

SUPREME COURT OF INDIA

Bharat Steel Tubes Limited

Vs.

IFCI Limited

Contempt Petition (Civil) No.271 of 2010

(Altamas Kabir and Cyriac Joseph JJ.)

30.11.2010

JUDGMENT

Altamas Kabir, J.

1. Before the Special Leave Petition which had been specially fixed for hearing on 9th November, 2010, could be taken up for consideration, Mr. T.R. Andhyarujina, learned Senior Advocate, appearing for the Petitioner, M/s Bharat Steel Tubes Ltd., submitted that Contempt Petition (Civil) No.271 of 2010 had been filed in regard to wilful and deliberate violation of the order passed by this Court on 8th October, 2010, by the alleged contemnors in entertaining bids for the auction proposed to be held in respect of the Petitioner's property despite the said order.

2. Mr. Andhyarujina submitted that in relation to an order passed by the Debts Recovery Tribunal, Delhi, on an application filed by the Petitioner under *Section 17 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993*, hereinafter referred to as "the Debts Recovery Act, 1993", a direction was given by the Tribunal on 15th September, 2010, to the Petitioner to deposit a sum of Rs.35 crores with the Industrial Finance Corporation of India Ltd. (IFCI Ltd.) without prejudice to its rights and contentions. The Respondent was also directed not to implement the possession notice as well as the public notice published on 13th September, 2010, till the next date of hearing. Against the said order, IFCI Ltd. filed Misc. Appeal No.352 of 2010 before the Debts Recovery Appellate Tribunal, which stayed the proceedings before the Debts Recovery Tribunal by its order dated 22nd September, 2010. Aggrieved by such direction, the Respondent had moved Writ Petition (Civil) No.6652 of 2010, in which an interim order was passed by the Division Bench of the Delhi High Court on 29th September, 2010, directing that during the pendency of the writ petition, the writ petitioner would be free to proceed in pursuance of the Public Notice dated 13th September, 2010, but the bid was not to be finalized. Since a winding-up order had been passed in respect of the petitioner company on the recommendation of the Board for Industrial and Financial Reconstruction (BIFR) and the Official Liquidator had been appointed, it was also directed that the Official Liquidator would be associated with the

process of auction and the amount received by the Petitioner from prospective purchasers, as earnest money under the bids, would be kept in a No Lien Account.

3. Mr. Andhyarujina pointed out that such an ex- parte order was passed on the supposition that there were dues to the extent of Rs.1,100.00 crores payable by the Respondent and that proceedings had also been taken under *Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002)* even though the BIFR had recommended the winding up of the Petitioner Company and finalization of those proceedings was still pending before the Company Court where the Official Liquidator had been put in charge of the functioning of the Petitioner Company. The Petitioner Company, being aggrieved by the said interim order of the Division Bench of the High Court, moved the instant Special Leave Petition and on 8th October, 2010, while issuing notice and giving directions for filing of affidavits, this Court stayed the operation of the order of the High Court which has been impugned in the Special Leave Petition. The result was that the order of the Debts Recovery Appellate Tribunal revived and according to the Petitioner, despite such order of stay passed by this Court, the alleged contemnors continued with the auction process in violation of the order of stay passed by this Court.

4. Mr. Andhyarujina submitted that while the order of stay was passed on 8th October, 2010, and the date of auction was fixed on 15th October, 2010, the Respondent Company continued to sell bid documents at least till 13th October, 2010, and the Bid Box was kept available in the office premises of the Respondent Company till 15th October, 2010, when the auction was to be conducted.

5. Mr. Andhyarujina submitted that since the said steps were taken by the Respondent Company despite the order of stay passed by this Court on 8th October, 2010, the alleged contemnors had committed contempt of Court and were liable to be dealt with accordingly before the Special Leave Petition was taken up for consideration.

6. Both Mr. Parag P. Tripathi, learned Additional Solicitor General and Mr. Ranjit Kumar, learned Senior Advocate, who appeared for the alleged contemnors denied the allegations made on behalf of the Petitioner Company and submitted that except for sweeping allegations having been made, there was no material proof before the Court to hold that the alleged contemnors had wilfully and deliberately violated the order of stay passed by this Court on 8th October, 2010.

7. On being asked as to whether the order passed on 8th October, 2010 had been communicated to the alleged contemnors or not, Mr. Andhyarujina submitted that since the order had been passed in the presence of learned counsel for the Respondent Company, it had to be presumed that the same had been conveyed to the Respondent Company by their learned counsel. Learned counsel submitted that a presumption would have to be drawn regarding knowledge of the order passed by this Court on 8th October, 2010, by the alleged contemnors since it was duly represented on the said date through counsel.

