LAW

Pegasus Assets Reconstruction P. Ltd. v. M/s. Haryana Concast Limited & Anr. – SARFAESI Act a complete code, harmonious with Companies Act, 1956

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Introduction

A secured creditor has a right to enforce its security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**"). In the case of ***Pegasus Assets Reconstruction P. Ltd.* v. *M/s. Haryana Concast Limited & Anr.*[1]**, the Supreme Court considered the question whether the Company Court enjoys jurisdiction to issue supervisory directions to such securitization company/ secured creditor in connection with a company in liquidation or under winding up.

Brief Facts of the Case

1. **Civil Appeal No. 3646 of 2011 –** This appeal was preferred by Pegasus Assets Reconstruction Private Limited ("**Pegasus**"), arising out of a Division Bench judgment of Punjab and Haryana High Court. The Court approved certain fetters placed upon Pegasus by the Company Court in exercise of its powers under the Companies Act, 1956 ("**Companies Act**"), while allowing it to exercise its powers as a secured creditor under the SARFAESI Act and proceed with the sale of the secured assets. ("**Punjab and Haryana High Court Judgment**")

2. **Civil Appeal No. 9293-94 of 2014 –** This appeal was preferred by Megnostar Telecommunications Private Limited ("**Megnostar**") arises out of a Division Bench Judgment of Delhi High Court dated 17 September 2012. By this order, the Delhi High Court has differed with the Punjab and Haryana High Court Judgment.

According to Delhi High Court, the company judge or the official liquidator cannot have any say in the sale of secured assets by the secured creditors under the SARFAESI Act. The Companies Act cannot be used to put any fetters on the sale by secured creditors because a secured creditor under Section 13 of the SARFAESI Act has been granted a right to enforce the security interest without the intervention of the court or tribunal. ("**Delhi High Court Judgment**")

Issues before the Supreme Court

The Punjab and Haryana High Court Judgment was contradictory to the Delhi High Court Judgment. Hence, the central issue arising out of the aforementioned appeals before the Supreme Court was whether a Company Court, directly or through an Official Liquidator, can wield any control in respect of sale of a secured asset by a secured creditor in exercise of powers available to such creditor under the SARFAESI Act?

Decision of the Supreme Court

The Apex Court held that SARFAESI Act is a complete code in itself and there is no lacuna or ambiguity. The SARFAESI Act was enacted in 2002 to regulate securitization and reconstruction of financial assets and enforcement of security interest. One of the main objects of the SARFAESI Act is to provide the banks and financial institutions in India with power to take possession of securities and sell them.

The clear intention of the Parliament is expressed in Section 13 of the SARFAESI Act that a secured creditor has the right to enforce its security interest without the intervention of the court or tribunal. In addition to this, detailed procedure has also been prescribed to take care of various eventualities such as when the borrower company is under liquidation. The proviso to Section 13 (9) contains clear mandate that the amount realized from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act.

Further, Section 13 requires notice to the borrower at various stages that in the case of a company under winding up, being a borrower, would mean requirement of notice to the Official Liquidator. The Rules framed under the SARFAESI Act also require notice upon the borrower or his agent at different stages. For sale of immovable secured assets, as per Rule 8, the authorized officer can take possession by delivering a Possession Notice to the borrower and by affixing Possession Notice on the outer door or at some conspicuous place of the property. Before the sale also, the authorized officer is required to serve to the borrower a notice of 30 days. Thus, the Rules also ensure that the Official Liquidator is in knowledge of the proceedings under the SARFAESI Act in case the borrower happens to be a company under winding up. As a borrower, the Official Liquidator has ample opportunity to get the details of the workers dues as ascertained under the Companies Act, placed before the authorized officer and seek proper distribution of the amount realized from the sale of secured assets in accordance with various provisos under Section 13 (9) of the SARFAESI Act.

The SARFAESI Act also provides for redressal of grievance of the borrower, which in the case of a company under liquidation would mean the liquidator. If the Official Liquidator is not satisfied with the decisions or steps taken by the secured creditor or the authorized officer, it has sufficient opportunity to avail right of appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. There is a right of further appeal under Section 18 before the Appellate Tribunal.

If the view expressed in the Punjab and Haryana High Court Judgment is accepted, there will be a conflict of rights and interest of the secured creditor who have the right and liberty to realize their secured interest in accordance with the provisions of the SARFAESI Act on one hand, and the statutory rights and liability of the Official Liquidator acting under the orders of the Company Judge as per provisions of the Companies Act, on the other. The appellate authority shall also differ, leading to a situation of uncertainty and conflict between the two Acts.

Thus, the Supreme Court held that there is nothing lacking in the SARFAESI Act so as to borrow anything from the Companies Act. The required provisions of the Companies Act have been incorporated in the SARFAESI Act for harmonizing the SARFAESI Act with the Companies Act in respect of dues of workmen and their protection under Section 529A of the Companies Act. In view of such exercise already done by the legislature, there is no plausible reason as to take recourse to any provisions of the Companies Act and permit interference in the proceedings under the SARFAESI Act either by the Company Judge or the liquidator. Hence, no order is required by the Company Judge for association of the Official Liquidator to protect the interest of workers and to realize their dues. Sufficient provisions have been made for this purpose under the SARFAESI Act and the Rules framed thereunder.

[1] *Civil Appeal No. 3646 OF 2011 alongwith Civil Appeal No. 14736 of 2015; Civil Appeal Nos.14737-14738 of 2015 and Civil Appeal Nos. 9293-94 of 2014.*