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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 14.05.2025***
Judgment pronounced on: 04.06.2025

\+ W.P.(C) 2105/2017

BHARAT PETROLEUM CORPORATION LTD. .....Petitioner
Through: Mr. A. P. Verma and Mr. Sanjay Verma, Advocates and Mr. Shekhar Gupta, Law Officer, BPCL.

versus

SYNDICATE BANK & ORS. .....Respondents
Through: Mr. S. V. Tyagi, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present petition challenges the **Judgement dated 26.08.2015**[1]**,** passed by the learned **Debts Recovery Appellate Tribunal**[2] dismissing the Appeal against the Judgement dated 10.01.2014 of the learned **Debts Recovery Tribunal-III**[3] and affirming that the goods hypothecated with Respondent No. 1-Bank were those for

[1] Impugned Order
[2] DRAT
[3] DRT

which Respondent No. 1-Bank had a lien and, resultantly having first charge of the same, were entitled to the said goods. The Petitioner, by way of the present petition, seeks the following reliefs:

> "i) issue a writ in the nature of certiorari or any other appropriate writ/order/directions/relief and setting aside/quashing the impugned Order/Judgment dated 26.08.2015 passed by the Hon'ble Mr. Justice Ranjit Singh, Learned Chairman, DRAT, Delhi, in Appeal No. 234/2015 titled as "M/s Bharat Petroleum Corporation Ltd. Vs. Syndicate Bank & Ors.; and
> ii) any other or further order/relief(s), which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, may also be passed favour of the petitioners and against the respondents."

2. The learned DRAT, while affirming the Order dated 10.01.2014 of the learned DRT, Delhi, has held the following:

> "The sole submission made before me in support of the appeal is that the possession of the stock, etc. lying was taken over as the dealer was selling the same in contravention of the guidelines. In order to succeed, the appellant was required to show if this, stock which had been hypothecated to secure the facilities was in any manner owned by the appellant to take the same away. If this stock was of the borrower and had been hypothecated to secure the facilities granted by the bank, there was no reason or justification for the appellant to take possession of such stock even if it was being sold against the guidelines. If the stock was the property of the Barrower then they had right to hypothecate it with the Bank.
> It has clearly come on record that the value of this stock was over Rs.17 lac. It is not disputed that this stock had been taken in possession by the appellant. The Tribunal below has rightly held that the bank had first charge over the stock which had been hypothecated. Despite opportunity given to the counsel for the appellant, he has not been able to show any document to claim right of ownership over this stock. Rather, the counsel could not dispute that the stock lying with borrower was their property as they had received the same after making payment. In this background, the grievance made in the appeal is not justified. The Order passed by the Tribunal below is well-reasoned and supported by evidence and material on record and it does not call for any interference in this appeal. The appeal is without any merit, and, therefore, is dismissed."

3. The learned counsel for the Petitioner would contend that it had a Licence Agreement with Respondent Nos. 2 & 3 and certain others, who were the former partners in Respondent No. 2. It is stated that the original agreement by which Respondent No. 2 was given the dealership had a different constitution as respects the partnership and the same was reconstituted without the knowledge and permission of the Petitioner. Resultantly, it is argued that the said reconstitution is bad in law, and no hypothecation of the goods of the said firm could have been effected.

4. The Petitioner's counsel would contend that as the said partnership was reconstituted against the terms of the agreement entered into with Respondent No. 2, the hypothecation by Respondent No. 4, who is not a partner in the records of the Petitioner, is not legally binding on it. The learned counsel for the Petitioner, therefore, would contend that the hypothecation agreement in favour of Respondent No. 1, by Respondent No. 4, without informing the Petitioner, is unauthorized, illegal and not binding.

5. The Petitioner would further contend that there was a failure in the exercise of due diligence by the Bank insofar as they failed to ascertain that the person signing the hypothecation agreement was not competent to do so, as he was not a partner as per the original license agreement as between the Petitioner and Respondent No.2.

6. In support of his arguments in respect of the unauthorized change of partnership, the learned counsel for the Petitioner would rely upon

Clause 10(s) of the **Dispensing Pump and Selling License Agreement**[4], which reads as under:

> "(s) Not to change the constitution of the Licensees firm nor to dissolve the partnership nor admit new member as partner nor allow any partner to withdraw from the partnership without obtaining the previous consent in writing of the Company."

