NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 571 of 2017

- M/s Radius Corporation Limited Through Director, Mr. Kailash Soni, S/o Late Gulab Chand Soni, Aged About 56 Years, R/o 3 Latakunk Zaoba Wadithakurdwar, Chrni Road, Mumbai- 400002, Maharashtra

---- Petitioner

Versus

- Reliance Capital Limited A Non Banking Company Incorporated Under The Companies Act, 1956, Through Authorised Signatory, Sunil Pillai, R/o H Block, 1st Floor, Dirubhai Ambani Knowledge City, Koprakhairne, Navi Mumbai- 400710, Maharashtra.

---- Respondent

For Petitioner	Mr. Abhinav Kardekar, Advocate
For Respondent /State	Mr. P.K. Bhaduri, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

9/3/2017

1. Heard.

2. The petitioner has obtained financial assistance from respondent-financial institution. However, since after June 2016, it failed to make payment of the installments, the account has been declared as NPA on 18.09.2016 and the Bank proceeded to invoke Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ["the Act"]) to enforce recovery of

the amount.

3. Mr. Abhinav Khardekar, learned counsel for the petitioner, would submit that the Bank is yet to take steps under Section 13(4) of the Act, therefore, remedy under Section 17 of the Act, is not available. Referring to the judgment rendered by the Division Bench of the High Court of Andhra Pradesh in the matter of **Sravan Dall Mill P. Limited rep. by its Managing Director Vs. Central Bank of India, rep. by its Chief Manager, Corporate Finance Branch and another, AIR 2010 AP 35**, he would submit that when declaration of the account as NPA itself is faulty and contrary to the RBI guidelines, a writ petition would be maintainable.

4. In **United Bank of India Vs. Satyawati Tondon and others, (2010) 8 SCC 110** and **Devi Ispat Limited and another Vs. State Bank of India and others, (2014) 5 SCC 762**, the Supreme court has held that when the Bank proceeds to take steps under Section 13 of the Act, the High Court should not interfere in the matter as the remedy for the person aggrieved lies in approaching the DRT under Section 17 of the Act.

5. Whether or not the act of declaration of the account as NPA is in conformity with the RBI guidelines, will also be a ground available to the petitioner when appeal is preferred under Section 17 of the Act.

6. In **Union of India and others Vs. Major General Shri Kant Sharma and another, (2015) 6 SCC 773,** the Supreme Court has

held that when statutory remedy is available, a writ Court should not interfere.

7. In the case at hand, the Bank has already considered the representation preferred by the petitioner in response to the notice under Section 13(2) of the Act and has sent reply to the petitioner as required under Section 13 (3A)of the Act.

8. In view of the decisions rendered in the matters of **Satyavati Tondon (supra), Devi Ispat (supra)** and **Major General Shri Kant Sharma (supra)**, this Court would not follow the Division Bench judgment of the High Court of Andhra Pradesh rendered in the matter of **Sravan Dall Mill P. Limited (supra)**, which is otherwise not binding on the Court, but has only persuasive value.

9. The writ petition is accordingly dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Shyna