



**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

**IA (IB) No.223/2023
In
CP(IB) No.255/7/HDB/2021**

Application filed under Section 60(5) of the IBC, 2016

IN THE MATTER OF M/S MASTER WEAVER ETHINICS PRIVATE LIMITED

Between

Udata Venkateswar Rao
R/o. Flat No. 202, Chandrodaya Residency,
Doctors Colony, Kothapet, Hyderabad-500035,T.S.

...Applicant

VS

1. M/s Master Weavers Ethinics India Private Limited
Registered Office at Shop No.337,338 Pvt.,
Market Kothapet Crossroads, Dilsukhnagar,
Hyderabad-500035, Telangana State
Represented by its Interim Resolution Professional
Mr. Malireddy Ramana Reddy.

....Respondent No.1/
Corporate Debtor

2. M/s. India Resurgence ARC PRIVATE LTD
Registered Office at 3rd Floor, Piramal Towers,
Peninsula Corporate Park, Lower Parel,
Mumbai-400013.
Represented by its authorized Officer.

Date of order: 22.05.2023

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)



Parties/ Counsels present:

For the Applicant : Mr. Tunga Mahesh Kumar, Advocate
For the Respondents: Mr. M. Vishwaraj, Advocate for R-1 and Shri J. Prabhakar, Senior Advocate assisted by Ms. D.V. Padmaja, Advocate for R-2.

PER: BENCH

1. This is an Application filed by the suspended Director of the Corporate Debtor, seeking *suspension* of the operation of the demand notice dated 15.06.2022 issued under Section 13 (2) of the SARFAESI Act, 2002 and the subsequent action of taking forcible possession of the schedule property mentioned in terms of the order passed in CRL MP No. 151 of 2022 dated 06.12.2022.
- 2.1 Admittedly, the Corporate Debtor is undergoing Corporate Insolvency Resolution Process pursuant to the order of this Adjudicating Authority, in **CP(IB) No.255/7/HDB/2021** dated 04.04.2022. The grievance of the Applicant appears to be that on 15.06.2022, the Financial Creditor issued a demand notice under section 13(2) of SARFAESI Act, 2002 to the Applicant and the Corporate Debtor demanding payment of a sum of Rs. 6,15,53,652/-



towards balance loan outstanding amount, and pursuant thereto the 2nd Respondent gave a reply stating that as the Corporate Debtor is undergoing Corporate Insolvency Resolution Process as such the Resolution Professional appointed shall represent the Corporate Debtor.

2.2. It is further contended as per the ruling *in re* Indian Overseas Bank Vs M/s RCM Infrastructure Limited and Another [Civil Appeal No.4750 of 2021] “once Corporate Insolvency Resolution Process is initiated all actions under SARFAESI Act, to fore close, recover or enforce any security interest are prohibited.”, therefore the demand notice dated 15.06.2022 is not sustainable under law. A Writ Petition No. 28519 of 2022 has been filed before High Court of Telangana, challenging the said demand notice and the same was disposed of along with the connected Writ Petition No. 27513 of 2019 vide order dated 18.07.2022, with an observation that “*No penal action can be taken by the respondent-Bank on its own without leave of NCLT*”.

2.3. However, the Respondent No.2 in violation of the aforesaid order of High Court of Telangana, filed CRL. M. P. No. 151 of 2022 before the Ld. Chief Judicial Magistrate Cum Principle Senior Civil Judge



at Ongole and obtained order dated 06.12.2022 and obtained possession of the secured asset.

3. The Liquidator filed reply on behalf of the 2nd Respondent contending, inter alia, that:
 - (a). The averments, allegations and statements made by the Applicant are baseless. It is further contended that having accepted the terms and conditions of the loans at the time of disbursal on 15.09.2015, the respondent No.1 defaulted continuously on the repayment since 2017-18 rendering it a stressed asset/NPA on 31.05.2019 as per the RBI norms.
 - (b) In spite of receipt of all the notices, the applicant herein has not made any efforts to repay the loans or settle the dues of respondent No.1. Hence, Respondent No.2 was constrained to issue the impugned demand notice for recovery of the sums due under the Deed of Assignment dated 05.11.2019.
4. In the light of the contest as above the point that emerged for our consideration is:



Whether the present application challenging the demand notice dated 15.06.2022 issued under Section 13 (2) of the SARFAESI Act, 2002 and the *consequential actions* taken pursuant to the said notice is maintainable under law?