7. The learned counsel for the Petitioner would also argue that the Petroleum products which were seized by the Petitioner were done so in light of the *inter se* Dealership Agreement as between Petitioner No. 1 and Respondent No. 2, read with the **MS HSD Control Order, 2005**[5], as no hypothecation was permissible under sub-item (iii) of Clause 1.5 of the **Marketing Discipline Guidelines**[6]**,** which states as follows:

> "1.5 OBSERVANCE OF STATUTORY AND OTHER REGULATIONS
> ****
>
> (iii) Dealer will not buy, sell or exchange petroleum products with any other dealer other than the principal Oil Company.
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> ***** "

8. The learned counsel for the Petitioner, while relying upon Clause 1.5(iii) of the MDG, would state that the act of hypothecation is in contravention of the said clause, insofar as the hypothecation of the said Petroleum products is in effect, an "exchange" of the Petroleum products and hence, is expressly barred by the provisions of the said clause.

9. The further point sought to be canvassed by the Petitioner would be that since Respondent No. 2 was found to be selling spurious/

[4] DPSL
[5] MS HSD Control Order
[6] MDG

adulterated products, as per provisions of the MDG, and more particularly, Clause 6.1.2 thereof, the said products, appropriated by the Petitioner, were to be sent to the nearest refinery. Clause 6.1.2 of the MDG states as follows:

> "6.1.2. HANDLING OF ADULTERATED PRODUCT
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> In case of proven adulteration, the product (MS/HSD) will be sent to the nearest refinery as per the directive of MOP & NG's letter (P-21027/29/2001-Dist dated 21-12-2002)..
> In case of proven adulteration at the RO, the entire expenses towards transportation, pumping of product, tank cleaning, incidental charges, local levies, etc. will be recovered from the dealer. The dealer will be paid and amount equivalent to the cost of Furnace Oil and for the actual quantity received at the Refinery end.
> In case of proven adulteration by the transport contractor/crew, the expenses would be recovered from the transport contractor. The loss on account of product downgradation and transit loss, if any would also be recovered from the transport contractor. The dealer will receive full value of the product.
> In case it is established that the sample of the supply point has also failed w.r.t. BIS Specification, the product will be disposed of in consultation with QC Department of the Region. The dealer will receive full value of the product."

10. In response to the Petitioner's contentions and arguments, the learned counsel for Respondent No. 1-Bank would state that the Bank, for years, had been lending money to Respondent No. 2-Partnership firm and to secure the said advances, was hypothecating the Petroleum products of Respondent No. 2.

11. The learned counsel for Respondent No. 1 would also contend that, being a secured creditor, they are entitled to have preference over the secured/hypothecated goods, and these goods have been illegally taken away by the Petitioner.

12. The learned Counsel for Respondent No. 1-Bank would also rely upon the Judgments of the Hon'ble Supreme Court to contend that, being a secured creditor, it has a preferential claim over all other classes of creditors. The Judgments relied upon by Respondent No. 1-Bank and their relevant extracts are reproduced herein below:

***(A) Union of India v. SICOM Ltd*[7]**:

> **"10.** It is trite that when Parliament or a State Legislature makes an enactment, the same would prevail over the common law. Thus, the common law principle which was existing on the date of coming into force of the Constitution of India must yield to a statutory provision. To achieve the same purpose, Parliament as also the State Legislatures inserted provisions in various statutes, some of which have been referred to hereinbefore providing that the statutory dues shall be the first charge over the properties of the taxpayer. This aspect of the matter has been considered by this Court in a series of judgments."

***(B) Central Bank of India v. Siriguppa Sugars & Chemicals Ltd*[8]**:

> **"17.** Thus, going by the principles governing the matter propounded by this Court, there cannot be any doubt that the rights of the appellant Bank over the pawned sugar had precedence over the claims of the Cane Commissioner and that of the workmen. The High Court was, therefore, in error in passing an interim order to pay parts of the proceeds to the Cane Commissioner and to the Labour Commissioner for disbursal to the cane growers and to the employees. There is no dispute that the sugar was pledged with the appellant Bank for securing a loan of the first respondent and the loan had not been repaid. The goods were forcibly taken possession of at the instance of the revenue recovery authority from the custody of the pawnee, the appellant Bank. In view of the fact that the goods were validly pawned to the appellant Bank, the rights of the appellant Bank as pawnee cannot be affected by the orders of the Cane Commissioner or the demands made by him or the demands made on behalf of the workmen. Both the Cane Commissioner and the

[7] (2009) 2 SCC 121
[8] (2007) 8 SCC 353

workmen in the absence of a liquidation, stand only as unsecured creditors and their rights cannot prevail over the rights of the pawnee of the goods."

