

(2014) 08 MAD CK 0118

In the Madras High Court

Case No : Writ Appeal No. 1098 of 2014 and M.P. No. 1 of 2014

State Industries Promotion Corporation of Tamil Nadu Ltd.
(SIPCOT)

APPELLANT

Vs

T.H. Infrastructure Pvt. Ltd.

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 2, 2(h)
(ii)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(4), 2(m), 3, 5

Citation : (2014) 5 CTC 648

Hon'ble Judges : Sanjay Kishan Kaul, C.J;M. Sathyanarayanan, J

Bench : Division Bench

Judgement

Sanjay Kishan Kaul, C.J.—Southern Petrochemical Industries Corporation Limited (SPIC) obtained on perpetual lease for 99 years the land known as Plot No. C14, C15 & C16 in the SIPCOT Industrial Complex at Cuddalore measuring 63.33 acres from the State Industries Promotion Corporation of Tamil Nadu Ltd., (SIPCOT) in pursuance to a Memorandum of Lease dated 21.2.1990. The said property was mortgaged with the consortium of Financial Institutions to secure loan being IDBI, Exim Bank, LIC and UTI for which No Objection Certificate (NOC) was issued by the Appellant/SIPCOT. SPIC went into financial difficulties resulting in foreclosure of mortgage for repayment of loan. M/s. Asset Reconstruction Company (India) Limited (ARCIL), an Asset Reconstruction Company, took over the debt and the possession of the assets based on the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in view of Section 13(4) of that Act. The property ultimately came to be transferred to M/s. T.H. Infrastructure Private Limited/the First Respondent herein which is also the original Petitioner and a controversy arose out of the demand raised by SIPCOT on the First Respondent for transfer of the leasehold rights seeking an amount of Rs. 9,31,92,765/- towards differential land cost, etc. It is this demand which was

assailed in the Writ Petition. The controversy which thus arose was whether such a demand could be raised by SIPCOT/Appellant taking into consideration the own Office Order of SIPCOT dated 5.1.2005. The relevant portion of the Office Order reads as under:

"Transfer of leasehold rights of the land will not be permitted for trading purpose.

The existing policy of not collecting differential land cost in the case of Management changes arising out of sale of a unit by Financial Institutions, Banks, Departments of the State and Central Governments and Official Liquidator and also in respect of Associate and Joint Sector Projects of ELCOT and TIDCO will be continued."

2. The learned Single Judge in terms of the impugned Order, opined in favour of the First Respondent/Original Petitioner vide impugned Order dated 21.3.2014 by allowing the Writ Petition which is now sought to be assailed by the Appellant/SIPCOT in the present Writ Appeal.

3. We heard the learned Counsel for the Appellant as well as the learned Senior Counsel for the First Respondent.

4. The sum and substance of the argument of the learned Counsel for the Appellant is that the aforesaid Circular would not come to the aid of the First Respondent for the reason that there was an intermittent transaction whereby the security interest was taken over by ARCIL which in turn traded in the property. It is the submission of the learned Counsel that the NOC for mortgage which is undisputedly a requirement prior to creation of mortgage as per the terms of the Lease Deed was never granted in favour of ARCIL. It is also her submission that the benefit of the Circular is available to a Financial Institution and ARCIL is not a Financial Institution within the meaning of Reserve Bank of India Act, 1934 (RBI Act).

5. We are unable to persuade ourselves to agree with the argument of the learned Counsel for the Appellant. We have to keep in mind that NOC for mortgage was undisputedly granted in favour of the Financial Institutions, which had advanced loans to SPIC. On failure to repay the loan, proceedings were taken under the SARFAESI Act. ARCIL is a Securitisation Company duly registered under the SARFAESI Act in accordance with Chapter II of that Act. Section 3 of the SARFAESI Act provides for such registration and the registration has to be with the Reserve Bank of India. As to what is the Financial Institution is defined under Section 2(m) of the SARFAESI Act. The relevant portion reads as under:

"2(m) "Financial Institution" means-

(ii) any institution specified by the Central Government under sub-clause (ii) of Clause (h) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);"

6. In view of the aforesaid definition, one has to turn to the definition under Section 2(h)(ii) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBFI Act) which reads as under:

"2(h) "Financial Institution" means-

(ia) the Securitisation Company or Reconstruction Company which has obtained a certificate of registration under sub-section (4) of Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(ii) such other institution as the Central Government may, having regard to its business activity and the area of its operation in India, by Notification, specify;"

7. Thus, it cannot even be disputed before us that a reading of the aforesaid provision clearly shows that a Securitisation Company is a Financial Institution within the meaning of the SARFAESI Act.

