IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8511 of 2017

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1. M/s IRIS Electronics India Private Limited, a Company incorporated under the provisions of the Companies Act, Plot No. CH - 29, Srikrishna Nagar, Kidwaipuri, Patna, Bihar.
2. Zakir Hussain son of Late Wazir Hussain Khan, resident of 68, South Gandhi Nagar, Boring Canal Road, P.S. Srikrishnapuri, Patna - 800001.

.... Petitioners

Versus

1. Reserve Bank of India through its Regional Director, South Gandhi Maidan, P.S. - Gandhi Maidan, Patna.
2. The Axis Bank Limited, having its registered office at TRISHUL, opposite Samardheshwar Temple, Near Law Garden, Ellis Bridge, Ahmedabad – 380006, through its Chairman-cum-Managing Director.
3. The Authorized Officer, Axis Bank Limited, Stressed Assets- East - 1 Shakespeare Sarani, 3rd Floor, A.C. Market Building, Kolkata.
4. The Branch Manager Incharge, Axis Bank Limited, S.M.E. Branch, Patna.

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Rajesh Mohan Mr. Suraj Samdarshi, Advocates.
For the RBI	:	Mr. Kaushal Kumar Jha, Advocate.
For the Axis Bank	:	Mr. R.C. Narain, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 31-01-2018

The present writ petition has been filed for the following reliefs:

> *"(i) For issuance of a writ/direction in the nature of Certiorari for quashing the letter dated 12.05.2017, by which the objection filed by the petitioner under Section 13(3A) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 has been rejected without due consideration.*
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> *(ii) For quashing of the letter dated 23.05.2017 by which the representation filed by the petitioner for reconsideration in light of the order dated 10.05.2017 passed in C.W.J.C. No. 5347 of 2017 has also been rejected without any further consideration of the issues raised therein.*

(iii) For a declaration that the discretion vested to any financial institution canot be exercised arbitrarily, and in particular to defeat the very object of the legislation which has provided for consideration of the objection raised by a borrower, in default.

(iv) For a direction to the respondent Bank to consider the case of the petitioner in light of the guidelines of the Reserve Bank of India as provided in circular bearing DBOD No. BP.BC.21/21.04.048/10-11.

(v) For a declaration that the case of the petitioners falls within the category of temporary deficiency and as such, such account, remaining out of order for a temporary period will not fall under the category of Non-Performing Assets (NPA).

(vi) For a direction to the respondent authorities not to take any coercive step till final adjudication of the present writ application; and for any other relief or reliefs to which the petitioners are found entitled."

2. This matter has been listed out of turn on the request of the petitioners on the ground that the mortgaged property of the petitioners has been put on auction which was to be held today.

3. Admittedly, the auction has failed in absence of willing buyers, as such the matter does not involve urgency.

4. This Court also takes notice that the petitioners have statutory remedy available by way of appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act"), which has not been availed of.

5. In this view of the matter, this Court is not inclined to

enter upon the merits of the matter.

6. The writ petition stands disposed of with liberty to the petitioners to approach the appellate forum for redressal of their grievances. In case any such appeal is filed within a period of 30 days from today the same shall be considered and disposed of on its own merits in accordance with law. In such event any auction of the mortgaged property of the petitioner as may be held hereafter shall abide by the final result of the appeal.

7. It is made clear that in case such an appeal is filed, the concerned authority would have regard to the present proceeding being pursued by the petitioner while considering any issue relating to condonation of delay, if applicable.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.02.2018
Transmission Date	N.A.