IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16545 of 2017

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M/s Sonali Auto Private Limited through its Managing Director Bidhan Chand Roy, Son of Late Daroga Prasad Roy, Resident at Danghi Complex, N.H.30, New Bypass, Anishabad, P.S.- Gardanibagh, District- Patna.

.... Petitioner

Versus

1. The Union Bank of India through the C. M. D., Vidhan Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai- 400021, Maharashtra, India.
2. The Deputy General Manager, Bihar, Union Bank of India, Nasheman Bhawan, 1st Floor, Mazharool Haque Path, Frazer Road, Patna, District- Patna.
3. The Chief Manager, Union Bank of India, Main Branch, Abhay Bhawan, Frazer Road, Patna, District- Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Vitesh Kumar Singh, Advocate
Mr. D.K.Tiwari, Advocate

For the Respondents : Mr. Rakesh Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 23-11-2017

The present writ petition has been filed for the following reliefs-

(i) For quashing of the initiation of the entire proceeding initiated against the petitioner under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') by way of sending demand notice dated 05.08.2017 as well as the subsequent proceeding which is based on material alteration.

(ii) For directing the respondent concerned to reverse the excess amount, which was charged by the Bank in the CC Account No. 300205010000163 and also respondents may be directed to close the Term Loan Account No. 300206390002414 as on date of deposit of the sale of the collateral security which was sold by the petitioner under pressure of the respondent concerned and a direction may be issued to kept in the CC Account, but respondents have not credited in the loan account which has caused huge loss to the petitioner's firm and further adjust the surplus amount in principle amount of loan.

(iii) For quashing of the declaration of the NPA by the respondent concerned, as the Account has been declared as NPA by the bank in a pure illegal manner just to ruin the business of the petitioner under vested interest.

(iv) For staying all the coercive action including SARFAESI proceeding against the petitioner which is initiated by the bank in a bias and arbitrary manner as the bank being a PSB run under RBI guidelines cannot act arbitrarily.

(v) For declaring the action of the respondents illegal and not sustainable in the eye of law.

(vi) For any other relief/reliefs for which the petitioner is entitled for.

2. Learned counsel for the petitioner submits that the respondent-Bank has acted completely arbitrarily in declaring the Account as NPA and has wrongly applied a higher rate of interest apart from other objections as enumerated in the petitioner's reply to notice under Section 13(2) of the SARFAESI Act.

3. Learned counsel for the respondent-Bank on the other hand, submits that the objection of the petitioner has been disposed of by letter dated 10.10.2017 and thereafter a notice under Section 13(4) of the SARFAESI Act has been issued for taking possession of the secured assets. It is further submitted that the petitioner has a right of appeal before the Debts Recovery Tribunal (DRT) in which the issue relating to NPA may be urged as the Tribunal is fully competent to decide the matter.

4. Having regard to the nature of the grievances and the stand of the parties, this Court is not inclined to interfere in the matter. The issues in

question raised disputed questions of fact which cannot be gone into by this Court in its extra-ordinary writ jurisdiction. A notice under 13(4) of the SARFAESI Act has already been issued and any action taken pursuant thereto by the respondent-bank is appealable before the DRT.

5. The writ petition accordingly stands disposed of with the observation that if the petitioner prefers the statutory appeal before the DRT against the action of the respondent-Bank, the same would be decided on its own merits in accordance with law after considering the objection of the petitioner with regard to the CC Account No. 300205010000163 and Term Loan Account No. 300206390002414 being treated as NPA.

(Vikash Jain, J)

Chandran/Ibrar

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.11.2017
Transmission Date	N.A.