

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 28914 of 2017

Decided on : 16.10.2018

M/s Navdeep Bioceuticals

..... Petitioner

Versus

Indian Overseas Bank and another

..... Respondents

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

Present : Mr.Aalok Jagga, Advocate and
Mr. Vivek Goyal, Advocate
for the petitioner.

Mr. C.S.Pasricha, Advocate and
Ms. Anna Bansal, Advocate for
for the respondents.

Mr. Ritesh Kumar Bansal, Amicus Curaie

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking directions to the respondent-bank to consider the loan account of the petitioner under One Time Settlement (OTS) Scheme (Annexure P-6). Further a prayer has been made for quashing of order dated 27.11.2017 (Annexure P-10) passed by Debts Recovery Tribunal-II, Chandigarh (for brevity, 'DRT').

2. The petitioner is a proprietorship concern. Indian Overseas Bank, Panchkula and Niharika Vashishta wife of Kunal Gupta, have been arrayed as respondents No.1 and 2 respectively in the present writ petition.

3. The petitioner availed following five loan facilities from the respondent-bank :-

- i) Housing loan of ₹4.85 lakhs availed in October 2003 and repaid completely on 06.09.2006.
- ii) Term loan-liquirent of ₹28 lakhs and ₹31.50 lakhs. Both the loans were availed in September 2004 and June 2006, respectively and were cleared in December 2008.
- iii) Cash credit limit of ₹20 lakhs, subsequently enhanced to ₹1.50 crore in the name of M/s Nanu Mal Naresh Kumar, the same has already been cleared on 13.12.2008, completely.
- iv) Cash credit limit of ₹30 lakhs in the name of M/s Nyssa Pharmaids Ltd., availed in July 2006 and cleared of in totality in September 2006.
- v) M/s Navdeep Bioceuticals (petitioner), which was sanctioned cash credit limit of ₹6 crore, term loan of ₹5 crore and another term loan of ₹1.05 crore and another term loan of ₹36 lakhs. (which is not paid)

4. In order to secure the credit facility, following properties were mortgaged with the bank :-

- a) House No.1800, Sector-15, Panchkula.
- b) Plot No.398, Industrial Area, Phase-I, Panchkula.
- c) Hillitop Estate i.e. factory at Baddi, which included machinery, raw materials finished and unfinished products and all outstanding book debts.

5. The petitioner has cleared the loans mentioned at serial No. (i) to (iv) above but there were outstanding dues of the loan mentioned at serial No.(v). The said loan account was classified as Non Performing Asset (NPA) on 28.02.2011. A notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') was issued on 08.04.2011. Thereafter, respondent-bank issued notice under Section 13 (4) of the Act. Petitioner filed a Securitization Application (SA) bearing No.193 of 2011 before DRT, Chandigarh. The same was dismissed on 21.03.2013.

6. The respondent-bank also filed Original Application (OA) No.115 of 2012 on 06.03.2012. An amount of ₹13,66,32,787/- alongwith future interest was claimed in the application. The order passed by DRT dated 21.03.2013 in SA No.193 of 2011 was assailed in appeal by the petitioner. The appeal was dismissed vide order dated 12.08.2014 as the petitioner failed to comply with the condition of pre-deposit as per Section 18 of the Act. Petitioner filed CWP No.2984 of 2015. The same was disposed of vide order dated 23.02.2015 and the petitioner was directed to deposit ₹2 crores. The Court further ordered that if OTS proposal was made within two weeks, the same shall be decided by the respondent-bank.

7. The petitioner submitted OTS proposal, the same was rejected vide order dated 17.03.2015.

8. Aggrieved of the rejection of OTS proposal, petitioner filed CWP No.14088 of 2015. The writ petition was dismissed vide order dated

16.07.2015. The relevant portion of the order is reproduced below:-

“A perusal of the impugned communication shows that earlier proposal for ₹7.28 crores given in the year 2011 and later for ₹7.50 crores given in the year 2012 were rejected by the Bank obviously for the reason that it was not adequate. Surprisingly, instead of increasing the amount for settlement, the petitioner reduced the amount by almost ₹3 crores when it offered to pay a sum of ₹4.85 crores. We find that such proposal does not merit any consideration for the reason that earlier proposals for higher amount stand declined. Whether the proposal for settlement should be accepted or not depends upon commercial decision of the Bank keeping in view the relevant factors. The impugned communication does not show that the Bank has acted in unreasonable manner while rejecting the One Time Settlement offer submitted by the petitioner. In view of the said fact, we do not find any reason to interfere in the communication issued. However, nothing said herein will preclude the petitioner from giving a better proposal to the Bank for settlement.

