NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2434 of 2014

1. M/s R.R. Iron & Steel Private Ltd. Having Its Registered Office At Station Road Telghani Naka Raipur 492009, Chhattisgarh Through its Director Shri Sanjay Jain, S/o Kanhaiyalal Jain, Aged About 43 Years, R/o 20, Jalashay Marg Choubey Colony Raipur, Police Station Saraswati Nagar, Distt. Raipur Chhattisgarh.

---- Petitioner

Versus

1. Allahabad Bank Having Its Head Office At 2, Netaji Subhash Road Kolkata 700001, West Bengal And The Branch Office Of Telibandha Branch Telibandha Chowk Shyam Nagar G.E. Road Raipur 492001 Chhattisgarh.

---- Respondent

For Petitioner	Mr. Sumesh Bajaj & Mr. Ashutosh Pandey, Advocates
For Respondent	Mr. Kishore Bhaduri & Mr. Saleem Kazi, Advocates

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Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

12/8/2015

1. The petitioner has preferred this petition under Article 226 of the Constitution of India for a direction to the respondent/Allahabad Bank (for short 'the Bank') to immediately refund the entire amount of Rs.10.00 crores deposited by the petitioner with due interest.

2. Necessary facts of the case, as projected in the writ petition, to be stated briefly, are that the Bank had extended loan facility to one M/s Vijeta Construction Company, Raipur (for short 'the borrower') and to secure the loan transaction, certain properties of the company were mortgaged. On default committed by the said borrower in repayment of the loan amount, the Bank invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act, 2002') and a sale notice was published in the newspaper on 20.04.2012. In the said proceedings initiated under the Act, 2002, the borrower and the Bank approached the petitioner/Ms. R.R. Iron and Steel Private Limited with a proposal that on payment of Rs.17.00 crores by the petitioner, all the properties stipulated in the sale notice would be transferred in its favour towards discharge of loan of the borrower. Out of the said amount of Rs.17.00 crores, the petitioner was initially required to deposit an amount of Rs.5.00 crores and the balance amount of Rs.12.00 crores was to be deposited within three months. According to the petitioner, the petitioner deposited an amount of Rs.10.00 crores up to 12-1-2013.

3. By issuing a letter to the petitioner on 28.06.2012, it was mentioned that a tripartite agreement between the borrower, bank and the petitioner will be executed and the same will

be filed before the Court/Debts Recovery Tribunal (for short 'the DRT') to seek further directions and in the event there is default in payment of the compromised sum, the concessions/relief granted in the settlements will be treated as withdrawn. Similarly, in the letter written to the borrower on 28.06.2012 itself it was mentioned that upon failure to make payment of the compromised sum, the settlements will be treated as withdrawn and the Bank will have the liberty to proceed for recovery of the entire outstanding dues as if there was no compromise. Accepting the said condition, the borrower wrote a letter to the Bank on 28.06.2012 itself vide Annexure P/4.

4. The Bank and the borrower moved an application before the DRT on 28.08.2012 for recording compromise without impleading the petitioner as a party. The terms of the compromise was mentioned in the application in the following manner :

> 4. That defendants and purchaser accept Rs.17.00 crore (Rupees Seventeen Crore only) as compromise sum towards full and final settlement of account vide letter dated 28-6-2012 & 29-6-2012. The amount is to be paid as per undernoted schedule, failing which the settlement will stand withdrawn and the applicant bank will proceed for recovery of the entire dues with interest as applicable. The details of said mutual compromise reached between the parties is as under :

(a) Rs.5.00 crore out of which Rs.3.25 crore have already been deposited in current account (No-lien account) of the purchaser and the balance amount of down payment (1.75 Cr.) will be paid on convey of approval of compromise i.e. today. Down payment Rs.5.00 crore will be adjusted in the loan account immediately.

(b) Balance amount of Rs.12.00 crores will be paid within 3 months or earlier in lump sum.

(c) Out of compromise sum (Rs.17.00 crores) outstanding BG amount (Rs.56.68 lacs) will be kept aside (in sundry creditors) to meet the liability if arises in future.

(d) As the entire compromise sum is being paid out by buyer M/s R.R. Iron & Steel Pvt. Ltd. post dated cheques of Rs.12.00 crores in respect of aforesaid balance amount will be obtained from the buyer M/s R.R. Iron & Steel Pvt. Ltd.

(e) As the entire compromise sum is being paid by the buyer M/s R.R. Iron & Steel Pvt. Ltd. on sale of all charged three collateral securities, a tripartite agreement between all the three interested parties (buyer, guarantor/mortagager & Bank) will be executed and the same will be filed with the relevant court/tribunal to seek further direction of the court/tribunal. If the purchaser M/s R.R. Iron & Steel Pvt. Ltd. deposit aforesaid amount in advance with the applicant bank so the applicant bank release the mortgage property of the defendants and to be execute sale deed in favour of M/s R.R. Iron & Steel Pvt. Ltd. The present defendants/mortgagers not create any objection before Sub-Registrar.

