2025 INSC 1045

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2025

(ARISING OUT OF SLP(CIVIL) NO.11069 OF 2024)

M/S EDELWEISS ASSET RECONSTRUCTION LIMITED ...APPELLANTS

VERSUS

REGIONAL PF COMMISSIONER II AND RECOVERY OFFICER, RO BENGALURU (KORAMANGALA) & ANR. ...RESPONDENTS

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.

2. The present appeal assails the correctness of the judgment and order dated 01.02.2024 passed by the Karnataka High Court in Writ Petition No.2543 of 2023 (L-PF), whereby the High Court dismissed the writ petition filed by the present appellant and further directed that the amount deposited, *vide* order dated

02.02.2023, be transmitted to the account of the respondent no.1 herein, i.e., the sole respondent before the High Court. Brief facts giving rise to the present appeal are narrated hereunder:

2.1. M/s Acropetal Technologies Pvt. Ltd. (hereinafter referred to as the 'Establishment') was covered under the ambit of Employees Provident Fund and Miscellaneous Provisions Act, 1952 [1] . The Establishment defaulted in payment of provident fund dues since July, 2013 and accordingly an enquiry was initiated under Section 7(A) of the PF Act. After due enquiry and affording opportunity of hearing to the Establishment, the Regional Provident Fund Commissioner-II, Bangalore, *vide* order dated 08.06.2015, determined a liability of Rs.1,28,90,486/- against the Establishment and accordingly directed it to deposit the same within 15 days. The order further indicated that any default or failure may entail prosecution under Section 14/14(A) of the PF Act in addition to recovery proceedings under Section 8(B) to 8(G) of the PF Act.

[1] For short, "PF Act"

It was also clarified that the above quoted amount did not include the interest and the damages under Sections 7(Q) and 14(B) of the PF Act.

2.2. The Establishment, *vide* communication dated 29.06.2015, informed that all its bank loan accounts with the Bank had been declared NPA (Non-Performing Asset) and that the Banks had initiated recovery process by auctioning their property. It was also mentioned in the said communication that Axis Bank Ltd. had initiated recovery process for auction of their property at 255-B in Bommasandra Industrial Area, Attibele Hobli, Anekal Taluk, Bangalore (hereinafter referred to as the 'Attibele property'). The communication further mentioned that the auction date fixed by the Bank was 29.07.2015 and also that they would have sufficient balance after settling the bank loan and accordingly would address the statutory dues from the sale amount.

2.3. It further requested the Employees' Provident Fund

Organisation[2] to communicate to the Axis Bank Ltd. for making payment directly to them towards the dues. Upon receipt of the aforesaid communication, the EPFO, *vide* letter dated 08.07.2015, addressed to the Axis Bank Ltd. referring to Section 11(2) of the PF Act and the judgment of this Court in the case of **Maharashtra State Co-operative Bank vs. Assistant PF, Commissioner** asked the Bank to remit a total amount of Rs.2,96,76,656/- as outstanding dues on 08.07.2015 by way of Demand Draft in favour of Regional Provident Fund, Commissioner payable at Bangalore out of the sale proceeds of the auction scheduled on 29.07.2015.

2.4. The Axis Bank in response, *vide* letter dated 20.07.2015, claimed first charge by referring to Section 35 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[3]. Immediately, on 23.07.2015, the EPFO re-asserted its priority under Section 11(2) of the PF Act and further issued an order of

[2] In short, "EPFO"
[3] In short "SARFAESI Act"

attachment of the immovable property i.e. the 'Attibele property'.

2.5. The EPFO issued a reminder dated 06.08.2015 to the Axis Bank which in response issued a communication informing that the auction could not take place as the same was stayed by an order of status quo passed by the High Court of Karnataka. The EPFO demanded a copy of the stay order, *vide* its communication dated 14.08.2015. Again, *vide* communication dated 02.09.2015, the EPFO requested for copy of the stay order.

2.6. The writ petition apparently was disposed of some time in October/November 2015 whereafter, again communications started flowing between EPFO and Axis Bank regarding the outcome of the auction sale and remittance of the outstanding dues of the EPFO. It appears that Axis Bank sold the property in auction held in March, 2016 and it appropriated the sale proceeds against its outstanding dues and informed the EPFO that the Bank had no amount in the account of the Establishment as it still had outstanding dues against the Establishment.

3. The EPFO, in the meantime, was informed by the Establishment that another property was being auctioned by State Bank of India through its assignee, the appellant-EARC. This property was situated at Kammanahalli (hereinafter referred to as the "Kammanahalli property"). The Establishment further informed the EPFO that another property at N.S. Palya (hereinafter referred to as the 'Palya property') was being auctioned by State Bank of Travancore (now taken over by SBI). Accordingly, the EPFO communicated with EARC and State Bank of India to remit the outstanding dues, *vide* communication dated 23.04.2021. The EPFO demanded an amount of Rs.2,08,94,800/- from EARC as per priority under Section 11(2) of the PF Act. EARC filed a writ petition before the Karnataka High Court, in which an interim order was granted staying the operation of order dated 15.06.2016 passed under Section 14(B) of the PF Act raising demand for an amount of Rs.1,30,52,221/-. In view of the same, the EPFO demanded EARC to remit the balance amount of Rs.78,42,579/- and also issued an order of attachment dated 24.11.2022 against EARC. In response, EARC, *vide* letter dated 27.01.2023, expressed

its willingness to remit Rs.78,43,629/-, which included Rs.1050/- as recovery charges also subject to confirmation that the said amount would be towards full and final settlement and EPFO would not raise any further demands from EARC with respect to provident fund dues of the Establishment. EARC challenged the order of attachment dated 24.11.2022 and also the recovery certificate of January 2023 before the High Court. The High Court, *vide* order dated 02.02.2023, directed the EARC to deposit Rs.75 lakhs as an interim measure and subject to such deposit stayed further recovery. By the impugned order, the said writ petition has been dismissed with the further direction that the amount of Rs.75 lakhs deposited by EARC be transmitted to the account of EPFO.

