IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18617 of 2018
Date of decision : 29.08.2018

M/s Chadha Super Cars (P) Ltd. and others .... Petitioners

vs

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

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Ms. Munisha Gandhi, Sr. Advocate with
Mr.Rakesh Bhatia, Advocate
for the petitioners.

Mr. Alok Kumar Jain, Senior Penal Counsel
for respondent No.1-UOI.

Mr. C. S. Pasricha, Advocate
for respondent No.3-Bank.

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AVNEESH JHINGAN, J.

This writ petition has been filed seeking quashing of order dated 20.07.2018 (Annexure P-19) passed by the Debt Recovery Appellate Tribunal, Delhi (for short, 'DRAT') in a Misc. Appeal No.446 of 2017 arising out of OA No.1955 of 2017.

2. Petitioner No.1 is a Private Limited Company. Petitioners No.2 and 3 are the Directors of the Company. Union of India; Debts Recovery Appellate Tribunal, New Delhi and HDFC Bank, Mumbai have been arrayed as respondents No.1 to 3 respectively in the writ petition.

3. Petitioner No.1 is having dealership of Toyota Vehicles for Ludhiana, Moga and Ferozepur. Petitioner No.1 took loan from various banks for working capital limits. A limit of ₹20 crores was sanctioned on 27.09.2014 by respondent No.3. The said limit was reduced by the

respondent-bank with the passage of time. Petitioner No.1 defaulted in repayment and the account was classified as non performing asset (NPA) on 16.10.2015. Respondent-bank issued a show cause notice dated 12.08.2016 to the petitioners as to why they may not be declared as willful defaulters. Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, 'the Act') was issued on 29.04.2017. As per notice there was an outstanding amount of ₹24,06,09,615/- as on 31.03.2017.

4. The respondent No.3 filed OA No.2422 of 2015 along with list of properties and prayed for interim relief restraining the petitioners to create third party interest. The matter was transferred to DRT-III from DRT-II and the OA was renumbered as 1955 of 2017. Interim orders were passed on 11.02.2016 and 19.05.2016. Thereafter, respondent No.3 filed an application for issuing directions to the Bureau of Immigration (Ministry of External Affairs) not to allow petitioners No.2 and 3 to leave the country without prior permission of the Tribunal. The said application was dismissed on 16.09.2017. Aggrieved of the order, respondent No.3 filed the appeal before the DRAT. Notice was issued in appeal. During the pendency of the appeal, petitioner No.2 filed an application for permission to leave India to attend meeting in South Africa. It is alleged that the Tribunal granted permission to petitioner No.2 to go abroad. Thereafter, respondent No.3 filed applications for initiation of contempt proceedings against the defendants/petitioner No.2. On the applications filed, DRAT passed an order dated 20.03.2018. The operative part of the order is reproduced below:-

> *"In the meanwhile, appellant bank can also give its response in respect of the permission granted*

to Mr.Chadha by the DRT. Counsel for the petitioner has today submitted that respondents owe to the bank over ₹17 crores which is huge amount of public money. On the next date, the respondents shall file an affidavit before this Tribunal regarding all their assets, immovable and moveable including bank accounts, and give details of properties which my be there in the names of their immediate family members as also of Companies, if any, in which Mr. Chadha himself has any share/interest. The respondents are also given a show cause notice to show as to why appropriate orders, as contemplated under Section 19(18)&(25) of the RDDBFI Act, 1993 be not passed including that of appointment of receiver for taking over possession of their immovable assets, encumbered or unencumberd."

5. The petitioner challenged the order dated 20.03.2018 in CWP No.10833 of 2018. Another prayer was made in the writ petition that respondents be restrained from appointing any receiver or taking physical possession of the property till the revival proposal is put before the committee constituted under notification dated 17.03.2016. The writ petition was disposed of vide order dated 02.05.2018. The order of the writ petition is reproduced below:-

"The recovery proceedings are pending before the Debts Recovery Tribunal-III, Chandigarh against the petitioner-borrowers. They have meanwhile applied to the HDFC Bank on 25.11.2016 to put up the matter before the Designated Committee constituted within the framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises, formulated

