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

\+ W.P.(C) 5278/2024 & CM APPL. 21584/2024, CM APPL. 21585/2024

MAGNUM STEELS LTD & ORS..... Petitioners

Through: Mr. Harshit Anand, Mr. Rohan Poddar and Mr. Raghav Anand, Advocates

versus

ASSET RECONSTRUCTION COMPANY (INDIA) LTD. & ANR.

..... Respondent

Through: Ms. Usha Singh and Mr. Shahruk Inam, Advocates for R-1

% Date of Decision: 10th April, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. The present writ petition has been filed challenging the impugned order dated 20th January, 2024 passed by the Debts Recovery Tribunal – I, Delhi ('DRT') in T.A. No. 165/2022[1] allowing the said application and directing the Petitioners herein to pay to the Respondent No.1, within a period of 30 days, a sum of Rs. 2,74,31,840.37/- as on 26th November, 2021 together with pendente lite and future interest @12.50% per annum with

[1] An application filed by the Petitioner under Section 17 of the SARFAESI Act challenging the Notice issued by the Respondent under Section 13(2) and 13(4) of the said Act.

monthly rent from date of filing of the application till date of realization, failing which the said amount shall be recovered from the sale of mortgaged property bearing no. 312 and 313, 3rd floor, P.P. Tower, Tower B, Plot No. C-1, 2 and 3, Netaji Subhash Place, Pitampura, Delhi without roof rights having super area of 2850 sq. ft. ('secured asset').

Brief facts

2. The Petitioner No.1 herein had executed a Loan Agreement dated 21st August, 2015 with the Respondent No.2, i.e. Bajaj Finance Limited, against mortgage of the secured asset, for a sum of Rs. 2,97,00,000/-. It is stated that subsequently, the said loan account along with its debt/ receivables was assigned to the Respondent No.1, i.e. Asset Reconstruction Company India Ltd.) w.e.f. 24th June, 2021

2.1. The loan account of Petitioner No.1 herein was declared as Non-Performing Asset ('NPA'). It is stated that thereafter, on 20th December, 2021, the Respondent No.1 issued a Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'), seeking repayment of the alleged debt to the extent of Rs. 2,73,92,579.89/- along with future interest and charges.

2.2. It is stated that thereafter, the Respondent No.1 in addition to the aforesaid Notice under Section 13(2) of the SARFAESI Act, also filed an application being T.A. No. 165 of 2022 before the DRT under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 ('RDDB Act'), for recovery of the alleged debts.

2.3. It is stated that on 23rd March, 2022, the Respondent No. 1 filed an application[2] under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate, North West District, Rohini Courts, Delhi ('CMM'), for appointment of a receiver to take possession of secured asset. It is stated that the said application was allowed by the CMM vide order dated 22nd April, 2022 and a receiver was appointed to take possession of the secured asset.

2.4. It is stated that subsequently, the DRT vide impugned order dated 20th January, 2024, allowed the Respondent No. 1's application i.e., T.A. No. 165/2022 filed under Section 19 of the RDDB Act and held the Petitioners to be liable for the outstanding amount. The DRT-I directed the Petitioners to pay a sum of Rs. 2,74,31,840.37/- along with interest within 30 days; failing which it was directed that the said amount shall be recovered by Respondent No.1 from the sale of the secured asset and in case of shortfall, the balance to be recovered from sale of other assets of the Petitioners. The DRT-I further directed issuance of a recovery certificate in favour of the Respondent No.1. Admittedly, no appeal, as provided under Section 20 of the RDDB Act, has been filed against the said order dated 20th January, 2024.

2.5. It is stated that the notice issued under Section 13(2) of the SARFAESI Act and the order dated 22nd April, 2022, passed by the CMM were challenged by the Petitioners before DRT-I by filing an application[3] under Section 17 of the SARFAESI Act. However, the same has been

[2] CC No. 3758/2022
[3] TSA No. 599 of 2022

dismissed by the DRT vide order dated 30th January, 2024. The DRT-I held that all mandatory procedures have been followed by Respondent No.1 as laid down under the SARFAESI Act for the recovery of its dues. The Petitioners herein have admittedly not availed the statutory remedy of filing an appeal under Section 18 of the SARFAESI Act against the said order.

