Sr. No.221

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18449 of 2015(O&M)
Date of decision:13.12.2016

M/s Recorders & Medicare Systems(P) Ltd.
.........Petitioner

versus

State Bank of Patiala and another
..........Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Munish Malhotra, Advocate for
Mr. Vikram V.Minhas, Advocate
for the petitioners.

Mr. Rakesh Gupta, Advocate
for the respondents.

Rakesh Kumar Jain, J.(Oral)

This petition is filed for quashing the notices issued under Section 13(2) dated 4.03.2015 by respondent No. 1, dated 10.03.2015 by respondent No. 2, Section 13(4) dated 27.07.2015 and for quashing the proceedings initiated under Section 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(for short, 'SARFAESI Act') and also for issuance of a direction in the nature of mandamus to the bank to seek their remedy before the Board For Industrial And Financial Reconstruction(For short, 'BIFR') in terms of the The Sick Industrial Companies(Special Provisions) Act, 1985(for short, 'SICA Act').

In short, the case set up by the petitioner is that the decision has been taken by the BIFR on 31.12.2012 declaring the petitioner as sick company and the matter is pending before the BIFR under Section 18 of the SICA Act. It is also the case of the petitioner that 3rd proviso to Section 15 of the SICA Act cannot be availed by the bank. Initially when the notice was issued in this case, status quo regarding possession was ordered to be maintained and thereafter, the said order was allowed to continue.

Counsel for the petitioners has very fairly produced notification of the Ministry of Finance dated 25.11.2016, issued in exercise of the powers conferred under Section 1(2) of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (for short, 'Repeal Act'), as per which the Central Government has appointed 1.12.2016 as the date on which the provisions of the said Act would come into force. Meaning thereby, the SICA Act shall stand repealed from 1.12.2016. However, it is submitted that the petitioner has a moratorium of 180 days in terms of Section 14(C) of The Insolvency and Bankruptcy Code, 2016 and prayed that the petitioner may be allowed to use the said period of 180 days as a window provided by the legislature for the redressal of his grievances.

On the other hand, counsel for the respondents has referred to a recent decision of the Supreme Court rendered in the case of *M/s Madras Petrochem Ltd. and another vs. BIFR and others;Civil Appeal Nos. 614-615 of 2016 decided on 29.1.2016* in which Supreme Court has held as under:-

> *"54(2) Where a secured creditors of a sick industrial company seeks to recover its debt in the manner provided by Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, such secured creditor may realise such secured debt under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,*

> *2002, notwithstanding the provisions of Section 22 of the Sick Industrial Companies(Special Provisions) Act, 1985."*

It is also submitted that both the respondents are hundred percent secured creditors but it is disputed by counsel for the petitioner.

Be that as it may, it is also submitted that once the SICA Act has been repealed w.e.f. 1.12.2016 under which protection has been sought by the petitioner regarding Section 22 of the said Act, the cause of action in the present petition does not survive as no relief can be given by this Court on the provisions of a Repealed Act.

I have heard learned counsel of both the parties and after examining the available record with their able assistance, am of the considered opinion that in so far as the present petition is concerned, it has become infructuous in view of the fact that Section 22 of the SICA Act is no more available to the petitioner in view of the notification dated 25.11.2016 which has made the Repeal Act applicable w.e.f. 1.12.2016 and thus, petitioner cannot be allowed to take the benefit of stay granted by this Court over and above, the proceedings initiated by the respondents under the provisions of Section 13(2) (4) & 14 of the SARFAESI Act'.

Consequently, this petition is dismissed as having become redundant in view of the Repeal Act. However, the petitioner, may, if so advised, avail its remedies, if provided, in accordance with law somewhere else.

At this stage, counsel for the petitioners has earnestly requested that since liberty has been granted by this Court to avail other remedy in accordance with law, status quo may be allowed to be continued, granted by this Court, atleast for two weeks'.

The prayer made by counsel for the petitioners is not opposed by counsel for the respondents and thus, it is ordered that in case remedy is availed by the petitioner within a period of two weeks' before any other forum, status quo granted by this Court shall remain operative for two weeks' only.

[Rakesh Kumar Jain]
Judge

13th December, 2016
Shivani Kaushik

Whether Speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*