> *by Reserve Bank of India.*
>
> *In our considered view, the petitioners may move an application in the pending case before DRT-III, Chandigarh for an appropriate consideration of their application and for taking decision regarding putting up the petitioners' request dated 25.11.2016 before the Designated Committee. The DRT-III, Chandigarh will decide the said application after hearing both the parties and in accordance with law.*
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> *The writ petition stands disposed of accordingly.*
>
> *Dasti."*

6. The matter was taken up by DRAT on 20.07.2018, no one put in appearance on behalf of the respondents (petitioners in the present writ petition) and even the earlier order dated 20.03.2018 regarding filing of affidavit giving detail of properties was not complied with. The DRAT ordered for preparation of an inventory of the item lying in the house No.2912-13, Radiant House, Gurdev Nagar, Ludhiana. It was also ordered that the showroom of the respondents would be visited and the cars lying parked shall be taken into possession after verifying the documents. It was further ordered that the bank accounts in the name of M/s Chadha Super Cars (P) Ltd. (petitioner) would stand frozen. For non-compliance of order dated 20.03.2018, respondents (the petitioners herein) were asked to show cause why they not be appropriately dealt with for disobedience of the orders.

7. Aggrieved of the said order, the present writ petition has been filed.

8. Notice of motion was issued on 02.08.2018. Learned counsel

for respondent No.3 accepted notice in the Court. He submitted that the officials of respondent No.3-bank will not visit the residence of the petitioners and the petitioners will not be called in the police station in respect of the loan proceedings till the next date of hearing. The order for ready reference is quoted below:-

> *Notice of motion to respondent No.3 only.*
> *Notice regarding stay as well.*
> *Process dasti.*
> *At this stage, Mr.C.S.Pasricha, Advocate, who is present in Court, accepts notice on behalf of respondent No.3-HDFC Bank. A copy of paper-book along with Annexures P-20 to P-27 be handed over to him during the course of the day.*
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> *Learned counsel for the petitioners submitted that the officials of respondent No.3-Bank are visiting the house of the Director i.e. House No.2912-13, Radiant House, Gurdev Nagar, Ludhiana and the petitioners are being called to police station. A prayer for interim relief was made by learned counsel for the petitioners.*
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> *Learned counsel for respondent No.3-Bank submitted that the officials of respondent No.3-Bank shall not visit the residence of the petitioners and the petitioners shall also not be called to the police station in respect of the loan proceedings till the next date of hearing. However, the petitioners/ respondent-bank shall furnish the inventory of the cars and details of assets of the petitioner to this Court on the next date of hearing."*

9. During the pendency of the writ petition, an application was

moved by the petitioners stating that an amount of ₹40 lakhs odd is lying in the accounts frozen by DRAT and the petitioners are ready to pay the said amount to respondent No.3. The accounts should be defreezed as the business of the petitioners is suffering. Notice in the application was issued to the non-applicants.

10. We have heard learned counsel for the parties.

11. Learned counsel for the petitioners submitted that the matter was taken up by DRAT on 20.08.2018. The petitioners had volunteered to pay about ₹40 lakhs lying in various freezed accounts of the petitioners before DRAT. The DRAT has ordered that the said amount be handed over to respondent No.3 bank and thereafter the request regarding modification of the orders freezing the accounts would be considered in accordance with law. She contended that the matter is now fixed for 12.09.2018.

12. Learned counsel for the respondent-bank contended that after passing of order dated 20.08.2018 by the DRAT, the petitioners have wrongly written a letter to the Managers of State Bank of India, Millerganj, Ludhiana that the account should be unfreezed as per order of the DRAT dated 20.08.2018.

13. The grievance raised in the present writ petition is against order dated 20.07.2018 (Annexure P-19). The order passed is interim order. The matter is being considered before the DRAT and the request made by the petitioners before this Court regarding acceptance of about ₹40 lakhs odd has been accepted by DRAT.

14. Without expressing any opinion on the merits of the case, the writ petition is disposed of with liberty to the parties to take all the pleas before the DRAT.

15. It is clarified that the interim protection given by this Court vide order dated 02.08.2018 shall continue only till 12.09.2018 i.e. the date fixed before the DRAT unless specifically extended by DRAT on the said date.

The writ petition is, accordingly, disposed of.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

29.08.2018
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Whether speaking/reasoned? Yes
Whether reportable? Yes