(2011) 09 GUJ CK 0109

In the Gujarat High Court

Case No : Special Civil Application No. 13642 of 2011

Gujarat Poly-Avx Electronics Ltd. APPELLANT

Vs

CMD, IDBI and Another RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 2 BC 635

Hon'ble Judges : S.J. Mukhopadhaya, C.J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Mihir Thakor, Mr. S.N. Soparkar and Mr. M.S. Dharmishta Raval, for the Appellant; Anip A. Gandhi, Advocate Respondent No. 1 and None, Respondent No. 2, for the Respondent

Judgement

S.J. Mukhopadhaya, C.J.—This writ petition has been preferred by the petitioner-Gujarat Poly-AVX Electronics Ltd., (borrower) against the notice issued by the respondent-secured creditor u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SRFAESI Act"). According to the petitioner it has paid all the dues as were due to the respondents. In fact, payment has been made pursuant to order dated 27th March, 2002 passed by Appellate Authority for Industrial and Financial Reconstruction, New Delhi (hereinafter referred to as "AAIFR").

2. Mr. Mihir Thakor, learned Sr. Advocate, appearing with Mr. S.N. Soparkar, learned Sr. Advocate with Ms. Dharmishta Raval, learned Counsel for the petitioner would refer to order dated 27th March, 2002, passed by the AAIFR in Appeal No. 387 of 2001, to suggest that amount of Rs. 6.58 crores as was due to respondent No. 1 -IDBI and another sum of Rs. 4.09 crores as was due to respondent No. 2-IFCI have already been paid. It was submitted that 45% of the said amount has been paid by the petitioner in cash and rest of the amount has been paid by conversion of equity shares; the debts having discharged, notice issued u/s 13(2) of the SRFAESI Act was uncalled for. This fact was brought to

the notice of the respondents by the petitioner, but such contention had been rejected.

3. The respondents, on appearance have refuted the contention and have shown the following amount due from the petitioner to the respondent No. 1 -IDBI as on 1st June, 2011 and respondent No. 2-IFCI as on 30th June, 2011 respectively.

GUJARAT POLY-AVX ELECTRONICS LIMITED (GPEL)

DETAILS OF OUTSTANDING LOANS OF IFCI

AS ON 30.6.2011 (INCLUSIVE)

(Figures in Rupees)

Sl. No

Loan Account

Principal

Interest (including Further interest & Liquidated Damages)

Total

1

Rupee Term Loan

98,00,000

34,27,81,468.00

35,25,81,468.00

2.

Foreign Currency Loan (converted into Rupee Loan)

3,11,00,000

1,36,62,17,652.00

1,39,73,17,652.00

Total

4,09,00,000

1,70,89,99,120.00

1,74,98,99,120.00

GUJARAT POLY-AVX ELECTRONICS LIMITED (GPEL)

DETAILS OF OUTSTANDING LOANS OF OTHER SECURED TERM

LENDER, IDBI

AS ON 1.6.2011 (INCLUSIVE)

(Figures in Rupees)

1

Principal

6,57,87,746

2

Interest

18,65,89,090

3

Further Interest

1,59,88,44,784

4

Liquidated Damages

20,48,85,304

Total

2,05,61,06,924

4. Mr. Anip Gandhi, learned Counsel appearing on behalf of the respondent would contend that there being remedy u/s 17 of the SRFAESI Act, as and when action may be taken by the respondents u/s 13(4) of the SRFAESI Act, the petitioner could move before the Debt Recovery Tribunal.

6. We have heard the learned Counsel appearing on behalf of the parties and perused the record.

6. In the present case, we find that the respondents have not yet taken any measure u/s 13(4) of the SRFAESI Act and thus, there is no cause of action taken place under the SRFAESI Act.

7. Similar issue fell for consideration before the Supreme Court in the case of United Bank of India Vs. Satyawati Tondon and Others, , wherein, referring to different provisions of the SRFAESI Act, the Supreme Court observed as follows:

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 SRFAESI 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.

8. In case of Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, , the Supreme Court upheld the decision of the High Court dismissing the petition on the ground that an efficacious remedy was available to the appellants u/s 17 of the Act. The Supreme Court held that:

It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person.

9. In the instant case, apart from the fact that admittedly, there is a disputed question of fact as to whether pursuant to the decision of the AAIFR, any amount had been paid to or realized by the respondent No. 1 -IDBI and respondent No. 2-IFCI, we find that there is no cause of action taken place under the SRFAESI Act till date in absence of any measure taken u/s 13(4) of the SRFAESI Act. If such measure is taken by the respondents u/s 13(4) of the SRFAESI Act, there being an efficacious statutory remedy of appeal u/s 17 of the SRFAESI Act available to the petitioner, who may ultimately avail the same, we decline to exercise our jurisdiction under Article 226 of the Constitution of India. However, this order shall not stand in the way of the petitioner to move before the Debt Recovery Tribunal if any measure is taken by the respondents u/s 13(4). The writ petition stands disposed of with the above observations.