

*Before S.Muralidhar & Avneesh Jhingan, JJ.*

**NORTH AGRO INDUSTRIES PRIVATE LIMITED, DISTRICT  
SANGRUR THROUGH ITS DIRECTOR DHARM PAL —**  
*Petitioners*

*versus*

**DISTRICT MAGISTRATE, SANGRUR AND OTHERS—**  
*Respondents*

**CWP No.14502 of 2020**

December 17, 2020

*Constitution of India, 1950 – Article 226 – Writ petition - Writ of mandamus - when to be issued - alternative remedy – Availability of statutory remedy before Debt Recovery Tribunal (DRT) – Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) – S.13 – Security Interest (Enforcement) Rules, 2002 – Rule 9 – Petitioner is a Micro, Small and Medium Enterprise (MSME) seeking a writ of mandamus to the Punjab and Sind Bank (PNB) to consider its case under the Credit Guarantee Scheme for Subordinate Debt (CGSSD) – Also, consider its objections before taking any action qua its properties mortgaged with the Bank – And stay proceedings arising out of possession notice under S.13 read with Rule 9 – Held, relying upon judgments by the Hon’ble Supreme Court, petitioner was not justified in bypassing the statutory remedy available under SARFAESI Act – The three contingencies, envisaged in Whirlpool Corporation case, in which availability of statutory remedy would not bar invoking writ jurisdiction are; (a) where a writ petition is filed for enforcement of Fundamental Rights or violation of Principles of Natural Justice, (b) where the order or proceedings are wholly without jurisdiction, (c) where vires of an Act is challenged – These contingencies are to be viewed in the context of other observation in the same decision that the High Court has discretion, having regard to the facts of a case, to decide whether or not to entertain a petition – On facts, the Court saw no reason to permit the petitioner to invoke the extra ordinary jurisdiction under Article 226, and relegated it to the remedies available under the SARFAESI Act.*

*Held that, the Court is not satisfied that in the facts and circumstances of the case, the Petitioner has shown justification for*

bypassing the statutory remedy available to it under the SARFAESI Act and for this Court to interfere under Article 226 of the Constitution. In Whirlpool Corporation (supra), the Supreme Court had set out the three contingencies in which the availability of alternative statutory remedies would not operate as a bar on invoking the jurisdiction of this Court under Article 226 viz., (a) where the writ petition has been filed for enforcement of any fundamental right or where there is violation of principles of natural justice; or (b) where the order or proceedings are wholly without jurisdiction and (c) where the vires of an act is challenged. Yet the enumeration of these contingencies has to be viewed in the context of the other observation in the same decision that a High Court, under Article 226 of the Constitution of India, has the discretion, while having regard to the facts and circumstances of a case, to decide whether or not to entertain a writ petition.

(Para 12)

*Further held that*, the Court sees no reason why the Petitioner should be permitted to invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution and bypass the efficacious alternative remedies available to it under the SARFAESI Act. It must be noted that not only can all the submissions made in the writ petition be urged before the Debt Recovery Tribunal (DRT) in the first instance but there is, in the event of the Petitioner not persuading the DRT, the remedy of an appeal before the Debt Recovery Appellate Tribunal (DRAT). Further the orders of the DRAT are amenable to judicial review under Article 226 of the Constitution.

(Para 16)

Puneet Kansal, Advocate  
*for the Petitioner.*

Pankaj Gupta, A.A.G., Punjab  
for Respondent Nos. 1 and 2.

Anant Bir Singh Sidhu, Advocate  
for the Respondent/ Bank.

**DR. S. MURALIDHAR, J.**

(1) The Petitioner, which is stated to be a Micro, Small and Medium Enterprise ('MSME') engaged in the business of manufacturing and trading agricultural implements machineries and spare parts, has filed the present petition under Article 226 of the

Constitution of India praying *inter alia* for a mandamus to be issued to the Punjab and Sind Bank at its Zonal Offices in Patiala and at Dirba, District Sangrur (Respondent Nos. 3 and 4/Bank), to consider the case of the Petitioner, under the Credit Guarantee Scheme for Subordinate Debt ('CGSSD').

(2) The Petitioner also prays for a direction to Respondent Nos. 1 and 2 to consider its objections before taking any action *qua* its eight properties mortgaged with the Bank. The third prayer is for staying the proceedings arising out of a possession notice dated 14<sup>th</sup> August, 2020 issued by the Bank under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SARFAESI Act') read with Rule 9 of the Security Interest (Enforcement) Rules, 2002. The said notice is stated to have been issued when the Petitioner did not repay an amount of Rs. 8.03 crores owed to the Bank, which in terms of the notice dated 9<sup>th</sup> August, 2019 issued by the Bank under Section 13 (2) of the SARFAESI, was directed to be repaid within 60 days of the said notice.

