

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.16310 of 2017.

Date of Decision: August 02, 2017

M.D. Frozen Food Exports Pvt. Ltd. & othersPetitioners

versus

Hero Fincorp Limited and anotherRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDHIR MITTAL.

Present: Mr.Nitin Kant Setia, Advocate, for the petitioners.

Mr.Akshay Bhan, Senior Advocate, with
Mr.Alok Mittal and Mr.Divij Kumar, Advocates,
for respondent No.1.

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Surya Kant, J. (Oral)

The petitioners are the borrowers to whom financial facility of limit of Rs.6.50 crores in the nature of secured term loan and working capital term loan was advanced by respondent No.1-Institution. As the petitioners defaulted in payment, the 1st respondent initially initiated arbitration proceedings in terms of the loan agreement dated 30.09.2015. Later on, when the 1st respondent was notified as a 'financial institution' within the meaning of Section 2(m) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the 2002 Act'), it invoked Section 13(2) of the 2002 Act and called upon the petitioner-borrowers to discharge their loan liability within the stipulated period. Thereafter, measures under Section 13(4) of the 2002 Act

to take possession of the secured assets. The said application has been allowed by the District Magistrate, Gurugram vide the impugned order dated 25.04.2017/01.05.2017 (P-10), directing the Tehsildar-cum-Executive Magistrate, Gurugram to take physical possession of the assets. A further direction has been issued to the Deputy Commissioner of Police (East/South), Gurugram to direct the concerned SHO to provide necessary police assistance to the authorized officer of the Bank. The borrowers being aggrieved by the order have approached this Court.

[2] Two-fold contentions are raised on behalf of the petitioners, namely, (i) since the respondent-1-financial institution opted to initiate arbitration proceedings, it cannot, without awaiting the outcome of those proceedings, invoke its discretion under Section 13(2) of the 2002 Act, and (ii) the 1st respondent was not a 'financial institution' within the meaning of Section 2(m) of the 2002 Act at the time when the loan was advanced, hence the subsequent acquisition of such status would not entitle it to invoke the provisions of 2002 Act. In support of the 1st contention, reliance is placed on a Full Bench decision of the Hon'ble Delhi High Court in HDFC Bank Limited versus Satpal Singh Bakshi, 2012 (35) RCR (Civil) 839.

[3] Learned counsel for respondent No.1-financial institution, on the other hand, points out that these very pleas were taken by the petitioners before the Delhi High Court in the case ARB.A. (COMM.) 15/2017 (M.D. Frozen Foods Exports Private Limited and others versus Hero Fincorp. Limited) and their appeal under Section 37(2)(b) of the Arbitration & Conciliation Act, 1996 has since been dismissed vide judgment dated 13.07.2017.

[4] Having heard learned counsel for the parties and after going through the record, we do not find any merit in this writ petition. The Full Bench of Hon'ble Delhi High Court in HDFC Bank's case (supra) has laid down that where the arbitration proceedings have been initiated for the recovery of outstanding dues, the creditor cannot institute parallel proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the 1993 Act'), for the arbitration is recognized as an alternate to the Civil Court and so is the status of the Tribunal constituted under the 1993 Act to decide certain type of cases which used to be earlier decided by the Civil Courts.

[5] Section 13(1) of the 2002 Act, on the other hand, provides in no uncertain terms that any security interest created in favour of a secured creditor can be enforced **without intervention of the Court or Tribunal by such creditor in accordance with the provisions of this Act**. The recovery measures to be invoked by a secured creditor under the 2002 Act are thus independent of the measures as may be available for the recovery of such amount with the intervention of a Court or Tribunal.

[6] Section 35 of the 2002 Act removes the doubts, if any, when it provides that “provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law...” In view of the over-riding effect given to the provisions of the 2002 Act, the pendency of arbitration proceedings between the parties cannot curtail the measures available to a secured creditor to enforce the secured interest created in his favour.

[7] The 1st respondent admittedly was notified as 'financial institution' within the meaning of Section 2(m) of the 2002 Act before it initiated measures under Section 13(2) of the Act. The second objection raised by the petitioners is also, therefore, misconceived.

[8] Be that as it may, the powers of a District Magistrate under Section 14 of the 2002 Act are neither quasi-judicial nor adjudicatory in nature. The District Magistrate does not adjudicate the lis between the parties or any relatable issues. The District Magistrate is obligated to satisfy himself in respect of the compliance of requirements contained in the first proviso to Section 14(1) of the 2002 Act and once the needful has been done, the District Magistrate is obligated to provide assistance for taking physical possession of the secured assets.

[9] It is equally well settled that the action under Section 14 of the 2002 Act is a measure in furtherance to Section 13(4) of the 2002 Act and the Statute provides an efficacious alternative remedy to a person aggrieved by any of such measures, to approach the Debt Recovery Tribunal under Section 17 of the 2002 Act. The petitioners having failed to make out an exceptional case to entertain the writ petition directly, we see no reason for not relegating them to the alternative remedy under Section 17 of the 2002 Act.

[10] That apart, the petitioners in their Arbitration Appeal before the Delhi High Court did raise both the contentions and having failed to persuade that Court, they cannot be permitted to re-agitate those very issues under the guise of territorial jurisdiction of this Court to examine the legality of the action taken by the District Magistrate, Gurugram under Section 14 of the Act.

[11] For the reasons afore-stated, we do not find any merit in this writ petition.

[12] Dismissed.

[SURYA KANT]
JUDGE

August 02 , 2017
mohinder

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No