8. We are unable to accept the submissions made on behalf of the Petitioner Company, since it is for the Petitioner in a contempt petition who alleges contempt, to establish that the alleged contemnor had defied and/or violated the order deliberately and wilfully, despite having knowledge thereof. We cannot lose sight of the fact that in a contempt proceeding, which is entirely of a summary nature, a person can be sentenced to imprisonment and also punished with fine, without a regular trial, even in the nature of a summons trial. Accordingly, the Courts have to strictly construe the provisions of *Section 3(b) of the Contempt of Courts Act, 1971*, in order to find a person guilty of having committed contempt of Court. We are not satisfied with the materials placed before us that the alleged contemnors had any knowledge of the stay order passed by this Court on 8th October, 2010, and, accordingly, we are not inclined to entertain the contempt petition which is, therefore, dismissed. The Special Leave Petition filed by M/s Bharat Steel Tubes Ltd. is taken up for consideration on its merits.

9. Mr. Andhyarujina submitted that the Petitioner, M/s Bharat Steel Tubes Ltd., had obtained a loan of Rs.55 crores from the Punjab National Bank in 1973.

“On 11th November, 2008, a lock-out was declared in the factory of the petitioner and ultimately on 1st May, 1990, the Petitioner made a reference to the BIFR. On 23rd February, 2010, the BIFR recommended winding up of the Company and forwarded its recommendation to the High Court. Three years thereafter, the Punjab National Bank filed O.A. No.12 of 2003 before the Debts Recovery Tribunal, Delhi, for recovery of a loan of Rs.3,27,62,27,044.00. On 14th August, 2003, the High Court passed an order winding up the Company and appointing the Official Liquidator to implement the order of winding up. At this stage, on 2nd September, 2004, the Punjab National Bank entered into a One-Time Settlement with the Petitioner Company for a sum of Rs.26.16 crores out of which the Petitioner was able to pay a sum of Rs.13.80 crores and was unable to pay the rest. However, on 9th February, 2005, the High Court stayed the winding up order passed on 14th August, 2003, and directed the Official Liquidator to continue as the Liquidator and to also observe the functioning of the unit.”

10. On account of the default committed by the Petitioner Company in respect of the One-Time Settlement entered into on 2nd September, 2004, the Punjab National Bank revoked the said settlement on 14th June, 2007.

11. Thereafter, certain further developments took place, which ultimately brought the present Respondent Company into the picture. On 5th May, 2008, the Petitioner Company entered into an agreement with Assets Care Enterprises Ltd., hereinafter referred to as "ACE", a third-party financier, whereby on payment of the balance amount of the One-Time Settlement by ACE to the Punjab National Bank, the dues of the Bank stood completely settled and there was no existing liability of the Petitioner Company as far as the Bank was concerned. A default clause was, however, included in the Memorandum of Understanding that in case of default of the Petitioner to repay ACE, the latter would be at liberty to proceed

against the Petitioner in terms of the financing documents assigned to it by the Petitioner. In fact, a Deed of Assignment was executed between the Punjab National Bank and ACE on 15th July, 2008, for a sum of Rs.15,01,28,752.00. This was followed by a further Deed of Assignment between ACE and the Respondent Company for a sum of Rs.18.63 crores.

12. Thereafter, on 10th August, 2009, IFCI Ltd. issued a notice of demand to the Petitioner Company under *Section 13(2) of the SARFAESI Act, 2002*, for a sum of Rs.1139.75 crores. The said claim was refuted by the Petitioner Company on 17th September, 2009, denying the right of IFCI Ltd. to the sum as demanded. It was stated that the Memorandum of Understanding between the Petitioner Company and ACE would indicate that ACE was only entitled to a sum of Rs.15,01,28,752.00 and nothing more. Subsequent thereto, on 10th October, 2009, IFCI Ltd. took symbolic possession of the property of the Petitioner Company situated at Gannore in the State of Haryana. The Petitioner Company also filed a suit, being CS (OS) No.1886 of 2009, to injunct IFCI Ltd. from proceeding in accordance with the notice dated 10th August, 2009, which was, however, dismissed by the High Court on the ground of lack of jurisdiction on 10th September, 2010.

