HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20330-2017
Date of Decision: January 18, 2018

M/s Shaktiman Cements & Packaging Industries Ltd. and others
.....Petitioners

Versus

Union of India and others ......Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE ANIL KSHETARPAL

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.Aalok Jagga, Advocate for the petitioners.
Mr.Satya Pal Jain, Addl.Solicitor General of India with
Mr.Piyush Khanna, Central Government Standing Counsel
for respondent Nos.1 and 2.
Mr.C.S.Pasricha, Advocate for respondent No.3.

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SURYA KANT, J.

Reply filed on behalf of respondent No.3 is taken on record.

[2] The petitioners availed loan facilities comprising 'Term Loan' and 'Cash Credit Limit' to the tune of ₹14.86 crores from respondent No.3-Bank. The loan facilities were availed for setting up of a unit for manufacturing of PP Woven Sacks used in packing of cements, rice, wheat, fertilizer and other products. Government of India, Ministry of Textiles vide Resolution No.6/4/2007-CTI circulated in November 2007 launched 'Technology Upgradation Fund Scheme (for short,'TUFS') under which industrial units like that of the petitioners are entitled to subsidy. The claim for subsidy was to be submitted directly to the Ministry by the lender-Bank. In the case in hand the respondent-Bank forwarded the petitioners' claim for

subsidy though apparently at a belated stage as it uploaded the online data in respect of the 'term loan' only on 11.01.2014.

[3] The Government of India, Ministry of Textiles has informed the Bank that benefit of subsidy of TUFS has been decided not to be extended to such left out cases. Learned Additional Solicitor General of India states that though a formal reply is yet to be filed but as per their instructions, the petitioners' industrial unit is not entitled to the special subsidy under TUFS.

[4] The respondent-Bank has meanwhile declared the petitioners' account as 'NPA' and initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act').

[5] The petitioners has laid challenge to the action initiated by the Bank primarily on the ground that its claim for subsidy is pending before Government of India and that no sooner the subsidy is received by the Bank, their account would stand regularised.

[6] In the light of the stand taken today before us on behalf of Government of India that the petitioners are not entitled to any subsidy, it is obvious that the foremost plea taken in this writ petition no longer survives. While the petitioners are at liberty to independently raise the claim of subsidy against Government of India through appropriate proceedings, we are of the view that the action initiated by the Bank under the SARFAESI Act cannot be stalled on the premise that the petitioners would succeed in getting subsidy from Government of India or that on receipt of such subsidy their loan account will stand regularised. The Bank, therefore, is entitled to proceed against the petitioners in accordance with law for the recovery of

the amount in default.

[7] However, keeping in view the fact that the petitioners are statedly a running industrial unit, the writ petition is disposed of with liberty to the petitioners to submit a fresh proposal to the Bank within <u>one week</u> for restructuring of the loan amount and let such proposal be sympathetically considered by the Designated Committee constituted by the Bank with an endeavour that the industrial unit survives and at the same time the commercial interest of the Bank is also duly protected. The Designated Committee/ Competent Authority shall take a decision on the offer to be submitted by the petitioners within <u>three weeks</u>. However, the petitioners shall have to deposit a sum of not less than ₹50.00 lacs alongwith application for restructuring of the loan amount and then only the Bank will consider their offer for restructuring of the loan amount. Till the Bank takes an appropriate decision on the application, let physical possession of the secured assets be not taken. However, if the petitioners fail to apply for restructuring, the Bank shall be at liberty to proceed against them in accordance with law.

[8] This order shall not be construed as a bar against the petitioners for seeking appropriate action against the Bank regarding the alleged delay in submission of the subsidy claim.

(SURYA KANT)
JUDGE

January 18, 2018 **(ANIL KSHETARPAL)**
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1. **Whether speaking/reasoned ?** **Yes/No**
2. **Whether reportable ?** **Yes/No**