IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.11235 of 2016
Date of Decision: 14.02.2017

M/s Millennium Wires (P) Limited, Jalandhar and another ..Petitioners

versus

Oriental Bank of Commerce, Gurgaon ..Respondent

CORAM: HON'BLE MR JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Manish Jain, Advocate,
with Mr. Mayur Kanwar, Advocate for the petitioners

Mr. A.K.Jaswal, Advocate,
with Mr. P.S.Sobti, Advocate, for the respondent.

<u>RAMENDRA JAIN,</u> J

1. The respondent-bank issued a notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the SARFAESI Act”) on 7.2.2014 to the petitioners. The petitioners filed objections to the same under section 13(3A) of the Act, which were rejected by the respondent-bank and intimation in this regard was given to them vide letter dated 28.4.2014. Thereafter, the respondent-bank issued notice dated 24.5.2014 (Annexure P-6) proposing to declare the petitioners as wilful defaulters. The petitioners also submitted their reply to the said notice vide letter dated 11.06.2014 (Annexure P-7), but the respondent did not take any action. In the meantime, the petitioners wrote several letters to the respondent-bank for restructuring of their loan amount and also for issuance

of "No Objection Certificate" with respect to sale of properties mortgaged with the respondent-bank. The respondent-bank accepted the request made by the petitioners for issuance of "No Objection Certificate" in regard to sale of properties and restructuring of the loan amount. Resultantly, the properties of the petitioners were sold out and the sale proceeds were deposited with the bank. Vide letter dated 28.11.2014 (Annexure P-8), the respondent-bank also enhanced the credit facilities in favour of the petitioners. Thus, the proceedings initiated by the respondent-bank under the SARFAESI Act as also the proposal to classify the petitioners as wilful defaulters appeared to have been dropped. The respondent-bank also issued possession notice dated 03.02.2016 (Annexure P-9) under the SARFAESI Act with respect to the two of the properties of the petitioners. The petitioners, however, made their sincere efforts for settlement of the loan amount and requested the respondent-bank for issuance of "No Objection Certificate" for sale of the residential property. The respondent-bank, vide letter dated 23.2.2016 (Annexure P-10) advised the petitioners to submit a revised representation along with an amount of Rs.10.00 lac. However, to the utter dismay of the petitioners that the respondent-bank, on one hand, had directed them to submit a revised proposal vide letter dated 23.2.2016 (Annexure P-10) but on the other hand, issued notice dated 24.2.2016 (Annexure P-1) on the very next day, proposing to declare them the willful defaulters. Being aggrieved, the petitioners had filed Civil writ Petition No.6368 of 2016 challenging the notice dated 24.2.2016 (Annexure P-1), issued by the respondent-bank, which was disposed of vide order dated 04.04.2016 (Annexure P-3),directing the respondents to grant the petitioners an opportunity of being heard and furnish all necessary documents before deciding whether or not the petitioners were liable to be declared as willful defaulters. In compliance of the said order, the respondent-bank, vide letter dated 20.4.2016 (Annexure P-2), supplied the documents to the petitioners as asked for. However, the request of the petitioners to present its case at the time of personal hearing before the Grievance Redressal Committee along with an advocate and/or a financial consultant was turned down stating that the committee was not a judicial forum vide letter dated 20.4.2016 (Annexure P-2). Consequently, the petitioners filed Civil Misc. Application no.5822 of 2016 in CWP No. 6368 of 2016 seeking clarification of the order dated 04.04.2016 (Annexure P-3) in the light of the said letter dated 20.4.2016 (Annexure P-2) issued by the respondent-bank. However, vide order dated 24.5.2016 (Annexure P-5), the said application was disposed of granting liberty to the petitioners to challenge any action taken including refusing them an opportunity of being represented by lawyer (s).

2. Now invoking extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India, the petitioners have prayed for quashing the impugned letter dated 24.2.2016 (Annexure P-1) issued by the respondent-bank proposing to declare the petitioners as "wilful defaulters." The petitioners have further prayed for quashing the impugned notice dated 20.4.2016 (Annexure P-2) issued by the respondent-bank, whereby the request of the petitioners to be represented before the Grievance Redressal Committee through an advocate and/or a financial consultant was not acceded to. Prayer for issuance of a writ of mandamus has also been sought for directing the respondent-bank to permit the petitioners to be represented by an advocate and/or a financial consultant before the Grievance Redressal Committee.