Arguments of the parties

3. Learned counsel for the Respondent No.1 has raised a preliminary objection to the maintainability of the present petition in view of the availability of statutory remedy of appeal under Section 20 of the RDDB Act. He states that Petitioners have approached this Court with unclean hands, inasmuch as, they have flouted the order of the CMM and interfered with possession of the secured asset by unauthorisedly breaking open the seal of the Respondent No.1 on the secured asset.

4. In reply, learned counsel for the Petitioners states that the remedy of filing an appeal under Section 20 of the RDDB Act is not efficacious as the Petitioners will have to comply with the statutory mandate of pre-deposit. He states that the grounds raised in the present petition are sufficient for carving out an exception in favour of the Petitioners to maintain the present writ petition. He states that the legal objections to the maintainability of the recovery proceedings under Section 19 of the RDDB Act were never raised by the Petitioners during the said proceedings. He states that this objection has been raised for the first time in this petition.

4.1. He states that since the Petitioner No.1 had first invoked the provisions of SARFAESI Act by issuing notice dated 26th November, 2021 under Section 13(2) of the said Act, Respondent No.1 was precluded from

invoking Section 19 of the RDDB Act, without withdrawing the SARFAESI Act proceeding or exhausting its remedies under the SARFAESI Act.

4.2. He relies upon the judgment of Supreme Court in ***Transcore v. Union of India and Another***[4] to contend that there was an implicit acknowledgement in the said judgment that once the financial institution has invoked the provisions of SARFAESI Act, such a party will not agitate the pending RDDB Act application any further, so that there is no multiplicity of proceedings.

4.3. He states that in the facts of the present case, as is evident, DRT-I was simultaneously seized with the application filed by Respondent No.1 under Section 19 of the RDDB Act and the application filed by the Petitioners under Section 17 of the SARFAESI Act. He states that this multiplicity of proceedings is prejudicial to the Petitioners as they will have to file two separate appeals against the said order(s) passed in these applications.

4.4. He states that DRT was precluded from entertaining the Section 19 RDDB Act application in view of the pending SARFAESI Act proceedings. He states that SARFAESI being the more effective mechanism, the RDDB Act could not have been resorted to by the Respondent No. 1. He states that the intent of ***Transcore*** (supra) was not to make two recovery proceedings run parallelly.

5. We have heard the learned counsel for the parties and perused the record.

[4] (2008) 1 SCC 125 (Paras 31, 34 and 37)

5.1. A perusal of the submissions made by the Petitioner and the grounds in the petition show that the legal issue raised by the Petitioners is to the effect that whether the recovery proceedings initiated by Respondent No. 1 under the RDDB Act can be continued along with the proceedings under the SARFAESI Act simultaneously?

5.2. In our considered opinion, the said issue is no longer res-integra and has been so authoritatively settled by the Supreme Court in its judgments in ***Transcore*** (supra), a later judgment in ***Mathew Varghese v. M. Amritha Kumar and Ors.***[5] and again in ***M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd.***[6].

5.3. In ***Transcore*** (supra), the Supreme Court held that the provisions of RDDB Act are not inconsistent with the provisions of the SARFAESI Act and the application of both the Acts was held to be complementary to each other. The relevant extract of the said judgment reads as under:

> *"64. In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply. According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.*

[5] (2014) 5 SCC 610
[6] (2017) 16 SCC 741

5.4. In its later judgment in ***Mathew Varghese*** (supra) as well this issue was discussed and the Supreme Court at paras 45-46 held as under:

