

Ms Tulip Data Services Pvt Ltd & Anr vs Edelweiss Asset Reconstruction ... on 10 November, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~43 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 12610/2021

MS TULIP DATA SERVICES PVT LTD & ANR. Petitioners
Through: Mr. Sanjeev Bhandari & Mr.Kunal
Dewan, Advocates.

versus

EDELWEISS ASSET RECONSTRUCTION
COMPANY LTD AND ANR Respondent
Through: Mr. R.P. Agrawal, Ms. Manisha
Agrawal & Ms. Priyal Modi,
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN
ORDER

% 10.11.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM APPL. 39434/2021(exemption) Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 12610/2021

1. Issue notice. Mr R.P. Agrawal, learned counsel, accepts notice on behalf of the respondent No.1- Edelweiss Asset Reconstruction Company Limited. In view of the order I propose to pass, it is not necessary to issue notice to the other respondent at this stage.

2. The petitioners have filed an application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"] before the Debts Recovery Tribunal ["DRT"]-II, Delhi under Diary No. 135/2021 dated 06.11.2021. As the DRTs in Delhi are without Presiding Officers, the petitioner filed a Transfer Application No. 142/2021 under Section 17(7) of the SARFAESI Act read with Section 17A(2) of the Recovery of Debts and Bankruptcy Act, 1993 before the Debts Recovery Appellate Tribunal

["DRAT"], seeking transfer of the proceedings from DRT-II, Delhi to a functional DRT. However, by virtue of a notification dated 29.10.2021 issued by the Department of Financial Service, Government of India, the office of the Chairperson, DRAT, Delhi has also been rendered vacant with effect from 30.10.2021.

3. It is in these circumstances that the petitioners have approached this Court for the following reliefs:-

"(a) Allot the Present Petition filed by the Petitioners;

(b) Direct that Securitisation Application bearing SA (Diary No)/135/2021 titled as M/s Tulip Data Services Pvt.

Ltd. and Anr. vs. EARC and Anr pending before the Debts Recovery Tribunal-II, Delhi be transferred to any other tribunal under the jurisdiction of the Hon'ble Debts Recovery Appellate Tribunal-Delhi;

(iii) Pass any other further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

4. Mr. Agrawal submits that the respondent No. 1 has several objections to the maintainability of the proceedings filed by the petitioner, as well as on merits. Mr. Sanjeev Bhandari, learned counsel for the petitioners, accepts that the matter be transferred without prejudice to any of the contentions of the respondent No. 1 on maintainability, including as to the territorial jurisdiction of the DRT-II, Delhi wherein the application was originally filed.

5. Having regard to the fact that the statutory remedy available to the petitioners has been rendered ineffective due to the vacancies in the offices of the Presiding Officers of the DRTs in Delhi as well as in the office of the Chairperson, DRAT, the petitioners' request is merited. The alternative would be for the borrowers to be compelled to institute proceedings before the writ court against the actions taken under the SARFAESI Act. Such a course is not consistent with the settled jurisprudence that writ proceedings ought not to be invoked against the measures taken under the SARFAESI Act, in preference to the statutory remedies available before the DRT and DRAT.

6. In *United Bank of India vs. Satyawati Tondon and Others* (2010) 8 SCC 110, the Supreme Court held as follows:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by

Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

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45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad* [AIR 1969 SC 556] , *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1] and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

(Emphasis supplied.)

7. The observations in *Satyawati Tondon* (supra) have been followed by the Supreme Court inter alia in *Authorized Officer, State Bank of Travancore and Another vs. Mathew K.C.* (2018) 3 SCC 85 [paragraphs 5, 9 to 15], and the recent judgment in *C. Bright vs. District Collector and Others* (2021) 2 SCC 392 [paragraph 22].

8. For the reasons aforesaid, the writ petition is allowed, and the Securitisation Application filed vide Diary No. 135/2021 dated 06.11.2021 pending before the DRT-II, Delhi is transferred to the DRT, Jaipur [which is the only functional DRT under the jurisdiction of the DRAT, Delhi].

9. As the auction which is challenged in the Securitisation Application [before DRT-II, Delhi] is scheduled for tomorrow, i.e. 11.11.2021, the DRT, Jaipur is directed to hear the matter tomorrow, i.e. 11.11.2021 at 2:00 PM, at least on the question of interim relief. The parties will be permitted to appear online (by video-conferencing) if they so request. The Registrar, DRT-II, Delhi is directed to transmit the record digitally to the Registrar, DRT, Jaipur. Learned counsel for the petitioners will also coordinate with the Registrars of both the DRTs for this purpose and may transmit the records digitally to DRT, Jaipur, if so permitted.

10. It is made clear that this Court has not rendered any findings on the merits of the petitioners' case which are to be decided by the DRT, in accordance with law.

11. The writ petition is disposed of in these terms.

PRATEEK JALAN, J NOVEMBER 10, 2021/'pv'