

## high court Of jammu And kashmir

OWP No. 1049 of 2016

Judgment Date:

16-02-2017

**Ind Swift Limited**

**..Petitioner**

**Union Of India**

**..Respondent**

Bench:

**{ HON'BLE JUSTICE B.S. WALIA, J. ; }**

Citation:

AIR 2017 J&K 95 ; 2017 (3) JKJ 589 ; 4 (2018) BC 158 ;

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B.S. Walia, J.—Petitioner has sought the issuance of a writ of Certiorari for quashing of notice dated 3-2-2016 issued u/S.13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act) as also a Writ of Mandamus for commanding the respondents to adhere to the provisions of law as applicable to the State of Jammu and Kashmir while dealing with the unit of the petitioner on the ground that the Act was not applicable in the State of Jammu and Kashmir and that the petitioner unit had availed loan facility from the respondent Bank for establishment of its unit at Samba and that while the unit was functional, the respondent Bank had resorted to proceedings under the Act which as per the concluded judgment of this Court was not applicable in the State of Jammu and Kashmir.

2. That it needs noticing that the impugned notice u/S.13 (2) SARFAESI was issued, inter alia to M/s. Ind Swift Ltd., a Company registered under that Companies Act, 1956 with its registered office at 781, Industrial Area, Phase II, Chandigarh, PIN - 160002., Sh. Navrattan Munjal r/o House No. 382, Sector 6 Panchkula, Haryana, Sh. Gopal Munjal r/o House No. 1085 Sector 7 Panchkula, Haryana, Sh. Sanjiv Rai Mehta r/o House No. 333 Sector 6, Panchkula Haryana, Sh. Rishav Mehta r/o House No. 322 Sector 6 Panchkula Haryana, Sh. Himanshu Jain r/o House No. 1133 Sector 21 B, Chandigarh, Smt. Nidhi Munjal r/o House No. 382 Sector 6, Panchkula, Haryana, Smt. Neeta Munjal r/o House No. 1085 Sector 7, Panchkula, Haryana by the Punjab National Bank, Asset Recovery Management Branch, Sector 17 B Chandigarh, on behalf of all Banks including the Bank of India from which the Company had availed credit facilities.

3. That a perusal of the impugned notice reveals that the same specifically mentions that the securities contemplated therein do not cover Stock/Book Debt/Plant and Machinery/Furniture Fixture etc., whether present or future relating to the State of Jammu and Kashmir. In addition thereto, perusal of the writ petition reveals the same having been filed by Ind Swift Ltd, IGC Phase 1, Samba, Jammu and Kashmir i.e. a unit of the Company having its registered office at Chandigarh against the Bank of India through its Jammu Branch without impleading the Lead Bank issuing the impugned notice and situated outside the State of Jammu and Kashmir.

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4. That a perusal of the impugned notice, Annexure B, reveals that the book outstanding of the Company and persons named above as on 31st of December, 2015 qua the Bank of India on account of non-payment of term loan was Rs. 3,87,15,494/-, on account of Corporate Loan was Rs. 18,61,19,548/-, on account of FITL outstanding was Rs. 5,19,49,307/- while on account of External Commercial Borrowings (ECB) the outstanding was Rs. 56,19,47,070/-. Likewise details of book outstanding of the Company as on 31-12-2015 of other Banks have also been given in the impugned notice.

5. That the grievance of the petitioner is that the Bank had proceeded to issue the impugned notice despite fully knowing that SARFAESI was not applicable to the State of Jammu and Kashmir, that in view thereof, the Bank was not entitled to recover the loan from the petitioner by taking recourse to the provisions of the Act. Reliance has also been placed on Annexure F, dated 8th September, 2014 issued by the Bank of India, Jammu, Mid Corporate Branch to the Managing Director of the Company at Chandigarh confirming receipt of payment from the Company, PPC charges in respect of ECB sanctioned to the Company and further mentioning that the ECB was managed and handled by the Jammu, Mid Corporate Branch of Bank of India.

6. That in paragraph No. 8 of the writ petition, apart from taking up the plea that the case was covered by the judgment delivered by this Court, it has categorically been mentioned 'Since the issue involve is about the taking over of immovable property of the petitioner situated within the State of Jammu and Kashmir therefore the provisions of SARFAESI Act cannot be invoked by the respondent Bank.'

7. That in paragraph No. 9 of the writ petition, it has been mentioned that since part of the cause of action arose within the State of Jammu and Kashmir and the proposed action of the Bank initiated u/S. 13 (2) of the Act was going to affect the working of the petitioner Company's unit at Samba which may have consequential effect of disturbing the entire chain of commercial activity of the petitioner Company, therefore the petitioner had challenged the notice issued by the respondent Bank along with others.

