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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 569/2017 & C.M. No.2621/2017

M/S XENIUM CARE SCIENCES AND ANR
..... Petitioners

Through Mr.Wills Mathews and Mr.Gaurav Kumar, Advocates.

versus

STATE BANK OF INDIA & ORS
..... Respondents

Through
Mr.S.N.Relan, Advocate for R-1/SBI.
Mr.K.S.Parihar and Mr. H.S.Parihar, Advocates for R-4/RBI.
Mr.Aditya Singh and Mr.Tahilramani and Mr.Pragyanand Tiwari, Advocates for R-3.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% 17.07.2017

Petitioner seeks a prayer which is to the effect that the loan account of the petitioner with the respondent Bank (State Bank of India) be summoned and be re-examined in order that the petitioner may be granted permission to re-pay his loan amount by way of instalments; he is seeking quashing of the notice (dated 26.12.2016) which had been issued to him under Rule 8(6) of the Security Interest (Enforcement) Rules.

Record shows that the petitioner was sanctioned a loan in the sum of Rs.1 crore for the purpose of manufacturing of cosmetic products; this was on 25.9.2012. Petitioner no.2 was the proprietor of petitioner no.1. Repayment schedule was for a period of 72 months. The land, building and the factory was mortgaged with the Bank. Repayment was to commence from August, 2014 i.e. from the date of production of the petitioner company.

The petitioner company started its production on 08.8.2014. On 25.3.2015 petitioner got a mail from the respondent Bank stating that his account was irregular. He also received a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) on 01.4.2015. He was declared as Non Performing Asset (NPA) by a communication dated 11.4.2015 informing him that he had been declared as NPA on 30.3.2015. He has also received a notice that the possession of his property would be taken over. The sale of his property had been fixed for 10.7.2015. The petitioner requested for a one time settlement (OTS).

Petitioner approached the High Court of Uttrakhand by filing Writ Petition No.292 (M/S)/2016. The Bank was directed to give a breakup of the complete loan amount to the petitioner; this was not to include the expenses like legal expenses, publication of notice in the newspaper. The petitioner was directed to pay his outstanding dues in six instalments payable after two months each. In case of default the Bank was at liberty to bring these facts to the notice of the District Judge Pauri Garhwal and with his permission the Bank will be at liberty to take the possession of the factory. Petitioner filed a Special Appeal (Special Appeal No.25/2016) before the Division Bench of the Uttrakhand High Court; this special appeal was disposed of 24.02.2016; the direction was that no other expenses like legal expenses, publication of notice in the newspaper will be added in calculating the arrears. It was left open to the Bank to include all the expenses, which it would actually incur as per law. The petitioner had been directed to pay first instalment on or before 20.3.2016 which was an instalment of Rs.25 lakhs. In case of default, it was directed that it would be open to the Bank to take possession as per law.

Admittedly, after 20.3.2016 not even a single paisa has been paid by the petitioner. The petitioner has now approached the present Court and has managed to stall the proceedings since January, 2017. On 20.01.2017 the Bank has been directed to give the petitioner a complete break of the amount (in terms of the orders passed by the Single of the Uttrakhand High Court) which direction has now been complied with and this has been recorded in the order dated 21.02.2017. Even today before this Court it has been admitted that apart from the sum of Rs.29 lakhs (as averred in the petition) no other amount has been paid by the petitioner. The complete statement of account of breakup of the loan of the petitioner has already been handed over to him; another statement of account has again been handed to the petitioner.

This Court is of the view that the petitioner has really no case; he is just buying time. Learned Single Judge of the Uttrakhand High Court had granted time to the petitioner way back on 15.02.2016 to pay his instalments which was endorsed by the Division Bench of the Uttrakhand High Court on 24.02.2016; the bank had been directed to add legal expenses which had been disallowed by the Single Judge.

After the order of the Single Judge on 15.02.2016 no instalment has been paid by the petitioner. The petitioner has already been declared as NPA by the Competent Authority. He really has no legs to stand on. The prayer made in the petition seeking that the record of his loan again be summoned and the case of the petitioner be re-appreciated is only a method to again buy time and to create hurdle in the way of the Bank in recovering its statutory dues. This Court is not inclined to grant any further time to the petitioner. This petition is without any merit. Dismissed.

INDERMEET KAUR, J

JULY 17, 2017
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