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

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**CS(COMM) 515/2022**

**PM FINCAP LIMITED**

..... Plaintiff

Through: Mr. Tanmaya Mehta, Mrs. Rashmi Gogoi, Mr. Vijay Kasana Mr. Divyansh Hanu Rathi, Mrs. Sumedha Sindhu, Mr. Bhawani Parmar & Ms. Riya Rathi, Advs. (M- 9990987000)

versus

**PARAMASIVAM MAHALINGAM ORS & ORS.** .... Defendants

Through: Mr. Sandeep Sethi, Sr, Adv. along with Mr. Atul Sharma, Mr. Abhishek Agarwal, Ms. Kanicka Miittal, Mr. Sumer Dev Seth and Ms. Riya Kumar, Advocates. (M- 9899899125)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

**% 20.03.2024**

1. This hearing has been done through hybrid mode.

**I.A. 18362/2022 (u/O VII Rule 11 CPC)**

2. This is an application filed under Order VII Rule 11 CPC by the Defendants raising a plea that the present suit is barred under Section 13(10) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, 'SARFAESI Act'). The Plaintiff has filed a suit for recovery of a sum of Rs. 152,93,19,155/- on the basis of a loan agreement dated 18th March, 2015. There were some previous transactions between a sister concern of the Plaintiff and the Defendants which however are not relevant for the present purposes.

3. The agreement dated 18th March, 2015 and the execution thereof is



not disputed. As per the said agreement, a sum of Rs.35 Crores is mentioned in the agreement as the loan given to the Defendants. Amended agreement dated 20th March, 2015 has also been executed between the parties. Pursuant to the said agreement, certain properties have also been mortgaged /hypothecated by the Defendants in favour of the Plaintiff.

4. Certain cheques for a sum of Rs. 45 crores which were given by the Defendants were dishonoured. The Plaintiff has availed of remedies under the SARFAESI Act as also the Negotiable Instruments Act, 1881 in respect of certain dishonoured cheques.

5. The issues that have been raised in this application filed by the Defendants is that the present suit cannot continue when the proceedings under the SARFAESI Act are pending before the Debt Recovery Tribunal (hereinafter, 'DRT'). Mr. Sethi, Id. Senior Counsel for the Defendants has relied upon the order dated 17th January, 2024 passed by the DRT where the DRT is looking into the question as to what is the actual amount that is payable to the Plaintiff. It is his submission that until and unless the proceedings under the SARFAESI Act reach a proper closure and the amounts are recovered in terms of the hypothecated assets, no civil suit would be maintainable. Id. Sr. Counsel relies on Sections 34 and 35 of the SARFAESI Act along with Section 17 and Section 28 of the Recovery of Debts and Bankruptcy Act, 1993 to state that the present suit is barred by law.

6. On the other hand, Mr. Mehta, Id. Counsel submits that Section 13(10) of the SARFAESI Act would not bar adjudication of the liability but would at best bar execution of any decree, if passed, by the competent forum. He places reliance on *M.D. Frozen Foods Exports Pvt. Ltd. & Ors.*



*v. Hero Fincorp Limited (MANU/SC/1244/2017) and Hero Fincorp v Techno Trexim (I) Pvt. Ltd. & Ors (MANU/DE/4581/2022).* It is his submission that in the SARFAESI proceedings, the properties which have been hypothecated may not give the complete value of the amount which is owed to the Plaintiff and thus the adjudication of the amount owed can continue before this Court. He further submits that the value of the properties which were hypothecated are only Rs.55 crores whereas the dues of the Plaintiff which are being sought to be recovered are more than Rs.200 crores.

7. Heard. The Court has perused the two decisions and a perusal of *M.D. Frozen Foods Exports Pvt. Ltd. (supra)* would show that in the said decision, the Supreme Court has held that the provisions of the SARFAESI Act are a remedy in addition to the provisions of the Arbitration and Conciliation Act, 1996. The relevant extracts from the said judgment is set out below:

*“32. The aforesaid is not a case of election of remedies as was sought to be canvassed by learned senior Counsel for the Appellants, since the alternatives are between a Civil Court, Arbitral Tribunal or a Debt Recovery Tribunal constituted under the RDDB Act. Insofar as that election is concerned, the mode of settlement of disputes to an arbitral tribunal has been elected. The provisions of the SARFAESI Act are thus, a remedy in addition to the provisions of the Arbitration Act. In Transcore v. Union of India and Anr. (supra) it was clearly observed that the SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Liquidation of secured interest through a more expeditious procedure is what has been*



envisaged under the SARFAESI Act and the two Acts are cumulative remedies to the secured creditors.