13. On the same date, an application was filed by the Petitioner before the Debts Recovery Tribunal- III, Delhi, under *Section 17 of the Debts Recovery Act, 1993*, which passed an ex-parte stay order in favour of the Petitioner in the said appeal. Thereafter, on 13th September, 2010, IFCI Ltd. issued possession notice with regard to the residential property, being Plot No.17, Friends Colony Cooperative Housing Building Society Ltd., New Delhi, and on the same date a public notice was also issued inviting bids for the factory at Gannore in Haryana. In terms of the public notice issued, it was intimated for the information of the public that the sealed bids would be opened on 15th October, 2010. On 15th September, 2010, the Debts Recovery Tribunal-III, Delhi, passed an order of stay in favour of the Petitioner Company restraining IFCI Ltd. from taking steps in accordance with the possession notice as well as the public notice for sale. The Petitioner Company was also directed to deposit a sum of Rs.35 crores within 30 days of the order.

14. The IFCI Ltd. filed two appeals against the said order dated 15th September, 2010, being Misc. Appeal Nos.352 and 353 of 2010, and on 22nd September, 2010, the Debts Recovery Appellate Tribunal issued notice and stayed the proceedings before the Debts Recovery Tribunal-III, Delhi, in the Original Application as also in the Securitization Appeal. Directions were given for filing affidavits and the case was adjourned by the Appellate Tribunal to 27th October, 2010. Since the time granted by the Appellate Tribunal was beyond the date for opening of the bids, IFCI Ltd. filed Writ Petition No.6652 of 2010 before the Delhi High Court against the orders dated 10th September, 2010 and 15th September, 2010 passed by the Debts Recovery Tribunal-III, Delhi, and order dated 27th September, 2010, passed by the Debts Recovery Appellate Tribunal. On 29th September, 2010, the High Court allowed the IFCI Ltd. to proceed with the public notice dated 13th September, 2010, with the directions mentioned hereinbefore in paragraph 2.

15. Mr. Andhyarujina submitted that till such time as the actual dues payable by the Petitioner Company was determined by the Debts Recovery Tribunal-III, Delhi, no proceedings could be continued under the *SARFAESI Act, 2002*, in respect of a nebulous figure. Mr. Andhyarujina submitted that in view of the One-Time Settlement, which had been arrived at between the Petitioner Company and the Punjab National Bank, the demand raised on behalf of IFCI Ltd. was entirely absurd since at best the said Company could claim what had been assigned to it by ACE. How a sum of Rs.15,01,28,752.00 could become Rs.1139.75 crores, remains unexplained and till such determination of the actual amount payable, proceedings under *Section 13(2) of the SARFAESI Act, 2002*, should not be allowed to be taken, since it would not be possible for IFCI Ltd. to determine as to what part of the Petitioner's property was liable to be taken possession of.

16. Mr. Andhyarujina submitted that it had also to be considered as to whether when the dues of the Punjab National Bank had been duly liquidated by ACE, its assignee could maintain the demand against the Petitioner Company.

17. Mr. Andhyarujina submitted that the steps taken by IFCI Ltd. pursuant to its demand notice dated 10th August, 2009 under *Section 13(2) of the SARFAESI Act, 2002*, were wholly illegal and were liable to be quashed.

18. Learned Additional Solicitor General, Mr. Parag P. Tripathi, appearing for the respondent IFCI Limited, submitted that there was no substance in the Special Leave Petition since the Petitioner- Company had not only failed to repay its debts, but had also failed to abide by the One-Time Settlement which had been arrived at with the Punjab National Bank. Having entered into a One-Time Settlement with the Punjab National Bank for a sum of Rs.26.16 crores on 2nd September, 2004, the Petitioner- Company paid a sum of Rs.13.80 crores only and was unable to pay the balance of the Settlement amount. Ultimately, the One-Time Settlement was revoked by the Bank on account of such default. Thereafter, the Petitioner-Company entered into a Memorandum of Understanding with ACE on 5th March, 2008, whereby ACE agreed to pay the Punjab National Bank the balance amount of the settlement amount. The said agreement made it clear that in the event the Petitioner-Company failed to repay ACE, the latter would be at liberty to proceed against the Petitioner-Company. Thereafter, on 15th July, 2008, a Deed of Assignment was executed between the Punjab National Bank and ACE for an amount of Rs.15,01,28,752.00. ACE, in its turn, assigned its rights under the above-mentioned Memorandum of Understanding to the Respondent-Company on 17th April, 2009, amounting to Rs.18.63 crores, whereunder notice was ultimately issued by IFCI Limited to the Petitioner-Company under *Section 13(2) of the SARFAESI Act, 2002*.