(f) Counter suits and other proceedings if any filed by defendants against the bank should be withdrawn.

(g) In case of any default in payment of the compromise sum or dishonor of any cheque, the concession/relief granted in the settlements will be treated as withdrawn and the bank will have the liberty to proceed for recovery of the entire outstanding dues with interest, cost and expenses as per original application.

(h) On payment of the entire compromise sum as per the terms of settlement all charges/mortgages held against the loan account will be released and a no dues certificate will be issued, if so required.

5. That it is further expressly agreed between the parties that in case the defendant and purchaser commit default in payment of the said compromised/settled amount on any of the due dates mentioned above and/or fail to pay this agreed amount within the stipulated periods as mentioned above, then the applicant shall be entitled to recover their entire balance dues as stated in para 1 above of this application.

5. The DRT passed a consent order/judgment on 14.09.2012 after duly recording the terms of compromise with following operative part :

> "Hence, this consent RC is passed allowing the parties 1 to 3 to the undertaking to liquidate the dues of applicant bank on or before 15-12-2012 as per the terms and conditions stated in clauses – (a) to (h) given in para-2 above. If the dues are not liquidated as per the terms and condition given above, the RO shall on intimation by the applicant Bank execute the RC being issued in favour of the Bank as per law so as to effect the recovery of dues from the defendants No.1 to 5. The tripartite agreement stipulated in Cl. (e) is appended to this order."

6. As per the terms of the compromise, the petitioner was required to deposit the balance amount of Rs.12.00 crores within three months from 14.09.2012, however, when it failed to deposit the amount, the Bank issued a reminder on 12.12.2012 (Annexure P/8), on which the petitioner sought more time from the Bank mentioning that the subject property is standing in the name of minor, therefore, since the bank is not executing the sale deed, permission of the District Court would be required for selling the minor's property and the order from the District Judge is still awaited. The Bank vide its communication dated 26.12.2012 refused to extend the period by referring to clause 2 (g) of the consent order of the DRT wherein only

three months time was allowed for payment of the balance amount.

7. It appears the petitioner deposited only Rs.10.00 crores by 12-1-2013 and failed to deposit the entire amount, therefore, as per the consent order of the DRT, the settlement was treated as withdrawn and the bank proceeded to recover the entire outstanding dues from the borrower. In the meanwhile, the Bank assigned the present loan transaction, amongst several other transaction to one M/s Pegasus Assets Reconstruction Private Limited (for short 'Pegasus') for which, an agreement between the Bank and Pegasus was entered on 27.09.2013. It is common ground that Pegasus has been joined as a party in the pending recovery/execution proceeding before the DRT.

8. I have heard Shri Bajaj, learned counsel for the petitioner and Shri Bhaduri, learned counsel for the Bank at quite a length and perused the documents.

9. Although learned counsel appearing for both the parties have raised manifold submissions in support of their respective cases, however, before proceeding to deal with those submissions, it is condign to consider whether at all this Court should decide the petition on merits or relegate the petitioner to approach the DRT. While entertaining this petition, it appeared to the Court that this petition can be

heard and this Court permitted the petitioner to withdraw the application filed by it before the DRT. However, having examined the matter and having anxious thought to the entire gamut of facts, the following would emerge :

a) The recovery proceeding/execution proceeding is pending consideration before the DRT.

b) Neither the borrower M/s Vijeta Construction Company nor the assignee i.e. M/s Pegasus Assets Reconstruction Private Limited are parties before this Court.

c) The settlement between the parties to which the petitioner impliedly agreed by depositing the amount has taken shape of a consent order by the DRT.

d) The loan transaction and the secured property having already been transferred to the assignee and the said assignee having stepped into the shoes of the Bank, there will be considerations emanating from different contracts, *firstly;* between the petitioner, borrower and the Bank and *secondly;* between the Bank and the assignee and *thirdly;* the impact of consent order.

10. Therefore, in the considered opinion of this Court, it would be appropriate that the matter is considered by the DRT rather than this Court venturing into deciding the issue like this in writ jurisdiction.

11. For the foregoing, the writ petition is disposed of with a direction that the petitioner may approach the DRT by moving an appropriate application for refund of the amount along with interest within a month from today and on such application being filed, the DRT shall consider and decide the same, in accordance with law and on its own merits, as early as possible preferably within a period of six months from the date of submission of application by the petitioner, as aforestated.

12. It is made clear that this Court has not expressed any opinion on the merits of the case and the DRT shall decide the matter, on its own merits, strictly in accordance with law, without treating any observation made in this order, as opinion on the merits of the case.

Sd/-

Judge

Prashant Kumar Mishra

Gowri