considering the case at the instance of the borrower, relating to the recovery proceedings under the SARFAESI Act, 2002 has held that the practice of interference by the High Courts in the matter pertaining to the SARFAESI Act, 2002 has been deprecated in various decisions. The Hon'ble Supreme Court in paragraph No.17 of the said decision has reiterated the principle laid down in the cases of ***Federal Bank Ltd. v. Sagar Thomas***⁶, ***Dharani Sugars and Chemicals Ltd. (supra)***, ***United Bank of India (supra)***, ***Authorized Officer, State Bank of Travancore v. Mathew K.C.***⁷, ***Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir***⁸ and ***Varimadugu Obi Reddy (supra)*** and has held that the power under Article 226 of the Constitution of India is required to be exercised in extraordinary circumstances specially when the matters pertain to the proceedings and adjudicatory schemes *qua* a statute, more so, in commercial matters involving lenders and the borrowers when the legislature has provided for a specific mechanism for appropriate redressal.

39. That being so, this court does not find any justification to entertain the instant writ petition. However, it is left open to the petitioners to take appropriate remedy in accordance with law, if they so desire.

40. It is clarified that this court has not expressed any final opinion on the merits of the case and has only recorded a *prima facie* observation so as to deal with the issue raised in the instant writ petition.

⁵ (2023) SCC OnLine SC 435

⁶ (2003) 10 SCC 733

⁷ (2018) 3 SCC 85

⁸ (2022) 5 SCC 345

41. The petition is accordingly disposed of along with pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MAY 03, 2023

MJ/Priya/nc