19. The learned Solicitor General, who also appeared for IFCI Ltd., urged that ACE as a "reconstruction company" within the meaning of *Section 3 of the SARFAESI Act, 2002*, was entitled under Section 5 thereof to acquire interest in the financial assets of the Petitioner-Company and was entitled to maintain a proceeding before the Debts Recovery Tribunal under *Section 17 of the Debts Recovery Act, 1993*. The learned Solicitor General contended

that the Petitioner-Company had not made any effort to clear any amount even from the unpaid balance of the One-Time Settlement and it was virtually under the control of the Official Liquidator inspite of the interim order passed by the Division Bench of the High Court under challenge. The learned Solicitor General submitted that not only had a recommendation been made for winding up of the Petitioner-Company by the BIFR, but an order of winding up was actually passed by the High Court, whereby the Official Liquidator was appointed to take over the Company and its assets. It was submitted that the High Court had merely allowed IFCI Limited to proceed in terms of the Public Notice issued, but had prevented it from taking any final decision in the matter and the same did not warrant any interference by this Court on account of the financial condition of the Petitioner-Company.

20. As to the submissions made by Mr. Andhyarujina on behalf of the Petitioner-Company, regarding quantification of the dues in the pending proceedings before the Debts Recovery Tribunal-III, Delhi, the learned Solicitor General submitted that the same could not be a reason to stay the auction in terms of *Section 13(4) of SARFAESI Act, 2002*, since the sale proceeds could be kept in a separate account for distribution, once the amount was determined.

21. Mr. Ranjit Kumar, learned Senior Advocate, who appeared for the alleged contemnors, while reiterating the submissions made by the learned Solicitor General and the Additional Solicitor General, submitted that Public Notice was issued by IFCI Limited on 13th September, 2010, inviting bids for sale of the factory of the Petitioner-Company at Gannore in Haryana in which it was indicated that the sale bids would be opened on 15th October, 2010. The Respondent-Company was served with notice of the securitisation appeal filed by the Petitioner-Company under *Section 12 of the SARFAESI Act, 2002*, before the Debts Recovery Tribunal-III, Delhi, on 13th September, 2010, in the evening, and, thereafter, stay was granted by the said Tribunal on 15th September, 2010, restraining IFCI Limited from implementing the possession notice, as well as the Public Notice for sale, with a further direction to the Petitioner-Company to deposit a sum of Rs.35 crores within 30 days of the order. Mr. Ranjit Kumar submitted that the Petitioner- Company has not deposited the said sum, as directed, till today. On the other hand, IFCI Limited preferred the above-mentioned appeals before the Debts Recovery Appellate Tribunal against the said order of 15th September, 2010, and the Appellate Tribunal stayed the proceedings before the Debts Recovery Tribunal in the Original Application, as also the Securitisation Appeal by its order dated 22nd September, 2010. It is against the order subsequently granting time to the Petitioner-Company to file a reply and adjourning the case to 27th September, 2010, which would be beyond the date of opening the bids, that IFCI Limited moved Writ Petition No.6652 of 2010 before the Delhi High Court, which passed the impugned order on 29th September, 2010, allowing IFCI Limited to proceed with the Public Notice dated 13th September, 2010, but with the direction that the bids were not to be finalised and that the Official Liquidator was to be associated with the bidding process. Furthermore, any amount received from the prospective purchaser as earnest money, was to be kept in a no-lien account.

22. With regard to the allegation made on behalf of the Petitioner-Company that the Bid Box had been kept available in the company premises for filing bids till 15th October, 2010, Mr. Ranjit Kumar submitted that there was nothing on record to show that the Bid Box had been used after 13th September, 2010, or that the contents thereof had been used for the purposes of the auction which was scheduled to be held on 15th October, 2010. Mr. Ranjit Kumar urged that it would be clear from the above that the alleged contemnors had neither violated the order of stay made by this Court on 8th October, 2010, nor did it have any intention to do so.