8. That in the objections filed on behalf of the Bank of India, it has been mentioned that none of the properties in respect of which the notice dated 3rd February, 2016 had been issued u/S. 13 (2) of the Act was situated within the State of Jammu and Kashmir, therefore the writ petition challenging the impugned notice on the ground that the provisions of the Act were not applicable to the State of Jammu and Kashmir was wholly misconceived and liable to be rejected out rightly, that the provisions of the Act had been declared legal and valid by the Hon'ble Supreme Court and the same being applicable to the properties mentioned in the impugned notice, no writ petition in respect of the properties situated outside the State of Jammu and Kashmir sought to be proceeded against by the Bank under the Act, was maintainable by the petitioner before the Jammu and Kashmir High Court, nor was the registered office of the petitioner situated in the State of Jammu and Kashmir nor its promoters or Directors were residents of the State of Jammu and Kashmir, the averments that the petitioner was permanent resident of the State of Jammu and Kashmir was totally false and incorrect for as per list, Annexure R-1, all the Directors/Promoters of the Company were residents of either Panchkula or Chandigarh. Details of the loans/limits sanctioned by the Bank of India in favour of the Company against the creation of pari passu charge on the entire fixed assets of the Company, including the immovable properties as mentioned in the impugned notice, apart from other property situated within the State of Jammu and Kashmir have also been given and the same are as under :-

- a) Term Loan of Rs. 10 crore.
- b) Corporate Loan of Rs. 20 crore.
- c) FITL of Rs. 5.20 crore.
- d) External Commercial Borrowings of Rs. 8 Mn (USD).

9. That as has already been noticed, perusal of the notice reveals a note having been appended thereto that the same did not cover Bank/FI/AR's claim/Charge over any property whether immovable or movable including

Stock/Book Debt/Plant and Machinery/Furniture/Fixture etc., whether present or future relating to the State of Jammu and Kashmir. It has further been mentioned that the aforementioned note was specially incorporated in the impugned notice after the passing of the judgment by the High Court of Jammu and Kashmir holding that the provisions of the Act did not apply to the State of Jammu and Kashmir. Consequently the Bank had not incorporated any of the property as situated within the State of Jammu and Kashmir in the impugned notice, that the impugned notice had not been issued in respect of plaint, Machinery, Stock or any movable or immovable property belonging to the Jammu unit of the Company, therefore, the writ petition before the High Court of Jammu and Kashmir was not maintainable and was liable to be dismissed. The averments regarding disbursement of loan at Jammu have not been denied but it has been contended that the same did not make the provisions of the Act not applicable to the property situated outside the State of Jammu and Kashmir, that every unit of the Company situated in different States, viz. Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir were independent units and not inter dependant on each other and that in any case the same did not confer any rights on the Company to avoid the proceedings under the Act in respect of the property situated outside the State of Jammu and Kashmir.

10. That the sole argument advanced by learned counsel for the petitioner was of the case being covered by the decision of the Division Bench of this Court in case titled as Santosh Gupta v. Union of India, decided on 16-7-2015 holding that the Securitisation and Reconstruction of Financial Assets Act, 2002 was not enforceable in the State of Jammu and Kashmir. No other point was argued.

11. That the controversy in issue has been set to rest by the decision of the Hon'ble Supreme Court in Civil Appeal Nos. 12237-12238 of 2016 in case titled as State Bank of India v. Santosh Gupta and another, (AIR 2017 SC 25 ). Relevant extract of the same is reproduced hereunder :-

'40.....As has been stated herein above, Entries 45 and 95 of List 1 clothe Parliament with exclusive power to make laws with respect to Banking, and the entirety of SARFAESI can be said to be referable to Entries 45 and 95 of List 1, 7th Schedule to the Constitution of India. This being the case, Section 5 of the Jammu and Kashmir Constitution will only operate in areas in which Parliament has no power to make laws for the State. Thus, it is clear that anything that comes in the way of SARFAESI by way of a Jammu and Kashmir law must necessarily give way to the said law by virtue of Article 246 of the Constitution of India as extended to the State of Jammu and Kashmir, read with Section 5 of the Constitution of Jammu and Kashmir. This being the case, it is clear that Section 13 (1) and (4) cannot be held to be beyond that legislative competence of parliament as is wrongly been held by the High Court.....'

'48..... We therefore set aside the judgment of the High Court. As a result, notices issued by Banks in terms of Section 13 and other coercive methods taken under the said Section are valid and can be proceeded with further. The appeals are accordingly allowed with no order as to costs.'

12. That in view of the decision of the Hon'ble Supreme Court (supra), the challenge in the writ petition to the initiation of proceedings under SARFAESI on the basis of the Division Bench judgment in Santosh Gupta's case no longer survives as the very judgment on the basis of which the challenge had been raised has been set aside by the Hon'ble Supreme Court. In the circumstances, the writ petition is liable to be dismissed with liberty to the Bank to take out proceedings against the noticees under the Act. However, it needs noticing that the writ petition was filed primarily by pleading 'Since the issue involved is about the taking over of immovable property of the petitioner situated within the State of Jammu and Kashmir therefore the provisions of SARFAESI Act cannot be invoked by the respondent Bank' ? However, the aforementioned averment's are contrary to the record and the same is evident from the note to the notice impugned in the writ petition that the notice did not cover Bank/FI/AR's claim/Charge over any property whether immovable or movable including Stock/Book Debt/Plant and Machinery/Furniture/Fixture etc., whether present or future relating to the State of Jammu and Kashmir. By filing the writ petition of false averments, the petitioner has tried to over reach the process of law to obtain undue benefit of stalling recovery proceedings by the Bank running into crores of rupees of public funds. Therefore it is a fit case where the writ petition should be dismissed with costs. Accordingly, the writ petition is dismissed with costs assessed at Rs. 20,000/-. (Rs. twenty thousand only). Stay granted vide order dated 20-7-2016 is vacated.

Costs are directed to be deposited with the Legal Aid Authority, High Court of Jammu & Kashmir within four weeks from today. Registrar Judicial to report compliance.

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