

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-COM No.64 of 2017
Date of Decision: 29.03.2017

M/s CGM Alloys Pvt. Ltd. and others

....Petitioners

Vs.

Bank of Baroda

....Respondent

CORAM: HON'BLE MR.JUSTICE R.K. JAIN

Present: Mr.Aalok Jagga, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is for seeking quashing of the order dated 8.03.2017 passed by DRT-III, Chandigarh [for short 'the Tribunal'] in SA No.28 of 2017 by allegedly recording a finding contrary to Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 [for short 'the Rules'].

In short, this petition is filed by the company (borrower) and the guarantors. The company had availed CC limit of ₹4.50 crores which was proposed to be enhanced to ₹7 crores. On 5.8.2015, the respondent-bank informed the petitioners that its account has been provisionally classified as NPA on 31.7.2015. Thereafter on 9.10.2015, the bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the Act'] claiming ₹7,43,76,675.05 as on 1.10.2015. The said notice was given

not only to the borrower but its copy was also forwarded to the guarantors. As per the procedure prescribed, in case of issuance of notice under Section 13(2) of the Act, the remedy is available to file objections under Section 13(3A) of the Act by the borrower, which has to be decided by the Secured Creditor within time prescribed. The objections were admittedly filed by the borrower only and not by the guarantors. The said objections were rejected by the bank on 8.2.2016. The possession notice was issued under Section 13(4) of the Act and thereafter a notice under Section 13(4) read with Section 14 of the Act was served upon the borrower's representative, namely, Jagjeet Singh s/o Mewa Singh. It is also not in dispute that the notice issued under Section 14 of the Act was also got pasted at the conspicuous place of the borrower and also got published in two newspapers having circulation in the area. The petitioners filed Securitization Application (SA) No.410 of 2016 to challenge the validity of the proceedings initiated under Section 14 of the Act. It was argued before the Tribunal that the Secured Creditor/respondent-bank has violated the mandatory provisions of Rule 8(1) of the Rules as the notice, required to be served under Section 14 of the Act, has not been delivered to the borrowers but has been delivered to the authorized representative. The petitioners had relied upon a decision of the Supreme Court rendered in the case of ***“Mathew Varghese Vs. M. Amritha Kumar”*** 2015 AIR (SC) 50. The Tribunal however, rejected the contention of the petitioners on the ground that the notice issued under Section 13(4) of the Act has been acknowledged by the authorized representative of the petitioners and therefore, there was no

requirement of sending it through registered post to the company separately.

Learned counsel for the petitioners has submitted that it was incumbent upon the Secured Creditor/Bank to have followed the mandatory provision of Rule 8(1) of the Rules and notice issued/delivered to the authorized representative of the company/borrower would not tantamount to the notice issued/delivered to the borrower/company. He has further argued that it was also incumbent upon the Secured Creditor to have served the notice to the guarantor and the borrower as the definition of 'borrower' provided under Section 2(f) of the Act includes the guarantor.

I have heard learned counsel for the petitioners and examined the available record with his able assistance.

In order to appreciate his argument, it would be relevant to refer to Rules 8(1) & (2) of the Rules, which are reproduced as under: -

8. Sale of immovable secured assets.-

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspaper] one in vernacular language having sufficient circulation in that locality, by the authorised officer.”

Since the word ‘borrower’ has been used in Rule 8(1) of the Rules, therefore, it is also required that the definition of ‘borrower’ be also referred to, which is reproduced as under: -

“(f) “borrower” means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance.”

No doubt that Rule 8(1) of the Rules prescribes that if secured asset is an immovable property, then the authorised officer shall take the possession by delivering a possession notice to the borrower and by affixing the possession notice on the outer door or at

such conspicuous place of the property. Rule 8(2) of the Rules further provides that the possession notice shall also be published not later than seven days in two leading newspapers.

Since, there is no dispute about the affixation and publication of notice, therefore, the Court has to examine only as to whether there is any illegality committed by the respondent in not delivering the possession notice to the borrower itself i.e. the company and the guarantors or it was suffice to deliver the notice to the authorized representative of the company. There is also no dispute that copy of the notice under Section 13(2) of the Act was also served upon the guarantors but it is also not denied that the guarantors remained silent in raising any objection to the said notice as the objections were only filed/submitted by the borrower i.e. the company. The guarantors remain dormant as they were not apparently effected with the notice issued to the company under Section 13(2) of the Act and, therefore, there was no participation of the guarantors till the property was put to auction. It was thereafter when the property was put to auction and according to the petitioner, auctioned at a throw away price, the entire action has been taken in the name of the guarantor to set at naught the action proceedings. Thus, it was not necessary to serve the notice required under Rule 8(1) of the Rules to the guarantors in these facts and circumstances.

Insofar as the notice to the borrower is concerned, there is no dispute that it was delivered to the authorized representative of the borrower and there is no evidence brought on record that the said authorized representative did not inform the company about the

notice, meaning thereby the notice was within the knowledge of the company and therefore requirement of Rule 8(1) of the Rules is satisfied. It would have been an altogether different situation had the said authorized representative not informed the borrower/company about the notice and kept the notice with himself keeping the company in dark but once there is no averment that the company was kept in dark by the authorized representative, therefore, requirement of Rule 8(1) was duly complied with as the company/borrower was duly informed by the said authorized representative and now it cannot merely rely upon the technical language used in Rule 8(1) of the Rules. Accordingly, I am of the considered opinion that in the above facts and circumstances, notice required under Rule 8(1) of the Rules was appropriately delivered as requirement of notice is to inform the party concerned/the borrower that as to what action is going to be taken against it at the instance of the Secured Creditor.

In view of the aforesaid observations, I do not find any error in the impugned order passed by the Tribunal and the present petition is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

29.03.2017

Vivek

Whether speaking/reasoned Yes/No

Whether reportable Yes/No