IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-COM No.20 of 2017 (O&M)
Date of Decision:12.05.2017

M/s S.R. Foils and Tissues Limited and others .....Petitioners

vs.

Religare Finvest Limited and another .....Respondents

CORAM: HON'NLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate,
for the petitioners.

Mr. Ashish Gupta, Advocate and
Mr. Sanjeev Singh, Advocate, for the respondents.

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<u>Rakesh Kumar Jain (Oral)</u>

This petition is directed against notice dated 19.8.2016 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, `the Act') and notice dated 03.01.2007 issued under Section 13(4) of the Act and all other conseuqential proceedings arising therefrom.

Petitioner No.1 was granted two credit facilties against the property (LAP) by Religare Housing and Development Finance Limited by mortgaging two properties (two flats), namely, D-43, Tower-D, 4th floor, Raheja Atlantis, NH-8, Sector 31-32A, Gurgaon and Flat No.D-54 Pinnacle, DLF City Phase-V, Gurgaon. The petitioners also obtained loan from Religare Finvest Limited (respondent No.1). The details of the loan obtained by the petitioners is depicted by way of chart which is reproduced as under:-

Sr. No.	LOAN DETAILS	AMOUNT	DISBURSEMENT DETAILS
1	Loan Agreement No.XMORPNG00016051 sanctioned on 30.03.2011	Sanctioned amount is Rs.40,00,000/-	Disbursal is done on 30.11.2010 vide Cheque No.010025 for Rs.39,55,880/-
2	LoanAgreement No.XMORPNG00016038 sanctioned on 10.08.2011	Sanctioned amount is Rs.62,00,000/-	Disbursal is done on 30.11.2010 vide Cheque No.010055 for Rs.61,31,614/-
3	LoanAgreement No.XMORPNG00034810 sanctioned on 23.12.2011	Sanctioned amount is Rs.95,37,661/-	Disbursal is done on 09.12.2011 vide Cheque No.029981 for Rs.95,37,661/-
4	LoanAgreement No.XMORPNG00034795 sanctioned on 23.12.2011	Sanctioned amount is Rs.1,01,60,164/-	Disbursal is done on 09.12.2011 vide DD No.0006266 for Rs.99,00,000/-

The case of the petitioners is that they have not mortgaged any poroperty for the purpose of obtaining loan from respondent No.1 whereas counsel appearing for respondent No.1 has submitted that the petitioners had mortgaged Flat No.D-54 Pinnacle, DLF City Phase-V, Gurgaon for obtaining loan shown in the aforesaid chart.

According to the petitioners, respondent No.1 initiated arbitration proceedings in respect of both the agreements, dated 10.8.2011 by which the petitioner was disbursed ₹61,31,614/- and dated 23.12.2011 by which the disbursement was made of ₹99 lacs. The arbitrator decided in favour of respondent No.1 by award dated 20.6.2015 in respect of agreement dated 10.8.2011 and award dated 20.2.2016 in respect of agreement dated 23.12.2011.

The petitioners filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, `the Arbitration Act') before the ADJ, Saket District Court, New Delhi, along with an application for stay. The stay was granted on 7.5.2016. While these proceedings were going on, the Ministry of Finance (Department of Financial Services)

Government of India issued a notification dated 5.8.2016 in exercise of the powers conferred in sub-clause (iv) of clause (m) of sub-section (1) of Section 2 read with Section 31A of the Securitisation and Reconstruction of Fianancial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), specificying the non-banking financial companies, which were covered under clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and registered with Reserve Bank of India having asset of five hundred crore rupees and above as per their last audited balance sheet, as "financial institution". It was also directed in public interest that all provisions of the said Act would apply to such financial institutions with the exception that the provisions of sections 13 to 19 shall apply only to such security interest which is obtained for securing repayment of secured debt with principal amount of rupees one crore and above. Respondent No.1, after the said notification, issued a notice under Section 13(2) of the Act to the petitioners on 19.8.2016. The petitioners filed objections/ reply under Section 13(3-A) of the Act alleging that respondent No.1 cannot have the recourse to two remedies as it had already had an award in their favour under the Arbitration Act and the notification is not applicable because the principal loan amount disbursed to the petitioners was less than ₹1 lac in the particular contract. It is submitted that although it was required on the part of the respondents to have decided the objections in terms of the provisions under Section 13(3-A) of the Act but respondent No.1 published the possession notice under Section 13(4) of the Act and simultaneously filed the execution of the award before the Executing Court compelling the petitoners to approach this Court.

Leanred senior counsel appearing on behalf of the petitioners has submitted that respondent No.1 has illegally and erroneously relied upon the notification dated 5.8.2016 because it applies only to the secured debt in which the principal amount is more than ₹1 crore. He has submitted that the petitioners had taken loan by way of separate agreements dated 10.8.2011 and 23.12.2011 in which the disbursed amount by way of cheque No.010055 dated 30.11.2010 was ₹61,31,614 and DD No.0006266 dated 9.12.2011 was ₹99 lacs. It is, thus, submitted that in both the agreements, even if the security interest, as stated by the respondents, is the same property, namely, Flat No.D-54 Pinnacle, DLF City Phase-V, Gurgaon, though it is denied to have been mortgaged, yet both the amount cannot be clubbed for the purpose of taking proceedings under Section 13 of the Act.

Counsel for the respondents submits that the security interest is the same for both the loan agreements, therefore, the amount disbursed to the petitioners under both the loan agreements have been clubbed which is undisbutably more than ₹1 crore towards the principal amount, therefore, the argument of the petitioners is misconceived.

Counsel for the petitioners has submitted that the petitioners may obtain various loans by mortgaging the same property. It is for the secured creditor to see as to whether he would advance loan on the same property or not but every agreement has a separate entity and the amount disbursed in the separate agreements cannot be clubbed together.

I have heard learned counsel for the parties and perused the record with their able assistance. The only issue involved in this case is in regard to the interpretation of the notification dated 5.10.2016 as to whether the respondents can be allowed to club the amount disbursed on various loan agreements in order to cross the hurdle of the principal amount of ₹1 lac for the purpose of intiating the proceedings under Section 13 of the Act. The answer is not far fetched because both the loan agreements are independent loan agreements . It is altogether a different matter that the secured creditor has advanced the loan on the same security to the borrower. There is no indication also in the notification that if the same property is mortgaged for obtaining various loans, the principal amount can be clubbed so that the proceedings under Section 13 can be initiated after crossing the hurdle. Thus, I am of the considered opinion that the notice issued under Section 13 of the Act by the respondents by clubbing the principal amount, disbursed to the petitioner, is totally illegal and erroneous and cannot be accepted. If the clubbing is not permitted then the amount disbursed to the petitioners under both the loan agreements is less than ₹1 crore and, therefore, notification dated 5.8.2016 is not at all applicable.

In view thereof, I find that the present petition is meritorious and the same is hereby allowed. The proceedings initiated under Section 13 of the Act and notice issued under 13(2) of the Act as well as the subsequent proceedings arising therefrom are hereby set aside. Since I am only deciding the issue with regard to the proceedings initiated under Section 13 of the Act, therefore, it would not affect the proceedings initiated by the respondents on the basis of the arbitral award.

May 12, 2017 **(Rakesh Kumar Jain)**
renu **Judge**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No