> *"45. A close reading of Section 37 shows that the provisions of the SARFAESI Act or the Rules framed thereunder will be in addition to the provisions of the RDDB Act. Section 35 of the SARFAESI Act states that the provisions of the SARFAESI Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 together, it will have to be held that in the event of any of the provisions of the RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts, namely, the SARFAESI Act and the RDDB Act, would be complementary to each other. In this context reliance can be placed upon the decision in Transcore v. Union of India [(2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] . In para 64 it is stated as under after referring to Section 37 of the SARFAESI Act: (SCC p. 162)*
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> > *"64. ... According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application."*
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> *(emphasis added)*
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> *46. A reading of Section 37 discloses that the application of the SARFAESI Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws are not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and*

Financial Institutions Act, 1993, or any other law for the time being in force."

5.5. Subsequently, in ***M.D. Frozen Foods Exports Pvt. Ltd.*** (supra) the Supreme Court after considering the aforesaid judgments, yet again reiterated that the RDDB Act and SARFAESI Act are thus, complimentary to each other and it is not case of election of remedy. The Court held that in view of the provision of Section 37 of the SARFAESI Act, the application of the said Act will be in addition to and not in derogation of the RDDB Act. The relevant paras read as under:

"27. On the SARFAESI Act being brought into force seeking to recover debts against security interest, a question was raised whether parallel proceedings could go on under the RDDB Act and the SARFAESI Act. This issue was clearly answered in favour of such simultaneous proceedings in Transcore v. Union of India [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] . A later judgment in Mathew Varghese v. M. Amritha Kumar [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] also discussed this issue in the following terms:...

28. These observations, thus, leave no manner of doubt and the issue is no more res integra, especially keeping in mind the provisions of Sections 35 and 37 of the SARFAESI Act, which read as under:

"35. The provisions of this Act to override other laws.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

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37. Application of other laws not barred.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

29. The aforesaid two Acts are, thus, complementary to each other and it is not a case of election of remedy.

...

32. The aforesaid is not a case of election of remedies as was sought to be canvassed by the learned Senior Counsel for the appellants, since the alternatives are between a civil court, Arbitral Tribunal or a Debt Recovery Tribunal constituted under the RDDB Act. Insofar as that election is concerned, the mode of settlement of disputes to an Arbitral Tribunal has been elected. The provisions of the SARFAESI Act are thus, a remedy in addition to the provisions of the Arbitration Act. In Transcore v. Union of India [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] it was clearly observed that the SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Liquidation of secured interest through a more expeditious procedure is what has been envisaged under the SARFAESI Act and the two Acts are cumulative remedies to the secured creditors.

33.Sarfaesi proceedings are in the nature of enforcement proceedings, while arbitration is an adjudicatory process. In the event that the secured assets are insufficient to satisfy the debts, the secured creditor can proceed against other assets in execution against the debtor, after determination of the pending outstanding amount by a competent forum."

5.6. In view of the aforesaid position in law, the continuation of the adjudicatory proceedings by Respondent No. 1 in the application number i.e., T.A. No. 165/2022 filed under Section 19 of the RDDB Act was maintainable. There was no bar on its continuation due to the invocation of the SARFAESI proceedings, which are in the nature of enforcement proceedings, as observed by the Supreme Court.

5.7. Therefore, in view of the settled position of law, filing of the present petition is not bona fide. It is evident that the Petitioners have filed the present petition to overreach the recovery proceedings, wherein the Petitioners have been found to be liable to pay an amount of Rs.

2,74,31,840.37 as on 26th November, 2021 plus interest, so as to circumvent the provisions of statutory appeal.

5.8. The Supreme Court in ***ITC Ltd v. Blue Coast Hotels Ltd***[7]. held that a debtor who has failed to discharge its liabilities is not entitled to discretionary equitable relief under Article 226 of the Constitution.

6. Accordingly, the present petition is without any merit and is dismissed along with pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 10, 2024/msh/hp/aa

[7] (2018) 15 SCC 99 (Para Nos. 52 to 57)