(2009) 04 DEL CK 0474

In the Delhi High Court

Case No : Writ Petition (C) 8048 of 2009 and C.M. No. 4607 of 2009 (Stay Application)

Radhika Spinning Mills Ltd. APPELLANT

Vs

Stressed Assets Stablisation Fund and Another RESPONDENT

Date of Decision : 08-04-2009

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(1), 13(2), 13(3), 13(4)

Citation : (2009) 04 DEL CK 0474

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Madan Gera, for the Appellant; Sanjay Bhatt, for Resp. No. 1, for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—Issue notice. Mr. Sanjay Bhatt, Advocate accepts notice. With consent, the matter was heard finally.

2. The petitioner complains of arbitrariness by the respondents in regard to the notice dated 28.07.2008 issued u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (hereafter called "SARFAESI").

3. The petitioner had borrowed sums of money and availed of credit facilities from the respondents from time to time between 1994 and 2002. It is contended that the respondents preferred an application before the Debt Recovery Tribunal (DRT) in 2003 claiming approximately Rs. 23 crores as principal amount with interest. The petitioner further submits that when the application was pending adjudication, the impugned notice calling upon it to pay a sum in excess of Rs. 57 crores was issued.

4. The petitioner''s contention is two-fold-one, that the properties against which action is proposed are agricultural land and, therefore, outside the purview of the SARFAESI Act and, two, that the Board for Industrial and Financial Reconstruction (BIFR), acting under the Sick Industrial Companies (Special Provisions) Act, 1985 has declared it to be ''sick'' and appointed an operating agency, for the purpose of examining the proposals of rehabilitation. It is lastly contended that the representations were made to the bank on 28.08.2008 and after which reminder was issued on 06.02.2009. Learned Counsel contends that the respondents are duty-bound to consider the representations and submissions made and indicate their reasons to the petitioner.

5. Learned Counsel for the respondents submits that the petitioner borrower had availed of credit facilities right from 1994. After persistent defaults, the applications were preferred before the DRT in 2003. Even after pendency of proceedings for more than five years, the petitioner was unable to discharge its dues. In the circumstances, the respondents were constrained to invoke provisions of SARFAESI. It is submitted that the respondents, acting in concert with all institutions have resolved to proceed u/s 13(4). Therefore, any interdiction by this Court would interfere with the choice of remedy. Learned Counsel also relied on Section 41 of the SARFAESI to say that references in the BIFR would abate in the event action is taken u/s 13(4) of the SARFAESI since both the respondents together are entitled to 100% of the outstanding amount, as secured credits.

6. Learned Counsel for the respondents further submitted that one Mr. R. Chopra, claiming to the tenant of the petitioner has filed an injunction suit and obtained status quo till 21.04.2009. A copy of the said order was shown to the Court.

7. The Court has considered the submissions of the parties. No doubt, Section 13(3)(1) of SARFAESI, after judgment of the Supreme Court in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., obliges banks or financial institutions, which issue notice u/s 13(2) to consider the representations of the borrower and indicate its decision or response within a time-bound manner. Yet, the Court cannot be unmindful to the proviso to that provision itself, which makes it clear beyond a shadow of doubt that no consequence was indicated by the Parliament in the event reasons were communicated or the borrower had some grievance against the reasons so communicated by the bank. The articulation of law in Mardia Chemicals (supra) which upheld the validity of provisions of SARFAESI were that in the event of a borrower''s grievance, he had the right of remedy u/s 17 after action u/s 13(4) was taken. Having regard to these legal position, the Court is of the opinion that even though the bank may be under obligation to consider and perhaps communicate its mind to the petitioner, its failure to do so or its communicating reasons which the petitioner may differ from, itself ipso facto does not entitle it to approach the Court and seek an extraordinary remedy when the normal course of appeal u/s 17 is

available. Neither the reasoning in Mardia Chemicals (supra) nor the wording of Section 13, after amendment supports the contention that the Bank''s reasons or inaction can be scrutinized by a separate judicial remedy, or normally, under Article 226. The only remedy is u/s 17, subject to the conditions spelt out in that provision itself.

8. As far as other contentions are concerned, the facts disclose that the petitioner borrowed amounts for setting up an industrial unit. No doubt, it contends that the land purchased by it was agricultural. However, there is no explanation whether all agricultural land was converted for industrial units; the documents placed on record clearly show that the petitioner has a spinning mill on the land which is said to be agricultural. This it self discloses a contradictory position. In these circumstances, the Court is of the opinion that this is not an appropriate case for examining the legal issues sought to be raised, at this late stage when the respondents have approached the competent forum u/s 14 as a prelude to action u/s 13(4).

9. The above observations should have been dispositive of the writ petition. However, since the respondents have stated that a status quo order has been made by a civil court, they may appropriately consider petitioner''s representation which are part of the record and indicate their response within one week. It is open to the petitioner thereafter, in the case of further grievance, to, in the event of action u/s 13(4) to approach the competent forum u/s 17 and prefer an appeal.

10. Learned Counsel for the respondents states that the representation alleged to have been sent was not received. They are part of the record. The respondents shall not take any action towards taking-over possession of the petitioner''s assets or orders u/s 14 of SARFAESI for a period of two weeks from today. In case of grievance, it is open to the petitioner to seek recourse to remedies available in SARFAESI, such as an appeal under Section

11. The writ petition and the accompanying application are disposed of in the above terms.

C.M. No. 4608/2009 (Exemption)

Allowed, subject to all just exceptions.