23. On the question of maintainability of the proceedings before the Debts Recovery Tribunal by the Respondent No.1-Company, Mr. Ranjit Kumar urged that there was no prohibition either under the *Banking Regulation Act, 1949* or under the *SARFAESI Act, 2002*, debarring an assignee financial institution or a reconstruction company from continuing a proceeding initiated before the Debts Recovery Tribunal by a banking/financial institution and, in any event, the said question could be raised and answered before the Appellate Tribunal itself. In this regard, learned Senior counsel referred to and relied upon the decision of this Court in *ICICI Bank Limited vs. Official Liquidator etc. etc.*¹, in which this Court was called upon to decide whether inter se transfers of Non-Performing Assets (NPA) by banks is illegal under the *Banking Regulation Act, 1949*, as was held by the Gujarat High Court. After considering the submissions made and the materials on record, this Court set aside the judgment of the Division Bench of the High Court, which had upheld the order of the learned Company Court on the ground that the assignment of debts by the banks inter se is an activity which is impermissible under the *Banking Regulation Act, 1949*. The matter was remitted to the Division Bench on other issues after setting aside the view taken by the Division Bench of the Gujarat High Court regarding the locus standi of the assignee of a debt as being an activity permissible under the aforesaid Act. It was urged that the Special Leave Petition and the Contempt Petition were both liable to be dismissed.

24. Although, the Special Leave Petition is directed against an interim order passed by the High Court on 29th September, 2010, granting liberty to the Petitioner to proceed in pursuance of the Public Notice dated 13th September, 2010, during the pendency of the writ petition, extensive submissions were advanced on behalf of the parties.

25. In this case, we have a situation in which moneys were admittedly borrowed by the Petitioner- Company from the Punjab National Bank which it was unable to repay in full. Ultimately, a One-Time Settlement was arrived at between the Petitioner- Company and the Punjab National Bank for a sum of Rs.26.16 crores. Out of the said amount, the Petitioner-Company paid a sum of Rs.13.80 crores and defaulted in payment of the rest. It entered into an agreement with ACE to pay off the entire dues of Punjab National Bank, which it did. The entire dues of the Bank, therefore, stood satisfied, but a new liability was created by the Petitioner-Company in favour of ACE which assigned its rights to IFCI Ltd. As explained hereinbefore, by virtue of *Section 3 of the SARFAESI Act, 2002*, a reconstruction company, such as ACE, would be entitled to carry on the business of securitisation.

26. We are not, therefore, impressed with Mr. Andhyarujina's submission that once the dues of the Bank were liquidated and a separate arrangement was entered into by the Petitioner-Company with ACE, the demand under section 13(2) of the said Act ceased to exist and IFCI Ltd, which acquired the interest of ACE in the Memorandum of Understanding with the Petitioner-Company, could not take action against the Petitioner-Company under the SARFAESI Act. There is no dispute that IFCI Ltd. is a financial institution which is an assignee of the interest of ACE in dues recoverable from the Petitioner-Company.

27. However, as indicated hereinabove, this Special Leave Petition has been filed against the interim order passed by the High Court on 29th September, 2010, in the Writ Petition filed by IFCI Ltd. seeking to set aside the order dated 27th September, 2010, passed by the Debts Recovery Appellate Tribunal limited to the question as to whether the auction sale should be proceeded with further. In effect, the question regarding the auction of the assets of the Petitioner Company is still the subject matter of the proceedings pending before the Debts Recovery Appellate Tribunal. All the questions raised in this Special Leave Petition are at large in the pending proceedings before the Appellate Tribunal which had stayed the proceedings before the Debts Recovery Tribunal-III, Delhi, directing stay of the auction sale proceedings.

28. Having heard the matter on 9th November, 2010, we had reserved judgment in the matter. However, it has subsequently been brought to our notice that certain developments had taken place in the pending Writ Petition before the High Court on 11th November, 2010. The High Court took note of the fact that the matter was still pending before the Debts Recovery Appellate Tribunal and that judgment in the Special Leave Petition before this Court was yet to be passed. It, therefore, held that nothing survived in the Writ Petition as the parties had to abide by the directions passed by this Court and, accordingly, the Writ Petition and the applications were disposed of.

29. The matter before the High Court may have come to an end, but the issues involved regarding steps taken under the SARFAESI Act are yet to be determined by the Debts Recovery Appellate Tribunal. However, since the order impugned in these proceedings has ceased to exist, we are not inclined to decide the questions that have been raised and instead we can only direct the Debts Recovery Appellate Tribunal to consider all the questions raised in the two appeals pending before it, being Miscellaneous Appeal Nos.352 and 353 of 2010.

30. We, therefore, dispose of the Special Leave Petition with a direction upon the Debts Recovery Appellate Tribunal to dispose of the pending appeal as early as possible since it would not be proper on our part to express any definite view with regard to the pending proceedings before the said Tribunal. Till a decision is arrived at by the Debts Recovery Appellate Tribunal in the matter, the auction proceedings being conducted under the SARFAESI Act shall remain stayed.

¹2010 (10) SCALE 378