$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on : May 01, 2015

\+ W.P.(C) 4319/2015, C.M. Nos. 7832/2015 and 7856/2015

M/S. GOLDSPIN INDUSTRIES LTD. .... Petitioner

Through: Appearance not given.

versus

AUTHORIZED OFFICER, CANARA BANK & ORS. .... Respondents

Through: Mr. Karan Khanna and Ms. Asmita Kumar, Advs. for Canara Bank.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE R.K. GAUBA:

%

In the wake of action initiated by the respondent bank having treated the loan account of the third respondent as Non Performing Assets (NPA), the possession of the mortgaged property comprised in land admeasuring 16 kanal 4 Marla, bearing khewat No.140, killa no. 78/6, 7/1 (5-18)' 78/14/2 (1-13), 15(4-16) & killa No. 78/6, 7/1 (2-5) surrounded by eight feet wall situated in village – Nangal Kalan, Sonepat, Haryana (hereinafter referred to as "the subject property") was taken over in exercise of the authority vested in the mortgagee (respondent bank) in terms of Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as "the SARFAESI Act") divesting the petitioner of its possession on 30-01-2009. The petitioner filed an appeal under Section 17 of the SARFAESI Act, registered as SA No. 19/2009, before Debt Recovery Tribunal – I, Chandigarh (hereinafter referred to as "the DRT"). The said SA was dismissed by the DRT by judgment dated 23-09-2013. The petitioner preferred appeal bearing no. 117/2013 before Debt Recovery Appellate Tribunal (hereinafter referred to as "the DRAT"), which was dismissed by the said appellate authority by order dated 31-03-2015. It is the said order which is assailed through the writ petition at hand, *inter-alia*, praying for a writ of certiorari seeking the order of DRAT to be quashed and for a direction to the respondent bank to accept the balance amount under the Tripartite Agreement leading to issuance of Sale Certificate in respect of the subject property in its favour. It may be added here that the Tripartite Agreement, thus referred, was executed on 03-01-2003.

2. It is necessary to trace the background facts at some length.

3. The third respondent had availed credit facilities from the respondent bank and had mortgaged the subject property in that context. The said third respondent (borrower) failed to repay its liability to the bank which impelled the latter to file the recovery suit that eventually resulted in judgment dated 14-05-1997 granting a decree for ₹70,46,669/- with interest @ 17.5% p.a. with quarterly rests. The bank took out execution proceedings in RC No.

336/01. It is during the pendency of the said proceedings that the petitioner entered the scene.

4. An agreement was executed between the petitioner and the borrower on 31-12-2001. The dues in terms of the loan liability, then stated to be of ₹90 (ninety) lacs, were taken over by the petitioner in consideration of which the borrower agreed to transfer the title in the subject property in favour of the former. In terms of the said agreement, the petitioner deposited with the respondent bank an amount of ₹30 (thirty) lacs and was, thereafter, put in possession of the subject property. It is the claim of the petitioner that it installed its own machinery worth ₹1.25 crores and then maintained the property with its own funds. It may be added here that DRT in its order dated 23-09-2013 has indicated it to be an undisputed fact that at the relevant point of time, the property was in use and possession of M/s. Hindustan Petro Foams inducted as a tenant by the petitioner.

5. The agreement dated 31-12-2001 was followed by an arrangement in the form of what has been referred as the Tripartite Agreement executed on 03-01-2003 by the petitioner, the borrower and the respondent bank. It appears that in terms of the said Tripartite Agreement, the petitioner was to pay to the respondent bank, in addition to ₹30 (thirty) lacs already paid in terms of agreement dated 31-12-2001, the balance amount of ₹60 (sixty) lacs on or before 30-01-2003. It is also a common ground between the parties that, in further compliance of the Tripartite Agreement dated 03-01-2003, the petitioner deposited another amount of ₹3 (three) lacs with the bank before the DRT. Concededly, the balance amount of ₹57 (fifty seven)

lacs was neither tendered nor deposited by the petitioner with the respondent bank within the time specified or thereafter.

6. As noted earlier, on 30-01-2009 the respondent bank took possession of the subject property in terms of the process taken under Section 13(4) of SARFAESI Act. On 06-02-2009, the petitioner came before the DRT with its application under Section 17 of the Act.

7. It appears from the material on record that the bank was also pursuing the execution of the recovery certificate before the Recovery Officer. The Recovery Officer had taken steps to put the subject property to auction. The petitioner appeared in those proceedings to file objection, *inter-alia*, with reference to the Tripartite Agreement. The respondent bank contested. The objections were dismissed by the Recovery Officer and the property was put to auction by order dated 21-09-2005.

8. It appears that the respondent bank even while pursuing the matter before the Recovery Officer, as also under the SARFAESI Act, approached the petitioner by letter dated 16-06-2005 offering to waive the interest on one time settlement (OTS) for the period 17-03-2001 till 31-03-2005 requiring deposit of ₹45 (forty five) lacs instead of ₹57 (fifty seven) lacs which was outstanding at that stage on account of the petitioner. The petitioner claims to have accepted the said OTS by submitting letter dated 02-07-2005.