(3) It must be noted here that the Petitioner also subsequently filed an application CM-11832-2020 in the present petition, praying for a stay of the operation of the order dated 20<sup>th</sup> August, 2020 issued by the District Magistrate, Sangrur (Respondent No. 1) under Section 14 of the SARFAESI Act, directing the Tehsildar, Dirba/Moonak (Respondent No. 2) to take over possession of the aforesaid mortgaged properties. By an order dated 17<sup>th</sup> November, 2020, the Court declined to stay the aforesaid order of the Respondent No. 1.

(4) In response to a query by the Court as to why the Petitioner should not be relegated to the efficacious alternative statutory remedy provided under the SARFAESI Act, Mr. Puneet Kansal, learned Counsel for the Petitioner, sought to place reliance on a series of judgments including *Whirlpool Corporation* versus *Registrar of Trade Marks, Mumbai*<sup>1</sup>, *Harbanslal Sinha* versus *Indian Oil Corporation Ltd.*<sup>2</sup>, *Chairman-cum-Managing Director, Coal India Limited* versus *Ananta Saha*<sup>3</sup> and *Maharashtra Chess Association* versus *Union of India*<sup>4</sup>.

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<sup>1</sup> (1998) 8 SCC 1

<sup>2</sup> (2003) 2 SCC 107

<sup>3</sup> (2011) 5 SCC 142

<sup>4</sup> 2019 (3) Law Herald (SC) 1996

(5) Mr. Puneet Kansal further submitted that Respondent Nos. 3 and 4 had committed a grave error in classifying the Petitioner as a “willful defaulter”. According to him, if the Bank had considered the Petitioner eligible under the CGSSD, it would help the Petitioner to revive its economic activities and enable it to repay its debt. He also pointed out that the Petitioner after receiving the notice dated 9<sup>th</sup> August, 2019 under Section 13 (2) of the SARFAESI Act paid a sum of Rs. 9,47,700/- and is ready and willing to make further payments. He submitted that the action of taking possession of the Petitioner’s mortgaged assets is hasty one, without affording the Petitioner an opportunity of hearing, which was contrary to the settled principles of natural justice. He therefore contended that given the circumstances, notwithstanding a statutory remedy available to the Petitioner, it could invoke the jurisdiction of this Court under Article 226 of the Constitution in light of the settled legal position explained in the above decisions.

(6) In the reply filed by the Bank, it has been pointed out that against the order of the District Magistrate under Section 14 of the SARFAESI Act, the Petitioner has a remedy of an appeal under Section 17 of the SARFAESI Act. Reference in this regard is made to the decision of the Supreme Court in *United Bank of India* versus *Satyawati Tondon*<sup>5</sup>, and a subsequent decision dated 27<sup>th</sup> November, 2017 of the Supreme Court of India in *Aggarwal Tracom Pvt. Ltd.* versus *Punjab National Bank*, (Civil Appeal No. 19847/2017).

(7) It is further pointed out in the said reply that the request made by the Petitioner in its letter dated 5<sup>th</sup> October, 2019 for restructuring of its accounts was replied to by the Bank on 9<sup>th</sup> October, 2019, advising the Petitioner to credit its account with Rs. 5 lakhs per week for 12 weeks continuously and stating further that there could be no restructuring until the overdue amount was cleared.

(8) It is then pointed out by the Bank that by a letter dated 21<sup>st</sup> October, 2019, the Petitioner made a request that it should be allowed to operate its account and undertook to pay Rs. 5 lakhs before 31<sup>st</sup> October, 2019 and Rs. 15 lakhs per month regularly from February, 2020 onwards. It is stated that request was also considered and accepted by the Bank on 25<sup>th</sup> October, 2019. It is stated that it was made clear that any case of default, the sanction would stand withdrawn immediately. It is stated that after the Petitioner again

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<sup>5</sup> (2010) 8 SCC 110

defaulted, it made a subsequent request by a letter dated 3<sup>rd</sup> September, 2020. This was also stated to have been considered and by a letter dated 7<sup>th</sup> September, 2020, the Bank informed the Petitioner that its accounts had been declared as Non-Performing Asset ('NPA') as on 31<sup>st</sup> July, 2019 and that symbolic possession of its mortgaged assets had been taken by the notice dated 14<sup>th</sup> August, 2020 under Section 13 (4) of the SARFAESI Act. In the said letter, the Petitioner is stated to have been informed by the Bank that its account had been substandard for more than one year and it should regularise its account at the earliest, failing which the Bank would be constrained to initiate further action under the SARFAESI Act. It is also pointed out as on 31<sup>st</sup> October, 2020, the Petitioner owed the Bank a sum of Rs. 8,74,81,678/-.

