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(2015) 03 RAJ CK 0122

In the Rajasthan High Court

Case No : .CWrit Petition No. 1481/15

Hotel Gaudavan Pvt. Limited APPELLANT

Vs

Alchemist Asset Reconstruction Co. Ltd. and Others RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 14, 17

Citation : (2015) 03 RAJ CK 0122

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Rajesh Shah, for the Appellant; M.S. Singhvi, Senior Advocate assisted by K.S. Lodha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—This writ petition is filed by the petitioner questioning the legality of the proceedings initiated under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), pending before the District Magistrate, Jaisalmer.

2. The relevant facts are that the respondent-State Bank of India (SBI) advanced a term loan of Rs. 24 crores to the petitioner. On account of failure on the part of the petitioner in payment of installments, the loan account was categorised as ''Non Performing Assets" (NPA). The respondent-SBI approached the Debt Recovery Tribunal, Jaipur (for short "the Tribunal") by way of original application for recovery of outstanding dues. During the pendency of the proceedings before the Tribunal, the respondent-SBI by way of an agreement entered into with the respondent No. 1-Alchemist Asset Reconstruction Co. Ltd. (AARCL), assigned its entire financial assets pertaining to the petitioner-M/s. Hotel Gaudavan Pvt. Limited together with all rights, interests and guarantees in terms of Section 5 of the Act. The respondent-AARCL already stands substituted as the applicant in the

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proceedings before the Tribunal. However, during the pendency of the original application before the Tribunal, for recovery of the outstanding dues, the respondent-AARCL started parallel proceedings under Section 13 of the Act.

3. After issuing the notice under Section 13(2) and 13(4) of the Act, the respondent-AARCL made an application under Section 14 of the Act before the District Magistrate, Jaisalmer for taking over the possession of the secured asset and forward such asset to the secured creditor and authorise the Tehsildar/Police Officials to break open the locks if the premises is found locked and prepare inventory of the goods lying in the said property, after taking possession thereof. Hence, this petition.

4. Learned counsel appearing for the petitioner submits that during the pendency of the proceedings before the Tribunal, the respondent-AARCL could not have initiated the parallel proceedings under the Act and therefore, the proceedings initiated under Section 14 of the Act is illegal. Learned counsel submitted that before passing any order in the proceedings initiated under Section 14 of the Act, the petitioner is entitled for an opportunity of hearing. Learned counsel submitted that during the pendency of the proceedings before the Tribunal, the action of the respondent-Bank in taking possession of the secured asset, is ex facie illegal and arbitrary.

5. On the other hand, the counsel appearing on behalf of AARCL, the respondent-caveator, submitted that as a matter of fact, aggrieved by the measure adopted by the respondent-AARCL for enforcement of the security interest, the petitioner has already invoked the jurisdiction of the Tribunal under Section 17 of the Act. It is submitted that the possession of the secured asset has already been taken. It is submitted that the petitioner having availed the remedy available under the relevant statute, the writ petition preferred deserves to be dismissed. In this regard, learned counsel has relied upon the decisions of the Hon''ble Supreme Court in the matters of United Bank of India Vs. Satyawati Tondon and Others, , GM, Sri Siddeshwara Co-operative Bank Ltd. and Another Vs. Sri Ikbal and Others, and Devi Ispat Limited and Another Vs. State Bank of India and Others, .

6. I have considered the rival submissions and perused the material on record.

7. It is to be noticed that the order, if any, passed by the District Magistrate in the proceedings under Section 14 of the Act is not impugned in the present writ petition. Admittedly, the petitioner is aggrieved by the measures adopted by the respondent-AARCL for enforcement of the security interest in terms of sub-section (4) of Section 13 of the Act, during the pendency of the proceedings before the Tribunal in the original application filed on behalf of the respondents. It is not in dispute that remedy of appeal is available to the petitioner against the impugned action of the respondent-AARCL under Section 17 of the Act. As per provisions of sub-section (3) of Section 17, if the Tribunal after examining the facts and circumstances of the case and the evidence produced by the parties,

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comes to the conclusion that any measures referred to in sub-section (4) of Section 13 by the secured creditor are not in accordance with the provisions of the Act or the Rules made thereunder, it can declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditor as invalid and restore the possession of the secured asset to the borrower. Moreover, as stated by counsel appearing on behalf of the respondent-AARCL at the bar, the petitioner has already availed the remedy available under Section 17 of the Act before the Tribunal.

8. Thus, on the facts and in the circumstances of the case, in the considered opinion of this court, the present matter does not suggest any special feature warranting interference by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India, by passing the effective and efficacious statutory remedy available under the relevant statute.

9. Accordingly, the writ petition is dismissed. It is made clear that the petitioner shall be at liberty to question the legality of the action taken by the respondent-AARCL under the provisions of Section 13 of the Act before the Tribunal on all available grounds, available under the law. No order as to costs.

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