8. The matter does not rest with this as acquisition of rights or interest in financial assets is dealt with under Section 5 of the SARFAESI Act. The relevant provision reads as under:

"5. Acquisition of rights or interest in financial assets.-

(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, Powers of Attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned Bank or Financial Institution is a party or which are in favour of such Bank or Financial Institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the Securitisation Company or Reconstruction Company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said Bank or Financial Institution, Securitisation Company or Reconstruction Company, as the case may be, had been a party thereto or as if they had been issued in favour of Securitisation Company or Reconstruction Company, as the case may be."

9. A reading of the aforesaid provision shows that after the acquisition of a financial asset, the Securitisation Company will have all rights as were available to the original entity in whose favour it was mortgaged and the same could be enforced or acted upon as fully and effectually as in the place of that entity. The NOC would operate as if it was "issued in favour of the Securitisation Company or Reconstruction Company". Thus the NOC granted by the Appellant in favour of the consortium of Financial Institutions has to be treated as if it was granted in favour of ARCIL and thus there is no merit in the grievance made before us that the NOC was never granted to ARCIL.

10. We have discussed aforesaid that once ARCIL is a Financial Institution within the meaning of the SARFAESI Act, there is no reason to look to the definition of Financial Institution under the earlier central legislation of the RBI Act. The two legislations being both Central legislations, the incorporation of the definition for "Financial Institution" under the subsequent legislation would prevail in the context of the action being under that Act, as the Parliament would be deemed to have knowledge of the earlier legislation.

11. On turning to the Circular in question, it does not qualify the nature of Financial Institution, but merely states that a sale of a unit by Financial Institution, Banks, Departments of the State and Central Governments and Official Liquidator, etc., would not invite collection of differential land cost by the Appellant. We cannot accept the submission of the learned Counsel for the Appellant that the transfer of leasehold rights of land to ARCIL has to be treated as one for trading purposes and is thus excluded under the Office Order extracted aforesaid. If the Appellant wanted to exclude the Securitisation Companies from the purview of the benefit of the Circular, then they ought to have modified the Circular which still holds force and came into force after the SARFAESI Act.

12. Apart from the legal defence which the First Respondent has, it would be highly inequitable and unfair to saddle the First Respondent with the liability of differential land cost when it has proceeded to purchase the property on certain premise of ARCIL being a Securitisation Company and thus a Financial Institution and any transaction by it being exempt from the requirement of payment of differential land cost as per the own Circular of the Appellant dated 5.1.2004.

13. The result of the aforesaid is that the impugned Order is sustained. The consequence would be that the demand towards differential land cost as per the communication dated 31.10.2012 stands set aside.

14. It is pointed out to us that there are certain other dues towards maintenance, etc., which are liable to be paid by the First Respondent and in fact, the First Respondent makes a grievance that those amounts are not being received despite being offered in view of the modified Lease Deed not having been executed. Not only that, even the electricity and water connections have been disconnected.

15. In order to avoid any further dispute, we issue the following directions: (i) The Appellant will raise the demands towards the other charges excluding differential land cost on the First Respondent within seven days from today.

(ii) The First Respondent will pay the amounts within 10 days of the receipt of the demand.

(iii) On deposit of the charges, all facilities shall be made available in the property by the Appellant.

(iv) The Appellant will execute a modified lease deed within a maximum period of

one month of the First Respondent having deposited the charges.

The Writ Appeal is accordingly dismissed with the aforesaid directions. The parties are left to bear their own costs. Consequently, connected MP is also dismissed.