

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3044 of 2015

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M/s Naturals Dairy Pvt. Ltd. a Company registered under the Companies Act, 1956 having its registered office at 225, Ashoka Place, Exhibition Road, P.S. Gandhi Maidan, Town and District Patna through its Managing Director Sri Hemant Kumar Das Son of Sri Awadhesh Kumar Das Resident of 504, White House, Block - A, Budha Marg, P.S. Kotwali, Town and District - Patna

.... Petitioner

Versus

1. The Bank of Baroda a Banking Company Constituted under the Banking Companies (Acquisition and Transfer of undertakings) Act, 1970 having its head office at Mandvi, Baroda, through its Managing Director
2. The Chief Manager, Bank of Baroda, S.K. Puri Branch, Patna
3. The Deputy General Manager, Bank of Baroda, Regional office, West Boring Canal Road, Patna
4. The Authorized officer Cum Chief Manager, Bank of Baroda, S.K. Puri Branch, Patna
5. Zonal Manager, Zonal office, Bank of Baroda, Boring Canal Road, Patna

.... Respondents

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Appearance :

For the Petitioner : M/s Sanjay Singh, Gautam Kejriwal and Hemant Kumar, Advocates

For the Respondents : Mr. Vivek Prasad, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 27-04-2015

I have heard parties and perused the records.

The writ application has been filed for following reliefs:

- I. For issuance of a writ in the nature of certiorari for quashing of the letter dated 30.6.14 bearing Ref No. PAT/ADV35/1611 issued by the Deputy General Manager of the respondent Bank of Baroda whereby the viability of the petitioner's industrial unit has been denied on ground of absence of TEV study done of the unit and the said exercise of TEV study to be done for

the purpose of rehabilitation of the petitioner's unit has been subjected to payment of entire overdue which is contrary to the guidelines issued by the Reserve Bank of India in this regard and as such unreasonable, irrational and violative of Article 14 of the Constitution of India;

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- II. For issuance of a writ in the nature of certiorari for quashing of the letter dated 7.4.11 bearing Ref. No. PAT/ADV36/3534 whereby the respondent Deputy General Manager gain reiterated the demand of overdue against the loan account from the petitioner in order to consider the request and proposal for rehabilitation of the unit submitted by the petitioner with a condition as stated therein is anomalous, onerous and self contradictory besides being violative of guidelines of the Reserve Bank of India;
 - III. For issuance of a writ in the nature of certiorari for quashing of the notice of demand dated 23.12.14 issued u/s 13(2) of the SARFAESI Act 2002 calling upon the petitioner to liquidate the entire loan dues without any rehabilitation exercise carried out with respect to active and productive unit of the petitioner in terms of its own guidelines as well as the Reserve Bank of India.;
 - IV. For quashing of the letter dated 24.01.15 issued by the respondent bank whereby the last representation dated 15.1.15 made by the petitioner has been rejected in arbitrary and unreasonable manner;
 - V. For issuance of writ in the nature of mandamus directing the respondents to cause a comprehensive TEV study done of the petitioner's existing project/unit in light of proposal for rehabilitation submitted by the petitioner in accordance with Debt Restructuring mechanism Micro, Small & Medium enterprises adopted by the respondent bank in terms and inconsonance with the Reserve Bank of India guidelines;
 - VI. For a declaration that it is quite unreasonable and illogical on part of the respondent bank and its authorities to demand the

petitioner to deposit the entire overdue for the purpose of rehabilitation of the unit in light of the fact that the very scheme and object of rehabilitation proposal was to overcome to condition of financial sickness admittedly being suffered by the petitioner and as such the petitioner would never need any rehabilitation package incase petitioner possessed the capacity to pay the overdue to the respondent bank;

- VII. For a declaration that the demand raised by the respondent bank and its authorities vide the impugned letter dated 30.6.14 and 07.11.14 for the purpose of TEV study of the petitioner's unit in connection with rehabilitation is absolutely alien to the procedure for rehabilitation exercise prescribed in the aforesaid Debt Restructuring mechanism adopted by the respondent bank and its authorities in light of the fact that no such condition is prescribed in the guidelines; "

