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

\+ W.P.(C) 16951/2024

DAWESCO LLP .....Petitioner

Through: Mr. Neil Dawes Bhutani, Petitioner (in-Person).

versus

UGRO CAPITAL LIMITED & ANR. .....Respondents

Through: Mr. Nishant Gautam, CGSC with Mr. Vardhaman Kaushik, Ms. Sanjana Mehrotra, Mr. Mayank Sharma, Mr. Vinay Kaushik, Mr. Srindam Sarin, Mr. Vipul Verma, Ms. Akriti M., Mr. Vipul and Mr. Ajay Kanojia, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **10.12.2024**

1. The Petitioner, a Limited Liability Partnership has approached this Court under Article 226 of the Constitution of India, 1950, aggrieved by the actions of Respondent No. 1 - URGO Capital Limited, a private Non-Banking Financial Corporation[1]. Briefly, the facts of the present case as presented by the Petitioner are as follows:

2. The Petitioner availed loan facilities of a sum of INR 76,07,917/- from Respondent No. 1, under a loan agreement dated 31st July, 2023. It is

[1] "NBFC"

contended that the material terms and conditions, including those governing moratorium or debt relief, were not disclosed in the loan agreement. The Petitioner further alleges that no paper copy of the facility documents was provided to them. Despite these grievances, the Petitioner undertook to fulfil its obligations under the agreement, assuming that moratorium or restructuring options would be available in accordance with MSME legal framework and fair market practices. However, it is alleged that the actual disbursed loan amount was only INR 22,14,750/-.

3. A significant factor in the Petitioner's financial distress was the prolonged delay in obtaining trademark registration for its brand. The Petitioner submitted an application in September, 2022 for registration of its trademark under Class 25, which was allowed only on 22nd April, 2024. The delay in registration, according to the Petitioner, prevented it from onboarding its products on e-commerce platforms, compounding its financial difficulties.

4. In light of the financial constraints, the Petitioner approached Respondent No. 1 on 11th March, 2024, seeking debt restructuring and/or a moratorium. However, Respondent No. 1 rejected this request on 12th March, 2024, issuing a Loan Recall Notice. This was followed by further notices demanding repayment of the outstanding dues.

5. Even though the Petitioner attempted to clarify their stance as to their stressed assets and financial constraints due to non-registration of trademark, Respondent No. 1 threatened the Petitioner with legal consequences, leading them to clear an EMI amount of INR 1,01,317/- against the loan availed by them.

6. The Petitioner argues that in violation of MSME laws and RBI Fair

Practice Code, Respondent No. 1 initiated proceedings under section 13(2) of the SARFESI Act, 2002[2], against the Petitioner by issuing a demand notice dated 10th June, 2024. Thereafter, on 14th June, 2024, Respondent No. 1 also presented a depository check to the Petitioner's bank to the tune of INR 77,64,289/-. By September, 2024, Respondent No. 1 had classified the Petitioner's account as a Non-Performing Asset[3] and claimed token possession of the Petitioner's secured asset under Section 13(4) of the SARFESI Act. Further, on 8th October, 2024, Respondent No. 1 also issued an arbitration notice to the Petitioner in order to sell off the Petitioner's secured asset, however, the same was withdrawn on 28th October, 2024.

7. The Petitioner submits that while Respondent No. 1 was taking these actions for recovery of their dues, the Petitioner, in accordance with the facility documents and as per the MSME law and statutory guidelines, repeatedly escalated the matter with the grievance redressal mechanism of Respondent No. 1, however, to no avail.

8. In addition to the above, the Petitioner contends that they discovered breaches of personal financial data by Respondent No. 1, including bank balance and transaction details of the Petitioner(s) as well as harmful online content posted by Respondent No. 1 to defame the Petitioner's reputation and business. Moreover, it is alleged that Respondent No. 1 has also initiated e-auction process for the secured asset of the Petitioner on 25th October, 2024.

9. In light of the above facts, the Petitioner has filed the present writ petition aggrieved by the actions of Respondent No. 1 which are alleged to

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[2] "SARFESI Act"
[3] "NPA"

be in complete violation of the applicable RBI and MSME laws, guidelines, rules and regulations in terms of MSME debt restructuring mechanism as well as the judgement of the Supreme Court in ***M/s Pro Knits v. Board of Directors of Canara Bank & Ors.***[4] In the afore-noted circumstances, the Petitioner seeks *inter-alia* the following reliefs:

> *a) Issue a Writ of Certiorari and/or Mandamus or any other appropriate Writ to Respondent No. 1 to immediately –*
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> *i. follow all applicable RBI and MSME laws, guidelines, rules and /or regulations of statutory force and to consider applicable MSME debt restructuring;*
> *ii. grant moratorium and/or other debt restructuring on the loan account along with an affidavit by the Respondent No. 1 citing precisely what the qualitive and quantitative requirements for these are;*
> *iii. refrain from filing further vexatious arbitration and/or legal proceedings;*
> *iv. disclose all sources and parties involved with Respondent No.1 in the illegal possession of Petitioner(s) personal bank account infom1ation;*
> *v. dismantle various illegal surveillance networks/syndicates pertaining to divulging of personal financial information operated by the Respondent No.1;*
> *vi. disclose all key management personnel/decision makers · involved in the predatory lending businesses that Respondent No.1 operates including sanctions/penalties on Board of Directors regarding governance issues(s);*
> *vii. set the collateral (i.e. immovable asset) aside;*
> *viii. provide attested hard copies of the loan documents reflecting changes by recent RBI mandates on removal of foreclosure charges and other penalties;*
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> *b) That the High Court alert the concerned authorities including the RBI of Respondent No. 1's conduct and its NBFC license* ***L67120MH1993PLC070739*** *be suspended along with monetary*