Thus the present writ petition is dismissed.”

9. In the meanwhile, the respondent-bank moved an application under Section 14 of the Act but it was dismissed by District Magistrate, Panchkula vide order dated 20.07.2015. The review application was filed and the same was also dismissed on 03.11.2015. The respondent-bank filed CWP No.11523 of 2016 before this Court. The writ petition was disposed of vide order dated 03.10.2017. This Court considering the fact that OA filed by the bank is pending before the DRT, directed the DRT to

decide the same by November 10, 2017. OA filed by the bank was decreed on 07.12.2017. It is pleaded in the writ petition that the petitioner intends to file the appeal against the said order.

10. It may be pertinent to mention here that the petitioner had raised a dispute that the residential property was not mortgaged with regard to the loan account mentioned at serial No.(v) above. This issue has been raised by filing a civil suit for directions to the bank to return the title deeds.

11. Present petition has been filed challenging order of DRT.

12. On 18.12.2017, learned counsel for the petitioner submitted that the bank had assessed the value of residential mortgaged property at ₹76 lakhs in the year 2015 and no bid was received but the petitioner is ready and willing to pay ₹65 lakhs for the aforesaid house as it is the only residential house of the petitioner. Notice of motion was issued. Petitioner was directed to deposit ₹10 lakhs with the Registrar General of this Court to show his bonafide to enable the Court to consider his request.

13. During the pendency of the writ petition, an application was moved for grant of status quo regarding possession of the residential house. It was submitted that on the earlier date, the petitioner offered to buy the mortgaged residential house for ₹65 lakhs, however, if the bank gets a better offer, then, the petitioner will either match the same or would hand over the vacant possession of the house to the bank. Status quo regarding house in question was ordered to be maintained.

14. The petitioner failed to deposit ₹10 lakhs in compliance of order dated 18.12.2017. Vide order dated 11.01.2018, this Court after hearing learned counsel for the respondent-bank came to a prima facie

opinion that petitioner is misusing the judicial forum of this Court and the interim order was vacated. Relevant portion of the order is reproduced below:-

“From the narration of the facts on behalf of the Bank, coupled with the unsuccessful rounds of litigation in the past, prima facie it appears that the petitioner is misusing the judicial forum of this Court. Hence, the interim order dated 21.12.2017 is vacated. The District Magistrate, Panchkula, is directed to pass an order on the application moved by the Bank under Section 14 of the the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on or before 17.01.2018 and if such application is allowed, let the physical possession of the mortgaged properties be handed over to the Bank within three days thereafter.”

15. On 30.01.2018, learned counsel for the petitioner stated that the petitioner is ready and willing to pay ₹65 lakhs for the residential house. Status quo regarding physical possession of the residential house was ordered to be maintained, subject to petitioner's approaching respondent-bank with a proposal alongwith an upfront payment of ₹10 lakhs.

16. During the pendency of the writ petition, civil miscellaneous application was moved by the petitioner stating that the bank has put the residential house to auction. Notice was issued in the application and the learned counsel for the respondent-bank was directed to inform the outcome of the auction to be held on 08.10.2018.

17. On 09.10.2018, learned counsel for the respondent-bank

submitted that a bid of ₹77,58,550/- had been received and the successful bidder has deposited 25 % of the said amount. The case was fixed for 11.10.2018.