Subsequently, the petitioner, by filing I.A. No. 3044 of 2015, sought amendment to the relief portion by insertion of the reliefs mentioned in paragraph 1 thereof as, during the pendency of the writ application, final order has been passed on 4.3.2015 under Section 13(3-A) of The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002 (hereinafter referred to as 'the SARFAESI Act') rejecting the objection of the petitioner. The decision is in form of the letter which is appended as Annexure 18. The aforesaid interlocutory application was allowed vide order dated 25.3.2015 and the relief mentioned in paragraph 1 thereof for quashing the decision taken under Section 13(3-A) of the SARFAESI Act was allowed to be included in the writ application

along with the facts and grounds stated in the application.

This is not the first time that the petitioner has approached this Court. He had earlier approached by filing C.W.J.C. No. 569 of 2011 challenging the notice issued under Section 13(2) of the SARFAESI Act. A Single Bench of this Court vide order dated 29.8.2013 as contained in Annexure 1, had disposed of the writ application with following direction.

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Considering the submissions of the parties, this Court would direct the respondent Bank to issue fresh notice under Section 13(2) of the SARFAESI Act to the petitioner setting out in detail the dues payable by the petitioner (the borrower). The petitioner shall be at liberty to pay off those dues and/or file objection thereto under Section 13(3-A) of the SARFAESI Act within the stipulated time. The respondent Bank in that event will consider said objection of the petitioner and pass an appropriate orders in accordance with law. The respondent Bank shall thereafter proceed to realize the dues, if any, in accordance with law.

The application is, accordingly, disposed of. “

Admitted fact is that the petitioner is a borrower of the respondent Bank and had received the loan /cash credit facility. According to the Bank the petitioner failed to pay back the loan amount and the respondent Bank, being the secured creditor, has initiated action for recovery of the loan under the SARFAESI Act.

The petitioner has come for grant of several reliefs as



mentioned above. However, at the time of hearing it has been argued on behalf of the petitioner that the order of rejection of the petitioner's objection filed in response to the notice issued under Section 13(2) of the SARFAESI Act, being not in accordance with law, should be quashed and, further, before deciding the case afresh the Bank shall examine as to whether the Unit is fit for debt restructuring or not. Learned counsel for the petitioner submits that it is not the fact that the unit has become completely unviable inasmuch as it is still functioning which would be apparent from Annexure 2 which is a minutes of meeting held at Regional office on 5.9.2013. Petitioner has made certain proposal and it was decided that the matter would be put up before the Deputy General Manager, for consideration. It was requested to the petitioner to expedite the release of subsidy from Government of Bihar within 10 – 15 days. Learned counsel submits that the subsidies, which have been received, have been deposited in the lien account of the Bank. It is submitted that altogether Rs. 170 lacs would be coming as subsidy from the State of Bihar, therefore, there is every likelihood that, if restructuring is allowed, the Unit will become performing from non performer. Learned counsel has further submitted that there is contradiction in the stand of the Bank inasmuch as while issuing a certificate, a copy of the which has been appended as Annexure 14,



for the purpose of release of subsidy, the bank has accepted that the first grant of Rs. 84,98,000/- has already been credited in the term loan account. It has further been stated that the Unit has been inspected and physically verified by the Bank and it has been found that the same has been established as per the proposal submitted in the application and further that the unit has utilized term loan amount and has started production from 9.12.2008 and is running satisfactorily. This certificate is of the date 9th October, 2014 in the next month, itself, vide letter dated 7.11.2014, the petitioner was informed that the Bank was not in a position to consider the request for the rehabilitation. Learned counsel has further contended that there is a mechanism for debt restructuring for Micro, Small and Medium Enterprises, a copy of which has been appended as Annexure 13. He has drawn attention of this Court towards Clause No. 2 which describes the scope and applicability of the restructuring mechanism and lays down guidelines. It has been explained that the guidelines enumerated in this clause may generally be made applicable to the accounts which are showing signs of slippage or have slipped to NPA category but have not become “unviable”. Thus, on such accounts, timely decision on restructuring would be helpful. It is urged that in view of the certificate granted by the Bank, since the petitioner’s unit has started production and is functional, a chance

should be given under debt restructuring mechanism under Clause 4 of Annexure 13.