5. We have heard Mr. Tunga Mahesh Kumar, Ld. Counsel for the Applicant, Mr. M. Vishwaraj, Ld. Counsel for R-1 and Mr J. Prabhakar, Senior Counsel assisted by Ms. D.V. Padmaja, Ld. Counsel for R-2, perused the record and case law.

Point.

Whether the present application challenging the demand notice dated 15.06.2022 issued under Section 13 (2) of the SARFAESI Act, 2002 and the *consequential actions* taken pursuant to the said notice is maintainable under law?

6. At the outset it may be stated that the law as regards the maintainability of challenge to the demand notice issued under Section 13 (2) of the SARFAESI Act, 2002, is no more, *res integra*, in as much the Hon'ble Supreme Court of India, and the High Court of Telangana, in the under mentioned cases:

- (a) Punjab National Bank & Anr. v/s. M/s. Imperial Gift House &

Ors. Civil Appeal No. 3563 of 2009 held as under:

“Leave granted. Heard learned counsel for the parties. By the impugned order, in effect and substance, the High Court has quashed notice issued



by the bank under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short, "the Act"]. Upon receipt of notice, respondents filed representation under Section 13(3)(A) of the Act, which was rejected, Thereafter, before any further action could be taken under Section 13(4) of the Act by the Bank, the writ petition was filed before the High Court. In our view, the High Court was not justified in entertaining the writ petition against the notice issued under Section 13(2) of the Act and quashing the proceeding initiated by the bank. Accordingly, the appeal is allowed, impugned order passed by the High Court is set aside and the writ petition filed before it is dismissed.”

(b) High Court of State of Telangana, in S.V. Developers v/s. State Bank of India and others. Order dated 07.06.2022,

“30. Thus, on a careful consideration of the statutory language employed in the proviso to Sub-Section (3A) of Section 13 of the SARFAESI Act read with the Explanation to Sub-Section (1) of Section 17 of the SARFAESI Act, it is crystal clear that a notice under Section 13 (2) of the SARFAESI Act or the rejection of the objection raised to it including the reasons in support thereof would not give rise to a cause of action for instituting an action in law. To that extent, we find sufficient force in the contention advanced by the respondents that the writ petition filed is premature. The statute does not contemplate any intervention at this preliminary stage. Only when the process ripens into a definitive action taken by the secured creditor under Sub Section (4) of Section 13 of the SARFAESI Act, the aggrieved person can avail the statutory remedy under Section 17 of the SARFAESI Act by filing securitization application before the jurisdictional Debts Recovery Tribunal”.

7. Therefore, from the above, it is quite clear that the legislative intent is to ensure that there should be no *judicial or quasi-judicial* interdiction at the stage of issuance of demand notice under Section 13 (2) of the SARFAESI Act. The adjudication would have to wait



till the stage of Sub-Section (4) of Section 13 is reached, where after any aggrieved person can file securitization application under Section 17 of the SARFAESI Act, in which all grounds of challenge would be available.

8. Hence, we hereby hold that the present application, is *per se*, not maintainable before this Tribunal and the same is liable to be dismissed, hence the same is hereby dismissed. However, liberty is given to the Applicant to seek his remedies before the competent forum having jurisdiction, as per law.

Accordingly, the petition is dismissed, however without costs.

SD/-

(CHARAN SINGH)
MEMBER (TECHNICAL)

SD/-

(DR. N.VENKATA RAMAKRISHNA BADARINATH)
MEMBER (JUDICIAL)

Swapna