18. On 11.10.2018, on request of learned counsel for the petitioner, the highest bidder in the auction was impleaded as respondent No.2 in the writ petition. Learned counsel for the petitioner submitted that the petitioner shall deposit ₹25 lakhs with the respondent-bank on 12.10.2018 and another amount of ₹14 lakhs by 17.10.2018. It was pleaded that amount of ₹39 lakhs shall be deposited with the respondent-bank on or before 22.10.2018, in order to save the residential house. According to the learned counsel, ₹78 lakhs which would be deposited by the petitioner may be taken as the reserve price and the property be auctioned afresh. It was ordered by this Court that in case the petitioner failed to adhere to the payment schedule, the amount already deposited by the petitioner shall stand forfeited.

19. Learned counsel for the petitioner today took a somersault from his earlier stand and argued that the amount of ₹78 lakhs shall only be deposited if the title deed of the mortgaged residential house is released by the bank.

20. From the narration of the facts above, it is evident that the present case has a long history and involves multifarious litigation. The earlier directions of this Court for pre-deposit of ₹2 crores for entertainment of the appeal was not complied with. The interim order of this Court dated 18.12.2017 to deposit ₹10 lakhs to establish the bonafide of the petitioner was only complied with when the interim order was vacated. The case set up for issuance of notice of motion by the petitioner

was that the petitioner is ready and willing to purchase the residential house. It was submitted by the petitioner that in case the bank gets a better offer than the petitioner, the same will either be matched or vacant possession of the house will be handed over to the bank. On 11.10.2018, learned counsel for the petitioner submitted that ₹78 lakhs would be deposited as per the time schedule mentioned, which may be taken as reserve price and property be put to auction afresh. The petitioner has even backed out from the statement made on 11.10.2018. From the conduct of the petitioner, it prima facie appears that the entire endeavour is to delay and stall the auction and recovery proceedings.

21. No case is made out for interference by invoking extraordinary jurisdiction under Article 226 of the Constitution of India. More so, when the petitioner has an alternative remedy against the auction proceedings under Section 17 of the Act and order Annexure P-10 is appealable under Section 18 of the Act.

22. Section 17(1) of the Act is reproduced below :-

“17. Application against measures to recover secured debts—

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section(4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measures had been taken:

Provided that different fees may be prescribed for

making the application by the borrower and the person other than the borrower.

Explanation - For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

23. Section 17 provides for filing of an application by any person aggrieved of any of the measures taken under Section 13(4) of the Act. Section 17 provides remedy even for an action taken after the stages contemplated under Section 13(4) of the Act.

24. The Supreme Court in the case of **Kaniyalal Lalchand Sachdev & others Vs. State of Maharashtra 2011(2) SCC 782** relied upon its earlier decision in *Authorised Officer, Indian Overseas Bank & Anr. v. Ashok Saw Mill*, (2009) 8 SCC 366 and observed as under:-

*“19. In **Authorised Officer, Indian Overseas Bank & Anr. v. Ashok Saw Mill**, (2009) 8SCC 366 the main question which fell for determination was whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act will be confined to the stage contemplated under Section 13(4) of the Act?*

On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court, held as under :

"35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

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39. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT."

20. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.

21. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: **Sadhana Lodh v. National Insurance Co. Ltd. & Anr.**, 2003(1) R.C.R.(Civil) 772 : (2003) 3 SCC 524, **Surya Dev Rai v. Ram Chander Rai & Ors.**, 2004 (1) R.C.R. (Civil) 147 : (2003) 6 SCC 675, **State Bank of India v. Allied Chemical Laboratories & Anr.**, (2006) 9 SCC 252. In **City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla & Ors.**, (2009) 1 SCC 168 this Court had observed that :

"The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the petitioner has any alternative or effective

remedy for the resolution of the dispute;
(d) person invoking the jurisdiction is guilty of unexplained delay and laches;
(e) ex facie barred by any laws of limitation;
(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

22. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution."

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25. Further, the Supreme Court in **United Bank of India Vs. Satyawati Tondon and others (2010) 8 SCC 110**, held as under :-

"It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues.

26. Keeping in view of the facts and circumstances of the case, and considering the law laid down by the Supreme Court, the writ petition is dismissed with liberty to the petitioner to avail the alternative remedies in accordance with law. Needless to observe, anything said in this order be not taken as final opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 16, 2018
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Whether speaking/reasoned: Yes

Whether reportable : Yes