
(2015) 04 JH CK 0011

In the Jharkhand High Court

Case No : L.P.A. Nos. 98 and 102 of 2015 and I.A. Nos. 942 and 943 of 2015

Black Diamond Techno Pvt. Ltd. and Others

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(1), 13(2), 13(3)-A, 13(4)

Citation : (2015) 04 JH CK 0011

Hon'ble Judges : Virender Singh, C.J.; Aparesh Kumar Singh, J.

Bench : Division Bench

Advocate : Binod Poddar, Senior Advocate, Deepak Sinha, Darshana Poddar, Piyush Poddar and Amrita Sinha, for the Appellant; Ranjan Kumar, Advocates for the Respondent

Judgement

Virender Singh, C.J.—Since in both the appeals, common issue has cropped up for consideration of the Court, we take them on board for the admission.

2. Mr. Poddar, learned Senior Counsel appearing for the appellant-writ petitioner (in short "borrower") inter-alia contends that it appears from the impugned judgment that the learned Writ Court did not enter into a very vital aspect, whether the representation made by the borrower in terms of section 13(3)-A of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act of 2002") was decided by according reasons of no acceptance of the representation made by the borrower before resorting to section 13(4) of the SARFAESI Act of 2002 which in fact, according to information received by the borrower through R.T.I., was decided on 16.06.2014 and communicated on 17.09.2014, two months after resorting to the provisions of section 13(4) of the SARFAESI Act of 2002. Learned Senior Counsel submits that this illegality on the face of it, makes all the action of the Bank non est including the sale of the property of the borrower, if at all, confirmed.

3. Learned Senior counsel further submitted that the writ petition filed by the

borrower has been dismissed by the learned Writ Court primarily on the ground that he had the alternative remedy under the Act itself, whereas the borrower, in fact, had no alternative remedy to throw challenge to any order taken by the Bank on his representation under section 13(3)-A of SARFAESI Act of 2002. Therefore, he knocked at the door of the learned Writ Court taking the legal plea on which, in fact, no finding has been returned by the learned Writ Court.

4. In support of his submissions, learned Senior Counsel has relied upon the decision of the Hon'ble Supreme Court in the case of Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., . He has drawn attention of the Court to Para-45 and 46 of the said judgment, which reads as under.

"45. In the background we have indicated above, we may consider as to what forums or remedies are available to the borrower to ventilate his grievance. The purpose of serving a notice upon the borrower under sub-section (2) of Section 13 of the Act is, that a reply may be submitted by the borrower explaining the reasons as to why measures may or may not be taken under sub-section (4) of Section 13 in case of non-compliance with notice within 60 days. The creditor must apply its mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply to the notice. There may be some meaningful consideration of the objections raised rather than to ritually reject them and proceed to take drastic measures under sub-section (4) of Section 13 of the Act. Once such a duty is envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers to apprise them of the reason for not accepting the objections or points raised in reply to the notice served upon them before proceeding to take measures under sub-section (4) of Section 13. Such reasons, overruling the objections of the borrower, must also be communicated to the borrower by the secured creditor. It will only be in fulfilment of a requirement of reasonableness and fairness in the dealings of institutional financing which is so important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It would certainly provide guidance to the secured debtors in general in conducting the affairs in a manner that they may not be found defaulting and being made liable for the unsavoury steps contained under Sub-section (4) of Section 13. At the same time, more importantly, we must make it clear unequivocally that communication of the reasons for not accepting the objections taken by the secured borrower may not be taken to give occasion to resort to such proceedings which are not permissible under the provisions of the Act. But communication of reasons not to accept the objections of the borrower, would certainly be for the purpose of his knowledge which would be a step forward towards his right to know as to why his objections have not been accepted by the secured creditor who intends to resort to harsh steps of taking over the management/business of viz. secured assets without intervention of the court. Such a person in respect of whom steps under Section 13(4) of the Act are likely to be taken cannot be denied the right to know the

reason of non-acceptance and of his objections. It is true, as per the provisions under the Act, he may not be entitled to challenge the reasons communicated or the likely action of the secured creditor at that point of time unless his right to approach the Debts Recovery Tribunal as provided under Section 17 of the Act matures on any measure having been taken under Sub-section (4) of Section 13 of the Act.

46. We are holding that it is necessary to communicate the reasons for not accepting the objections raised by the borrower in reply to the notice under Section 13(2) of the Act, more particularly for the reason that normally in the event of non-compliance with notice, the party giving notice approaches the court to seek redressal but in the present case, in view of Section 13(1) of the Act the creditor is empowered to enforce the security himself without intervention of the court. Therefore, it goes with logic and reason that he may be checked to communicate the reason for not accepting the objections, if raised and before he takes the measures like taking over possession of the secured assets, etc."

5. On the strength of the aforesaid submissions, learned Senior Counsel not only prays for admission of the instant appeal but also stay of the further action, if any taken by the Bank pursuant to resorting to section 13(4) of the SARFAESI Act of 2002. An Interlocutory Application being I.A. No. 942/2015 has also been fled by the borrower for the interim relief.

6. Learned counsel appearing for the Bank states that he could not file any counter to the information supplied to the borrower through R.T.I. and placed on record before the learned Writ Court, therefore, he is not in a position to controvert the fact, as to whether the decision taken on the representation moved by the borrower in terms of section 13(3)-A of the SARFAESI Act of 2002 was dispatched to him on 17.09.2014 or the date on which representation was decided i.e. 16.06.2014. Learned counsel otherwise states that now third party interest has also been created as sale of the property of the borrower has been confirmed, although possession not delivered till date.

7. Prima facie, we find it a case of showing indulgence.

8. Hence, Admitted.

9. Issue notice.

10. Post admission notice is waived by Mr. Ranjan Kumar.

11. Till further orders, the property which is the subject matter of the instant matter, shall not be handed over to any third person, even if the sale stands confirmed.

12. List the main appeal for its final consideration on 24.06.2015.