[4] (2024) 10 SCC 292

penalties, until it conforms with all requisite norn1s and guidelines;

c) *Award damages for business disruptions and/or set - off damages against any amounts against the loan in the interests of equity;*

d) *Issue an appropriate Writ to the Respondent No. 2 to certify. that the delay in trademark objection proceedings was not caused by the Petitioner(s);*

e) *That the Hon'ble High Court of Delhi take Suo Moto cognizance of the illegal sources and pa1iies involved with Respondent No. 1 in the illegal possession of personal bank account information;"*

10. Having heard Mr. Bhutani and on consideration of the material on record, the Court finds that the present writ petition is not maintainable under Article 226 of the Constitution. The primary reliefs sought are against Respondent No. 1, a private NBFC, which does not qualify as 'State' under Article 12 of the Constitution. While judicial review under Article 226 is available against private entities performing public functions, no such element of public law is discernible in the present dispute. The matter pertains to contractual obligations and private commercial transactions, which are best addressed under civil law.

11. The Petitioner's attempt to introduce a public law element by impleading Respondent No. 2 – Registrar of Trademarks, is also unpersuasive. The Petitioner is attempting to seek a certification from Respondent No. 2, that the delay in trademark objection proceedings was not attributable to the Petitioner. Such a relief is completely misconceived. Furthermore, by the time the present writ petition was filed by the Petitioner, the trademark registration had already been granted on 22nd April, 2024. Even though it may be true that the removal of objections took time, which

in turn may have caused some stress on the assets of the Petitioner, there is no apparent connection between the grant of trademark registration and the inability of the Petitioner to repay its loans to Respondent No. 1. Therefore, the impleadment of Respondent No. 2 is a misjoinder of cause of action in the present case and the relief sought against them in prayer (d) above, is completely misconceived.

12. Pertinently, the grounds urged by the Petitioner, including alleged breaches of the RBI Fair Practices Code, MSME legal framework, and issues related to financial data breaches, are in the nature of defences to the loan default and are intended to avoid the SARFAESI proceedings initiated by Respondent No. 1. Such grounds are squarely within the scope of the remedies available to the Petitioner under the SARFAESI Act. It is well-settled that the SARFAESI Act provides a comprehensive mechanism for borrowers to challenge actions taken by secured creditors. Section 17 of the SARFESI Act empowers aggrieved borrowers to file an application before the Debt Recovery Tribunal[5] to challenge the measures taken by the secured creditor under Section 13(4). This statutory remedy includes the power to address all defences, including claims of unfair practices, coercion, or improper classification of accounts as NPAs.

13. It must also be noted that the Petitioner has placed reliance on the case of ***M/s Pro Knits***, to argue that non-observance of directions issued by the central government under the MSME Act or RBI regulations renders all subsequent actions taken by banking companies as *void ab initio*. However, this interpretation is unsustainable since, in the aforenoted case, the leave granted to the appellants to challenge the actions taken by creditors under

the SARFESI Act, was only given due to the fact that the court had not examined the particular facts and circumstances of the case and rather the court pronounced the judgement on the question of applicability of the directions and instructions issued by the central government and RBI with regard to restructuring process for MSMEs. In the present case, the question before this Court is not with regard to the applicability of the central government and RBI guidelines on the NBFC, rather the contentions raised are purely factual and based on the allegedly illegal actions of Respondent No. 1. As such, these contentions can be raised by the Petitioner in the proceedings under SARFESI Act, already initiated by Respondent No. 1.

14. The Supreme Court, in ***United Bank of India v. Satyawati Tondon & Ors.,***[6] has categorically held that when a borrower has an effective and alternative statutory remedy under the SARFAESI Act, the High Court must refrain from exercising its writ jurisdiction to interfere with the recovery proceedings. The Court emphasized that borrowers must avail themselves of the remedies before the DRT and the Appellate Tribunal. This principle has been consistently followed in subsequent decisions, including ***Authorized Officer, SBT v. Mathew K.C.***[7] and ***ICICI Bank Ltd. v. Umakanta Mohapatra.***[8]

15. In the present case, the Petitioner has the statutory right to approach the DRT to challenge the measures taken by Respondent No. 1 under Section 13(4) of the SARFAESI Act. The Petitioner's grievances regarding alleged non-compliance with RBI guidelines, the MSME framework, or

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[5] "DRT"
[6] (2010) 9 SCR 1
[7] (2018) 1 SCR 233
[8] (2019) 13 SCC 497

breaches of data privacy can all be addressed before the DRT, which is empowered to adjudicate on such issues.

16. In light of the above, this Court finds that the present writ petition is an attempt to circumvent the statutory remedies available under the SARFAESI Act.

17. For these reasons, the court is not inclined to entertain the present writ petition. Accordingly, the petition along with pending applications, is dismissed.

18. It is made clear that nothing noted above shall be considered as the Court's opinion on the merits of the case. All rights and contentions of the parties are reserved.

SANJEEV NARULA, J

DECEMBER 10, 2024