(C) Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.9***:***

> **"10.** However, the Crown's preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor. It is only in cases where the Crown's right and that of the subject meet at one and the same time that the Crown is in general preferred. Where the right of the subject is complete and perfect before that of the King commences, the rule does not apply, for there is no point of time at which the two rights are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already. In *Giles* v. *Grover* [(1832) 131 ER 563 : 9 Bing 128] it has been held that the Crown has no precedence over a pledgee of goods. In *Bank of Bihar* v. *State of Bihar* [(1972) 3 SCC 196] the principle has been recognised by this Court holding that the rights of the pawnee who has parted with money in favour of the pawnor on the security of the goods cannot be extinguished even by lawful seizure of goods by making money available to other creditors of the pawnor without the claim of the pawnee being first fully satisfied. Rashbehary Ghose states in *Law of Mortgage* (TLL, 7th Edn., p. 386) — "It seems a government debt in India is not entitled to precedence over a prior secured debt"."

13. Taking into account the submission made by the parties, this Court is of the opinion that the only issues that need determination in the present matter are whether the Petroleum products that were hypothecated with Respondent No. 1-Bank could have been hypothecated at all and, if so, would be subject to charge of Respondent No. 1-Bank giving them a lien over the said goods or whether the said hypothecation was impermissible as the same are in the nature of

restricted goods, which can only be disposed of in the manner as set out in the MS HSD Control Order.

14. At the outset, we would deal with the contention regarding whether Respondent No. 4 could or could not have hypothecated the said product on behalf of Respondent No. 2. The fact that Respondent No. 4 was not reflecting as a partner in the records of the Petitioner does not make Respondent No. 4 incompetent to sign on behalf of Respondent No. 2. At best, the same could be a violation of the terms of the inter-se agreement between the Petitioner and Respondent No. 2. The Petitioner has adequate remedies for enforcing the terms and conditions as set out therein.

15. The next aspect comes as to whether the Products could have been hypothecated at all. It is trite that once the Product of the Petitioner had been supplied and all payments made in this respect, the goods stood transferred to Respondent No.2 and the Petitioner could not claim any lien on them thereafter. The transaction stood concluded as consideration had already been paid and the title of the goods had passed to Respondent No. 2. Once the goods stood transferred, there is no impediment, either in the Agreement or in any law which stood in the way of Respondent No.2's ability to hypothecate the same with the Bank for the purpose of availing any legal facility offered by it. Neither the DPSL nor the MDG in any manner prohibit the mortgage of any of the Petroleum products. Clause 1.5 of the MFG which is sought to be pressed into service in support of the same does not make any such

[9] (2000) 5 SCC 694

prohibition. The term "exchange" as used in that clause cannot be extended to a legal mortgage of goods to a Bank. In any event, it is only *qua* one dealer to another.

16. It is apparent that the Petitioner herein is neither the borrower nor the mortgagee nor the owner of the said goods.

17. It has come on record that despite the opportunity given to the learned counsel for the Petitioner, he had been unable to show any document that would evidence the Petitioner's right to claim ownership over this stock. It is also an admitted position that the said goods were supplied by the Petitioner after having received payment for the same from Respondent No.2-Firm.

18. The learned counsel for the Petitioner also sought to rely upon Clause 5 of the DPSL agreement as between the Petitioner and Respondent No. 2 which reads as follows:

> "5. The premises and the said facilities hereby licensed to the Licensees shall only be used for stocking and selling/dispensing the Petroleum Products of the Company and shall not be used for any other purpose except as may be permitted in writing by the Company."

19. The said Clause is clear insofar as it expressly states that it is only limited to the premises and the facilities licensed by the Petitioner to be used for the purpose of stocking and selling the Petroleum products and for no other purpose.

20. The reliance by the learned counsel for the Petitioner to, in some manner, establish that this would grant it a lien over the petroleum products is clearly against the express terms of the clause.

21. The terms of both the DPSL and the MDG would only suggest that any licensee of the Petitioner would have to ensure that the products of the Petitioner that are sold by them conform to the quality standards that have been imposed. They do not in any manner determine the question of ownership of the Petroleum products, which, in the opinion of this Court, upon being sold by the Petitioner to Respondent No. 2-Firm, would rest with the Firm and no longer with the Petitioner.

22. As an owner of the goods, there is no impediment to the goods being hypothecated. Once it is established that there is no impediment in the Respondent mortgaging the product, it is apparent that Respondent No. 1-Bank, having first charge over the hypothecated goods, would be entitled to the same in the event of any default on the part of the borrower, who, in this case, is Respondent No. 2.

23. In view of the afore-stated, we are of the firm view that there is no infirmity in the impugned Judgment of the learned DRAT and resultantly, the present Petition stands dismissed.

24. The present Petition is disposed of in the above terms with no order as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

JUNE 04, 2025/sm/***va***