4. Aggrieved by the same, EARC has preferred the present appeal. The appellant in the appeal has admitted that the dues of EPFO have a first charge. However, the objection taken by the appellant is to the effect that the Axis Bank has sold one property for 12 crores approximately whereas, appellant has sold two properties for total consideration of Rs.7 crores. Further, submission is that the balance amount of EPFO may be recovered from the

Axis Bank as EARC has already paid an amount of Rs.75 lakhs which is proportionate to the sale consideration received by it and the balance amount due to the EPFO which apparently has been stayed by the High Court of Karnataka for the amount quantified under Section 14(B) of the PF Act amounting to Rs.1.3 crores approximately would fall in proportionate share of the Axis Bank. The recovery for the balance amount if ultimately EPFO succeeds before the High Court for its demand under Section 14(B) of the PF Act should be made from Axis Bank and not from the appellant.

5. The stand of the EPFO is that the High Court has rightly dismissed the petition of the appellant and, therefore, it is entitled to recover the balance amount of Rs.3,43,629/- and the amount of Rs.1.3 crores approximately quantified under Section 14(B) of the PF Act, as and when, the EPFO succeeds before the High Court. It is further submitted that the appellant had not impleaded Axis Bank before the High Court and, therefore, the contention of the appellant that balance recovery may be made from Axis Bank with respect to the amount quantified under Section 14(B) of the PF Act cannot be sustained. It has

therefore prayed that the appeal may be dismissed.

6. The stand of the Axis Bank is based upon Section 35 of the SARFAESI. According to the Axis Bank in view of the provisions contained in Section 35 of the SARFAESI, the dues of the Bank being secured would have a priority over the sales taxes and other dues payable to the Government or local authority and, therefore, no recovery can be made from Axis Bank till such time its entire dues are liquidated and satisfied.

7. We have heard Shri Krishnan Venugopal, learned Senior Counsel appearing for the appellant, Shri Gopal Jain, learned Senior Counsel appearing for the Axis Bank and Shri Dushyant Parashar, learned counsel appearing for the EPFO and have also perused the material on record.

8. It is true that the appellant did not implead Axis Bank as a party-respondent before the High Court. However, before this Court, Axis Bank was impleaded and is now represented and duly heard.

9. According to the appellant, the EPFO had first charge over the property auctioned, whether by the appellant or by the Axis Bank. Whereas the contention of the Axis Bank

is that it has the first charge and priority over the sales tax and other dues payable to the Government and local authority. Therefore, EPFO would be entitled to recover anything from the Axis Bank only after its dues are fully satisfied.

10. It is an admitted position that Axis Bank by sale of Attibele property has realised an amount of Rs. 12 crores approximately whereas, appellant by sale of the other two properties namely Kammanahalli property and Palya property has realised only Rs.7 crores approximately. Further, it is an admitted position that the appellant had already paid Rs. 75 lakhs and had in fact given an undertaking that it will pay Rs.78,42,579/- in full and final discharge of its liability. According to the appellant, the balance payment of Rs.1,30,52,221/- approximately may be recovered from the Axis Bank. This is precisely the case canvassed before us by the appellant.

11. In our considered opinion, it would be appropriate that the High Court first deals with the issues raised by Axis Bank that it has first charge and priority over and above the EPFO to satisfy its dues from the secured property in view of Section 35 of the SARFAESI Act. The High Court

will examine the priority of first charge amongst the EPFO and the secured creditors i.e. the Axis Bank and other two Banks, namely, State Bank of India and the State Bank of Travancore (now taken over by SBI) in view of Section 11(2) of the PF Act.

12. In view of the above, we set aside the impugned order and restore the Writ Petition No.2543 of 2023 (L-PF) to be decided afresh after impleading the Axis Bank as a respondent and after affording due opportunity of exchanging pleadings and hearing to all the parties to the said proceedings. The High Court will take into consideration, the relevant fact relating to the charge having been created by the EPFO over the properties to be auctioned by the Axis Bank prior to the auction. Material in this regard has been placed before us. Since we are not entering into the merits of that issue relating to first charge and priority, we are not dealing with the same in detail. All the parties to the writ petition as it would stand now after remand would be at liberty to raise all contentions before the High Court.

13. The appeal stands accordingly allowed. The impugned order is set aside, and the writ petition is restored to its

original number before the High Court. Further, the High Court to proceed and decide the writ petition in accordance with law in the light of the observations made above after impleading the Axis Bank as a party-respondent.

.....J.
[VIKRAM NATH]

.....J.
[SANJAY KAROL]

.....J.
[SANDEEP MEHTA]

NEW DELHI;
AUGUST 26, 2025