33. SARFAESI proceedings are in the nature of enforcement proceedings, while arbitration is an adjudicatory process. In the event that the secured assets are insufficient to satisfy the debts, the secured creditor can proceed against other assets in execution against the debtor, after determination of the pending outstanding amount by a competent forum.”

8. Further, in ***Hero Fincorp v Techno Trexim (I) Pvt. Ltd. & Ors.*** (*supra*), the Id. Single judge of this Court has also referred to ***MD Frozen Foods*** (*supra*) and has observed under:

“51. I find that even the Supreme Court in the case of *Vidya Droliya* (*supra*) in paragraph 35 while referring to *M.D. Frozen Foods Exports Pvt. Ltd.* (*supra*) and *Indiabulls Housing Finance Ltd.* (*supra*) held that even prior arbitration proceedings are not a bar to proceedings under the NPA Act (SARFAESI Act) as it sets out an expeditious procedural methodology enabling the financial institutions to take possession and sell acquired properties for non-payment of dues, as such powers obviously cannot be exercised through arbitral proceedings.

52. Having said that, the plea of the counsel for the respondent No.1 is that the value of the immoveable property is more than adequate to satisfy the alleged principal / outstanding amounts that are being claimed by the petitioner. This submission would not bar the initiation of arbitration proceedings for the simple reason that, if any recovery is made by the petitioner through the process of SARFAESI Act, surely the factum can be brought to the notice of the Arbitrator. This I say so, because there may be an eventuality where the complete amount as due and payable may not be recovered through process initiated under the SARFAESI Act.



*53. The plea of learned counsel for the respondent No.1 that the respondents have a right to challenge the action taken by the petitioner under Section 13 (4) of the SARFAESI Act by filing a petition before the DRT under Section 17 of the Act and that under Section 34 of the SARFAESI Act, the jurisdiction of the Civil Court is barred in relation to matters in which DRT has jurisdiction. To answer this submission, I must reiterate it is the case of the petitioner that it is an NBFC and has not been notified by the Central Government under the RDB Act. In that sense, proceedings under the RDB Act cannot be initiated by the petitioner. The reference to DRT in the submission of the counsel for the respondent No.1 is with regard to the fact that SARFAESI Act under Section 17 provides DRT as a Forum. However the mandate of the DRT under Section 17 of the SARFAESI Act is limited to examining whether the action initiated by the petitioner is in accordance with Section 13 (4) of the Act and nothing more. So, in that sense, the proceedings are not under the RDB Act, but under SARFAESI Act. ”*

9. A perusal of the above decisions shows that the scope of the DRT proceedings is limited. In **MD Frozen Foods (supra)** the Supreme Court has clearly held that SARFAESI proceedings and arbitration proceedings which are civil proceedings are cumulative remedies i.e., they are not in derogation or conflict with each other. The amount that is due to be paid has to be adjudicated. The present proceeding is a civil suit seeking recovery and the same at this stage, cannot be held to be barred. The correct course of action in the present suit would be to frame an issue in respect of the maintainability of the suit, with the onus on the Defendant challenging maintainability and to permit the suit to proceed further in the matter.

10. In the meantime, if there is any adjudication by the DRT, the same



may be brought to the notice of the Court.

11. Accordingly, after hearing the parties, the following issue is framed in the following terms:

*“Whether the present suit is not maintainable in view of Section 13(10) of the SARFAESI Act, 2002?” OPD.*

12. The present order would not be construed as an order on merits. The issue would be adjudicated without being affected by the observations in this order.

13. Application is disposed of in these terms.

**I.A. 11803/2022 (for delay)**

14. This is an application for condonation of delay in re-filing. This application is considered. The e-filing log of the High Court has been taken out for this suit. The said log shows that the suit was instituted on 28th February, 2022. The re-filing was done on 1st June, 2022. Objections were raised in between and defects have been cured.

15. Considering the orders passed by the Hon'ble Supreme Court in *Suo Moto Writ Petition (C) No. 3/2020*, which excluded the period from 15th March, 2020, to 28th February, 2022 along with the e-filing log, the delay in refiling stands condoned.

16. Application is disposed of.

**I.A. 6593/2024 (for additional docs.)**

17. The additional documents filed by the Defendants are taken on record. If the Plaintiff wishes to file any rebuttal documents they may do so within four weeks.

18. Application is disposed of.



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19. List before the Joint Registrar for completion of pleading in the application and admission/denial on 1<sup>st</sup> May, 2024.
20. List the application for interim injunction and for framing of issues on 2nd August, 2024 before Court.

**PRATHIBA M. SINGH, J**

**MARCH 20, 2024**

*Rahul/bh*