9. In the SA submitted under Section 17 of the SARFAESI Act before the DRT, the petitioner raised its grievance against the bank on the ground that it had misled the petitioner by making false representations with regard

to the encumbrances. It was alleged that the subject property was part of the area comprising about 300 acres of land in which respect the Government of Haryana had initiated action under the Land Acquisition Act. It is claimed by the petitioner that it learnt about the said acquisition proceedings only on 27-01-2003 and later also learnt that on 24-11-2004 the Government of Haryana had passed the final Award. It is the case of the petitioner that against the backdrop of such revelation, it had sent several letters to the respondent bank seeking clarity and also to ascertain as to where to deposit the balance amount of ₹45 (forty five) lacs in terms of the OTS that had been offered. It is also alleged by the petitioner that in the wake of CBI investigation, it had come to its knowledge that the third respondent had given the subject property earlier on lease to another entity (M/s. Dunroll Industries Ltd.) which Company had taken loan from Oriental Bank of Commerce (for short "OBC"). On failure to pay the outstanding dues by the said entity (M/s. Dunroll Industries Ltd.), OBC had filed recovery proceedings and since the said other borrower had gone into liquidation, the Official Liquidator had visited the subject property on 20-10-2006 to take over its machinery.

10. The DRT was not impressed with the contentions raised and, thus, dismissed the SA submitted by the petitioner, *inter-alia*, observing that the benefit under the Tripartite Agreement could be claimed only if the terms and conditions thereof had been complied with and since there was no tender of the balance amount within the specified period (on or before 31-01-2003) no consequences in favour of the petitioner could follow. The DRT rejected the contention with regard to the other encumbrances created

by the borrower *vis-à-vis* the subject property on the ground the bank not being a party thereto could not be held responsible.

11. In the appeal before the DRAT, certain further facts came to be revealed. It has been noted in the order dated 31-03-2015 that the bank had sanctioned OTS on 05-07-2014 for a sum of ₹250 (two hundred fifty) lacs. It is not disputed that no payment was made pursuant to the said fresh OTS even though the petitioner had been given opportunity to match the amount of ₹250 (two hundred fifty) lacs for which the bank was ready to settle its claim with the borrower. The petitioner had submitted acceptance on the condition that the amount of Rs. 30 lacs earlier deposited would be adjusted against the said settlement amount. Against this backdrop, the respondent bank was permitted to sell the subject property by public auction.

12. The DRAT found no merit in the appeal and rejected it though giving to the petitioner a right to participate in the open auction. It is in this context that the petitioner submitted before the DRAT that it would instead seek refund of the amount of ₹30 lacs deposited by it with the bank under the Tripartite Agreement. The DRAT drew curtain on the proceedings before it observing that the petitioner is at liberty to make an application with regard to claim for refund before the appropriate forum, in accordance with law.

13. In the writ petition filed before this Court against the order dated 31-03-2015 of DRAT, the petitioner again harps on the Tripartite Agreement dated 03-01-2003. We are not impressed with the submissions made. The Tripartite Agreement admittedly included a stipulation that the balance amount would be paid on or before 31-01-2003. The amount was not

deposited. The petitioner seeks to justify non-payment at that stage on the ground it had learnt about the on-going land acquisition proceedings initiated by the Government of Haryana. It also refers to the alleged misrepresentation by the third respondent, as also by the bank, on the ground the factum of land acquisition proceedings and the transaction involving the third entity were withheld. On both scores, the petitioner must blame itself. While entering into the agreement with the borrower so as to take over its loan liability, on 31-12-2001, it was the obligation of the petitioner to gather the entire set of facts particularly about encumbrances, if any, other than the outstanding liability towards the respondent bank, existing on such date. The principle of *caveat emptor* squarely applies and has been rightly invoked to reject the argument of the petitioner. At any rate, such grievances of mis-information would hold good only against the third respondent but definitely not against the respondent bank. The respondent bank had nothing to do with the transaction involving the third entity (M/s. Dunroll Industries Ltd.).

14. The balance amount in terms of the Tripartite Agreement dated 03-01-2003 was not tendered within the specified time or reasonably soon thereafter. The petitioner by its own conduct, abandoned the said Tripartite Agreement by entering into further parleys with the bank to the extent of conditional acceptance to a fresh OTS offered by the bank to settle the account for ₹250 (two hundred and fifty) lacs, to which extent the liability of the borrower had risen over the period on account of the accrual of interest. The condition of the petitioner for adjustment of ₹30 (thirty) lacs earlier deposited, in terms of its agreement with the borrower on 31-12-2001, was

not acceptable to the bank. Such condition cannot be imposed by the petitioner on the bank since it was not party to the agreement dated 31-12-2001 pursuant to which such deposit had been made by the petitioner with the bank in the name of the borrower.

15. In above facts and circumstances, the application under Section 17 of the SARFAESI Act has been rejected by the two forums below for sound reasons. We do not find any merit in the writ petition. No liberty beyond what has been given by the DRAT to the petitioner by order dated 31-03-2015 needs to be accorded.

16. The petition, thus, fails and is dismissed.

R.K.GAUBA, J

S. RAVINDRA BHAT, J

MAY 01, 2015
sh