Learned counsel has further drawn attention of this Court towards the decision taken by a competent authority which in form of the reply to the objection under Section 13(3-A) of the SARFAESI Act. It has been pointed out that not a single ground raised in the objection filed by the petitioner that has been appended as Annexure 17 to this writ application, has been considered and answered by the authorized officer.

Per contra learned counsel for the Bank has submitted that reason has already been assigned as the petitioner never fulfilled any commitment and since the Bank has disappointing experience with his past commitment, the decision has been taken for recovery of the loan amount under the SARFAESI Act. A detailed counter affidavit has also been filed on behalf of the Bank defending the action and blaming the petitioner for sordid affairs. Learned counsel submits that in the facts and circumstances of the case this court should not intervene in the matter. On this reliance has been placed on the decisions of the Apex Court rendered in **United Bank of India Vs. Satyawati Tondon [(2010) 8 SCC 100]** and another in **General Manager, Sri Siddeshwara Cooperative Bank Limited and Another Vs. Iqbal and others [(2013) 10 SCC 83]**. It has been

held by the Supreme Court that the exercise of powers under Article 226 should be exercised sparingly with extreme care.

However, upon consideration of the rival contentions, I find force in the submission made on behalf of the petitioner and the disposal of objection filed under Section 13(3-A) of the SARFAESI Act cannot be held to have been done in accordance with law inasmuch as not a single ground mentioned by the petitioner in his objection dated 23.2.2015 (Annexure 17) appears to have been considered by the authorized officer. A blanket order has been passed holding that the petitioner could not fulfill any commitment made during the meetings and, as such, his objection is to be rejected.

In my considered opinion, that could not be held to be compliance of the mandate contained in sub Section 3-A of Section 13 of the SARFAESI Act. For better appreciation the relevant provision is quoted as under:-

“X X X X X X X X

(3-A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate[within fifteen days] of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or the Court of District Judge under section 17-A.

X X X X X X X X”

From bare perusal of the aforesaid provision it would appear that in case representation filed or objection raised by the borrower would not be acceptable and tenable, he shall be communicated the reasons for non-acceptance of the objection. There is no discussion of the objections raised by the petitioner at all in the letter dated 4.3.2015 what to say about incorporating grounds for rejecting the same. Of course the Apex Court has held in **United Bank of India & General Manager, Sri Siddeshwara Cooperative Bank Limited (supra)** that usually the Court should not ordinarily exercise its power available under article 226 of the Constitution of India as alternative remedy is available under Section 17. However, in the present case, as would be apparent from the proviso to sub Section 3-A, no remedy is available to the petitioner against the rejection of the objection under Section 13(3-A) of the SARFAESI Act. It clearly lays down that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an



application to the Debts Recovery Tribunal under Section 17 or the court of District judge under Section 17-A. In such a situation when the grounds raised by the petitioner has not at all been considered and there is no remedy available against such order, this court cannot shut its eyes and allow unsustainable order to continue.

Thus, since the decision taken by the authorized officer does not appear to be in accordance with the mandate of Section 13(3-A) of the SARFAESI Act, the same is quashed and set aside. The matter is again remitted back to the authorized officer to take a fresh decision on its own merit and in accordance with law.

However, before doing that, in my considered opinion, since the Bank itself has given a certificate in the month of October, 2014 that the unit is running satisfactorily, this Court would be inclined to direct the General Manager of the Zone to examine the case of the petitioner as to whether it falls within the exceptional cases or not for the purpose of debt restructuring in view of Clause 4(VI) of the Debt Restructuring Mechanism contained in Annexure 13, on its own merit and in accordance with law. Before taking a final decision he should also accord reasonable opportunity to the petitioner. It is expected that such exercise would be done before passing any order on the objection raised by the petitioner under Section 13(3-A) of the SARFAESI Act, preferably within a period of

one months from the date of receipt / production of a certified copy
of this order.



(Dr. Ravi Ranjan, J)

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