3. The respondent-bank filed written statement controverting the pleas taken up by the petitioners and re-iterated its stand that the respondent- bank is intending to declare the petitioners as wilful defaulters as per the guidelines formulated by the Reserve Bank of India. In reply to sub para (c) of para 3 of the writ petition, it is specifically asserted that the respondent-bank supplied the documents as asked for by the petitioners and further advised the petitioners to submit their grievance, if any, or represent for personal hearing within 15 days from the receipt of the letter dated 20.4.2016 (Annexure P-2). However, the petitioners were informed that they will not be allowed to be represented through an advocate and/or a financial consultant. The petitioners availed loan facilities from the respondent-bank but they cannot escape from their liabilities by raising a plea that a fraud has been committed with them by the overseas suppliers. The respondent-bank has also issued notices to the petitioners under section 13(2) of the SARFAESI Act. In response thereto, the petitioners filed their objections, which were considered and rejected vide letter dated 28.4.2014. It has been further specifically submitted that the petitioners failed to regularise their loan accounts and therefore, their loan accounts were declared as NPA as per the guidelines laid down by the Reserve Bank of India. The respondent-bank has specifically submitted that against the action initiated by it under SARFAESI Act, the petitioners filed SA before the Hon'ble DRT-II, Chandigarh, where the counsel for the petitioners urged that the petitioners are ready to pay a sum of Rs.3,50,00,000/- subject to the condition that sale of residential property is stayed. The sale of confirmation was, accordingly, stayed subject to deposit of the aforementioned amount by the petitioners, but on the next date of hearing, the SA was dismissed as

withdrawn on failure to make the payment of the said amount. The respondent-bank has supplied the documents as requested by the petitioners, which has also been admitted by them in para no. (c) of para 3 of the writ petition. In the end, the respondent-bank has prayed for dismissal of the writ petition.

4. Learned counsel for the petitioners, at the very out-set, submits that the primary prayer now is that the petitioners be allowed to be represented by an advocate and/or a financial consultant at the time of personal hearing by Grievance Redressal Committee. It was pointed out that the controversy qua representation by a borrower before Redressal Grievance Committee through an advocate and/or a financial consultant has been set at rest for all intents and purposes by a decision of the Delhi High Court in Kingfisher Airlines Limited versus Union of India and others W.P. (C) 5532 of 2014, decided on 28.08.2014. The said decision has been upheld in Letters Patent Appeal in Punjab National Bank versus Kingfisher Airlines Limited, 2015 SCC OnLine Delhi 14128, which fact, during the course of hearing, has not been disputed by the learned counsel for respondent no.1-bank.

5. After giving our thoughtful considerations to the submissions raised by the learned counsel for the parties, we are of the view that the writ petition merits acceptance.

6. The action of the respondent-bank in declining the right to be represented by an advocate before the Redressal Grievance Committee cannot be countenanced, keeping in view the law laid down by a Division Bench of the Delhi High Court in Punjab National Bank's case (supra). A relevant portion of the said judgment is extracted here-in-below:

> "(LL) We are therefore of the opinion that the GRC satisfies the tests prescribed to qualify as a Tribunal.
>
> (MM) Once the GRC is held to be Tribunal within the meaning of Section 30 of the Advocates Act, the advocates would have a right to practice before it and axiomatically the borrower before such GRC will have a right to engage and avail the services of an advocate."

7. For the reasons recorded hereinabove, the writ petition is allowed. Consequently, the letter dated 24.2.2016 (Annexure P-1) issued by the respondent-bank and notice dated 20.4.2016 (Annexure P-2) issued by the respondent-bank, to the extent it debars the advocate and/or a financial consultant to represent the case before the Grievance Redressal Committee, is quashed. The Grievance Redressal Committee shall now proceed further by permitting the borrower to be represented by an advocate or by a financial consultant and pass orders in accordance with law.

(RAMENDRA JAIN)
JUDGE

14.2.2017
VK

(AJAY KUMAR MITTAL)
JUDGE

1.	Whether reasoned/speaking	Yes/No
2.	Whether reportable	Yes/No