(9) Reference is also made by the Bank in its reply to the decision dated 22<sup>nd</sup> March, 2016 of this Court in CWP No. 5120 of 2016 (*M/s Ranbir Textiles* versus *Reserve Bank of India*) to the effect that there cannot be a mandamus to the Bank to regularize the Petitioner's accounts in terms of the relevant policies of the Reserve Bank of India (RBI), as these were commercial decisions best left to the parties equipped to deal with the same.

(10) A rejoinder has been filed by the Petitioner reiterating that the action of the Bank in classifying the Petitioner's loan as NPA and issuing notices under Sections 13 (2) and 13 (4) of the SARFAESI Act was "completely illegal and without jurisdiction". It is submitted therein that the Bank has not acted in accordance with the binding circulars of the RBI and that the order dated 7<sup>th</sup> September, 2020 of the Bank was a non-speaking one. Detailed reference is made to certain entries in the various accounts of the Petitioner concerning booking of interest. Reference is also made to the RBI Circulars regarding revival and rehabilitation of MSMEs. It is submitted that the Bank was bound to take into account those circulars before declaring the Petitioner's accounts as NPA.

(11) The Court has considered the above submissions and has carefully perused the pleadings.

(12) The Court is not satisfied that in the facts and circumstances of the case, the Petitioner has shown justification for bypassing the statutory remedy available to it under the SARFAESI Act and for this Court to interfere under Article 226 of the Constitution. In *Whirlpool Corporation* (*supra*), the Supreme Court had set out the three contingencies in which the availability of

alternative statutory remedies would not operate as a bar on invoking the jurisdiction of this Court under Article 226 viz., (a) where the writ petition has been filed for enforcement of any fundamental right or where there is violation of principles of natural justice; or (b) where the order or proceedings are wholly without jurisdiction and (c) where the *vires* of an act is challenged. Yet the enumeration of these contingencies has to be viewed in the context of the other observation in the same decision that a High Court, under Article 226 of the Constitution of India, has the discretion, while having regard to the facts and circumstances of a case, to decide whether or not to entertain a writ petition.

(13) This basic proposition has been reiterated in subsequent judgments of the Supreme Court in *Harbans Lal Sinha* (*supra*), *Ananta Saha* (*supra*) and *Maharashtra Chess Association* (*supra*). Specific to the context of the SARFAESI Act, the following observations of the Supreme Court in *Satyawati Tandon* (*supra*) are relevant:

“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 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.”

(14) Subsequently in *Aggarwal Tracom* (*supra*), it was explained by the Supreme Court as under:

“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.”

(15) The submission of the Petitioner that there has been a failure of the Bank to follow RBI Circulars concerning MSMEs has also been answered by this Court in *M/s Ranbir Textiles (supra)* in the following terms:

“Assuming that the scheme and the guidelines are mandatory and to be implemented by the banks, the only question would be whether the bank concerned has assessed the proposal for reliefs/concessions/restructuring in a reasonable manner and after taking into consideration the relevant facts. If it is found that the decision of the bank has been taken after considering the relevant facts, it is not open to the Court to interfere and to substitute its view or assessment for that of the banks. These are commercial decisions which require the assessment by financial experts taking into consideration a variety of facts and factors relating to financial feasibility, the nature and quality of the unit and the equipment, the staffing pattern and the viability of the projections made. These are commercial decisions best left to the parties equipped to deal with the same. The Courts especially while exercising their extra ordinary writ jurisdiction under Article 226 of the Constitution of India ought not to substitute their judgment on such matters for that of the experts in the field. Even if we were to be so presumptuous as to assume having knowledge of the expertise to assess and judge such matters, it would not be permissible to substitute our decisions with those of the experts in the field and those concerned with the decision making process in this regard.”

(16) The Court sees no reason why the Petitioner should be permitted to invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution and bypass the efficacious alternative remedies available to it under the SARFAESI Act. It must be noted that not only can all the submissions made in the writ petition be urged

before the Debt Recovery Tribunal (DRT) in the first instance but there is, in the event of the Petitioner not persuading the DRT, the remedy of an appeal before the Debt Recovery Appellate Tribunal (DRAT). Further the orders of the DRAT are amenable to judicial review under Article 226 of the Constitution.

(17) For the aforesaid reasons, without expressing any opinion whatsoever on the merits of the contentions of the parties, leaving it open to the Petitioner to avail statutory remedies as are available to it in accordance with law, the Court declines to interfere in the matter.

(18) It will be open to the parties to rely on the pleadings in the present case before the DRT under the SARFAESI Act. If when and the DRT is approached, it shall decide the issues before it independent of the observations in this order and in accordance with law.

(19) The petition is dismissed in the above terms, but in the circumstances with no order as to costs.

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*Tribhuvan Dahiya*