IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11663-2018
Date of Decision: May 09, 2018

Milk Specialities Ltd through its Managing Director and another
.....Petitioners

Versus

United Bank of India and another
......Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SHEKHER DHAWAN

1.	**To be referred to the Reporters or not?**	**Yes/No**
2.	**Whether the judgment should be reported in the Digest?**	**Yes/No.**
3.	**Whether Reporters of local papers may be allowed to see the judgment?**	**Yes/No**

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Present: Mr.Puneet Bali, Sr.Advocate with
Mr.Arun Gupta, Advocate for the petitioners.

Mr.Aalok Jagga, Advocate for the respondent-Caveator.

....

SURYA KANT, J.

The petitioners are aggrieved by the orders dated 23.03.2018 passed by the Recovery Officer of Debts Recovery Tribunal-III, Chandigarh and dated 03.04.2018 passed by the Presiding Officer, DRT-III, Chandigarh.

[2] Petitioners are the borrowers who availed loan facility from the respondent-Bank. As there was default in payment of the loan amount, their account was classified as 'NPA' and Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act') was issued on 27.02.2014. As per the said Notice, the amount recoverable from the petitioners was more than ₹40.00 crore. Thereafter Notice under Section

13(4) of the SARFAESI Act was issued and pursuant to an order passed by the District Magistrate under Section 14 of the SARFAESI Act, physical possession of the Milk Product Factory alongwith moveable assets and stock was taken over on 12.09.2014.

[3] Soon thereafter, the petitioners approached this Court through CWP-1629-2015, which was disposed of on 30.01.2015 with the consent of counsel for the parties with a direction that firstly the movable assets including vehicles, and the products lying in the stock may be sold as it was the contention of the petitioners that value of the stock itself was more than the loan amount.

[4] It further appears that the petitioners approached DRT Chandigarh for appointment of an Officer for giving effect to the order dated 30.01.2015 of this Court. The DRT did not construe that application in its right perspective, which prompted the petitioners to move CM-3744-2015 before this Court in the above mentioned decided case. The said application was disposed of on 27.03.2015 in the following terms:-

> "By the order dated 30.01.2015, the DRT was not called upon to exercise any judicial function or to consider any application pending before it. The DRT was only requested by this Court to appoint an officer for the purpose of implementing the order. The costs, charges and expenses of such officer would be paid independently by the petitioner.
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> The DRT is once again requested merely to appoint an officer for the purpose of implementing our order. The documents necessary for the sale of the vehicles referred to in our order shall also be supplied by the petitioner to the respondent.
>
> Disposed of."

[5] Subsequently, the petitioners alleged that their stock comprising *Ghee* and milk powder was siphoned off from the factory premises and *panchnama* had been forged. On the basis of these allegations, an FIR was got registered against Bank officials etc. in which after investigation, challan is said to have been presented and the matter is sub judice before the Court.

[6] On the other hand, case of the Bank is that the stock is still lying intact and on its fresh evaluation, it was found that value of the stock and other movable assets was approximately ₹4.00 crore only, which is far less than the recoverable loan amount of about ₹50.00 crore. Meanwhile, in purported compliance to the directions of this Court, referred to above, the Recovery Officer of DRT-III, Chandigarh has issued the impugned 'Proclamation of Sale' dated 21.03.2018 (Annexure P12). The 'Schedule of Property' appended thereto unveils that all the hypothecated assets, vehicles as well as plant and machinery have been put to sale.

[7] The petitioners meanwhile moved three miscellaneous applications before the DRT requesting that the order dated 30.01.2015 passed by this Court was not being complied with in its true letter and spirit and that the appropriate recourse for the DRT was to decide the main case before 'immovable assets' of the petitioner-borrowers are sold by the Bank.

[8] The petitioners' grievance thus is that since the impugned Notice includes plant and machinery, which is not a movable asset, there is a violation of order dated 30.01.2015 passed by this Court and, as such, the Tribunal was not justified in dismissing its interim applications. The second grievance is that value of the hypothecated assets including the stock was

more than the loan amount but the Bank has deliberately got it re-evaluated at a very low price so that sale of plant and machinery or other immovable assets can be justified. On the other hand, counsel for the Bank submits that valuation of the stock and plant & machinery is approximately ₹4.00 crore only, whereas recoverable dues are approximately ₹50.00 crore, hence the Bank is justified in selling the plant and machinery at the first stage before other immovable assets are sold.

[9] We have heard learned counsel for the parties at a considerable length and gone through the impugned orders as well as other material on record.

[10] The question as to whether or not the products lying in stock have been siphoned off or are still lying intact and what is their market value, is essentially a question of fact which can be, in our considered opinion, decided by a fact finding appropriate Forum, be it may DRT or a Court of competent jurisdiction. It is not expedient for this Court to express any views in this regard. Hence, we refrain from ourselves making any observations in that regard as two different Forums are yet tot ake a final view in this regard.

[11] It is vehemently contended that the material lying in stock be auctioned first as it would fetch sufficient price to settle the entire loan amount and would further save the plant and machinery, for the petitioners want to run the industrial unit. The Bank, however, has taken a categorical stand that outstanding loan is approximately ₹50.00 crore and value of the stock is hardly Rs.4.00 crore. In such a situation where, according to the Bank, the material lying in stock is wholly insufficient to discharge the loan

liability, no fault can be found with the sale of plant and machinery. It goes without saying that if the stock is finally evaluated in the auction at a rate expected by the petitioners and the loan stands satisfied, the Bank will possibly have no legal necessity to confirm the sale of plant and machinery or to sell the other immovable assets.

[12] So far as the order of DRT-III, Chandigarh refusing to grant *ad* interim protection against the auction is concerned, we are of the view that the said order is appealable before the Debts Recovery Appellate Tribunal. Since there is any efficacious alternative remedy available to the petitioners, this question need not be gone into by this Court.

[13] The petitioners, however, are justified in urging that the Tribunal should decide their SA within a reasonable time.

[14] Keeping in view the contentious issues raised by both the sides, we request the Tribunal to decide the main case as early as possible and preferably within <u>three months</u>.

[15] Similarly, if there is any breach of the orders of this Court, there lies a separate remedy in law which can be availed by the petitioners.

[16] Disposed of.

(SURYA KANT)
JUDGE

May 09, 2018 **(SHEKHER DHAWAN)**
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1. Whether speaking/reasoned ? Yes/No
2. Whether reportable ? Yes/No