Sr.No.233

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-COM No. 72 of 2017
Date of decision:09.05.2017

M/s Surya Pharmaceuticals Ltd. and others
.........Petitioners

versus

State Bank of India and others
..........Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

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

Mr. Anil K.Ahuja, Advocate
for respondents No. 1 to 9 and 12.

Rakesh Kumar Jain, J.(Oral)

Counsel for the petitioners has submitted that the petitioners have already filed an application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(for short, "the Act") against the proceedings initiated under Section 13(4) and 14 of the Act but while the application was pending before the DRT, the DRAT decided the Misc. Appeal No. 60 of 2016 arising out of S.A.Dy.No.8/2016(DRT-II, Delhi) titled as *Vikram Bakshi & Company Pvt. Ltd. vs. Housing Development Finance Corporation Ltd.* on 20.03.2017.

It is submitted that orally the petitioners were told by the Tribunal that the SA of the petitioners may not proceed further because of the decision taken by the DRAT in the case of *Vikram Bakshi & Company Pvt. Ltd.(supra)* and hence the petitioners thought of filing this writ petition to challenge the aforesaid order of the DRAT and the SA was adjourned which is now still pending. It is further submitted that before the petitioners could have filed this petition, another petition bearing CWP-COM NO. 62 of 2017 titled *M/s Hallmark Steel Pvt. Ltd. and others vs. Federal Bank and others* came to be filed in which notice of motion was issued and interim order was granted by this Court on 28.03.2017 staying the dispossession of the said petitioners and at the time of issuance of notice of motion, detailed order was passed by this Court on 05.04.2017 which read as under:-

> *"The petitioners-borrowers are aggrieved of the approach of the respondent-Bank including the D.R.T whereby before deciding the Securitization Application filed under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") against the action taken under Section 13 (4) of the Act, efforts are being made to secure the physical possession of the mortgaged property.*
>
> *It is contended that this Court upon consideration of entire case law,*
> *on the subject, has prima facie held that the approach of the DRT on assuming the aforesaid premise is erroneous and thereby proceeded to grant interim stay vide order dated 28.3.2017 passed in CWP-COM-62 of 2017 while issuing notice of motion for 07.4.2017.*
>
> *Notice of motion for 09.5.2017.*
>
> *Till the next date, the dispossession of the petitioners from the mortgaged property shall remain stayed. However, the DRT is free to decide the pending Securitization Application, in accordance with law."*

It is further submitted that while this petition was pending, the decision of the DRAT in the case of *Vikram Bakshi & Company Pvt. Ltd. (supra)* was challenged by the said company before the division bench of the Delhi High Court in CWP 2966 of 2017. The Delhi High Court has stayed the operation of the order passed by the DRAT in *Vikram Bakshi & Company Pvt. Ltd.(supra)* on 10.04.2017 and posted the hearing of the case to 17.07.2017 and thereafter, various other petitions were listed before this Court in which the issue was raised that since the operation of the order passed by the DRAT has been stayed by the division bench of Delhi High Court, the order passed in some cases in which their SA's were dismissed by the Tribunal on the ground of being pre-mature were allowed by this Court on the ground that the order passed in the case of *Vikram Bakshi & Company Pvt. Ltd.(supra)* has since been stayed, therefore, it does not exist at present having been eclipsed and therefore, the securitization applications filed by the borrowers/guarantors may be allowed to proceed and necessary direction may be issued to the tribunal in this regard. It is further submitted that one such order was passed by this Court in a bunch of three cases bearing CWP-COM NO.91 of 2017 *M/s KB Sales and another vs. Canara Bank and others* which was decided on 24.04.2017, the said order is reproduced as under:-

> *"This order shall dispose of three petitions bearing CWP-COM Nos.91, 92 and 93 of 2017, in which a common issue has been raised about the orders having been passed by the Debts Recovery Tribunal(s), Chandigarh (hereinafter referred to as the "DRT"), dismissing Securitization Application(s) of the petitioner(s) on the basis of an order passed by the*

Debt Recovery Appellate Tribunal, Delhi (hereinafter referred to as the "DRAT") on 20.03.2017 in Misc. Appeal No.60/2016 arising out of S.A. Dy. No.8/2016 (DRT-II, Delhi) titled as ***"Vikram Bakshi & Company Pvt. Ltd. vs. Housing Development Finance Corporation Ltd.".***

This Court has already disposed of a bunch of petitions by order dated 21.04.2017 with the lead case bearing CWP-COM No.62 of 2017 titled as ***"Hallmark Steels Pvt. Ltd. vs. Federal Bank & Ors."*** *and set aside the order(s) of the DRT(s) because the order passed by the DRAT in* ***Vikram Bakshi & Company Pvt. Ltd.'s case (supra)*** *has been stayed by a Division Bench of the Delhi High Court. Therefore, in view of the peculiar facts and circumstances, I do not find any need to issue notice to the respondents as the issue involved is purely legal, which has already been settled by this Court vide order dated 21.04.2017 passed in* ***Hallmark Steels Pvt. Ltd.'s case (supra).***

Consequently, all the three petitions are allowed, impugned orders passed by the DRT(s) at Chandigarh in their respective cases are set aside and all the matters are remanded back to the DRT(s), Chandigarh with a direction to restore Securitization Application(s) of the petitioner(s) to its original number and decide them as early as possible, in accordance with law.

The petitioner(s) are directed to appear before the DRT(s), Chandigarh on or before 01.05.2017. Till then, the respondent-bank(s)/secured creditor(s) shall not take any coercive steps against the petitioner(s).

A photocopy of this order be placed on the files of other connected cases."

On the other hand, learned counsel appearing on behalf of the banks has submitted that since SA is still pending before the Tribunal, therefore, this Court may direct the Tribunal to entertain the application and decide the same as expeditiously as possible.

I have heard learned counsel for the parties and after examining the available record with their able assistance, am of the considered opinion that this petition deserves to be allowed for the reason that the DRT has the jurisdiction, at present, to deal with the securitization application because operation of the order has been stayed in the case of *Vikram Bakshi & Company Pvt. Ltd.(supra)* and thus, its effect is no more in existence in law. Hence, the present writ petition is therefore, allowed and direction is issued to the Tribunal, seized of the SA, of the petitioners, to entertain the same and proceed with it and decide the same in accordance with law as expeditiously as possible.

[Rakesh Kumar Jain]
Judge

9th May, 2017
Shivani Kaushik

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*