IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9093 of 2016 (O&M)

Date of Decision:09.08.2018

M/s Nakshatra Metals Pvt. Ltd and another ....Petitioners

Versus

Authroised Officer, Oriental Bank of Commerce, Delhi.

......Respondent

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

Present: Mr. Onkar Singh Batalvi, Advocate
for the petitioners.

Mr. Raj Kumar, Advocate
for the respondent.

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AVNEESH JHINGAL, J.

The present writ petition has been filed seeking quashing of notice dated 02.04.2016 (Annexure P-5) for e-auction of the mortgaged property of the petitioners-company by the Bank. Further grievance is that the petitioners had already filed an appeal bearing No. 173 dated 04.05.2016 before the Debts Recovery Appellate Tribunal, New Delhi (for short 'DRAT'), but the same could not be heard as the Presiding Officer had retired.

The Oriental Bank of Commerce, Ranibagh, New Delhi, has been arrayed as respondent.

Petitioner No.1 is the private limited company engaged in business of trading and manufacturing of metal and metal products, its unit is located at Hissar. In the year 2011, the petitioner-company availed an overdraft facility from the respondent-bank. The said facility was subsequently enhanced to Rs.4 crores. The facility availed became overdue and the account was classified as 'Non-Performing Asset' (for short 'NPA').

The respondent-Bank on 01.10.2015 issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'). As per notice, the outstanding liability was Rs.4,25,68,793/-. Since neither any payment was made nor any reply filed, the respondent-Bank issued notice under Section 13 (4) of the SARFAESI Act, on 22.12.2015.

Against the action of the bank, the petitioner No.1 filed Securitization Application (for short 'SA') No. 25 of 2016 before the Debts Recovery Tribunal-I, Chandigarh. A separate application for staying the auction proceedings of the mortgaged property was made. The application for stay was dismissed vide order dated 28.03.2016. The respondent-Bank issued a public notice for e-auction in the newspaper on 02.04.2016 fixing the e-auction for 12.05.2016.

The petitioners filed an appeal against the rejection of the stay application before DRAT, New Delhi. The appeal was numbered as 173 dated 04.05.2016. Since, the Presiding Officer had retired, the appeal could not be heard, hence, the petitioners filed the present writ petition.

The petitioners while arguing the writ petition contended that they wish to pay the entire amount together with interest and the petitioners intend to approach the bank for one time settlement. To show their *bonafide*, the petitioners produced six post dated cheques and further undertook to pay the entire dues of the Bank latest by 30.09.2017. Vide order dated 12.05.2016, notice of motion was issued.

For ready reference the order dated 12.05.2016 is quoted below:

" Issue notice of motion returnable on 31.05.2016.

We would normally have relegated the petitioners to an alternate remedy of filing an appeal before the Debts Recovery Appellate Tribunal against the order of the Debts Recovery Tribunal, Chandigarh by which the interim relief has been rejected. Strong observations have been made against the petitioners. Despite the same, we intend entertaining this writ petition at this stage in view of the petitioners having made a statement before us that they wish to pay the entire amount(s) together with interest as demanded subject to adjusting the amount(s) already paid by 30.09.2017. The notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 which was issued in October, 2015 claimed an amount of Rs.4,25,68,793.27/- together with interest. Even according to the petitioners, at the highest an amount of Rs. 87 lacs has been paid. Prima-facie, therefore, an amount of at least about Rs.3.5 crores is payable.

The petitioners propose approaching the bank for a One Time Settlement. To show their bonafides, the petitioners agree and undertake to issue in favour of the bank at this stage six post-dated cheques each in the sum of Rs. 25 lacs dated 10.07.2016, 10.08.2016, 10.09.2016, 10.10.2016, 10.11.2016 and 10.12.2016.

The respondent-bank shall be at liberty to encash the cheques and appropriate the amounts on account, but strictly without prejudice to its rights and contentions.

The petitioners further agree and undertake to pay the entire dues of the bank latest by 30.09.2017.

The statements made and undertakings given

> are accepted.
>
> In view of the above, the e-auction to be held today may proceed, but the sale shall not be confirmed till further orders.
>
> Liberty to the respondent to apply to have this order modified or vacated earlier by giving the petitioners' advocate 72 hours notice in writing.
>
> A copy of this order be furnished to learned counsel for the petitioners under signature of the Bench Secretary."

Thereafter some payments were made by the petitioners but the undertaking given on 12.05.2016 before this Court was not honoured.

On 05.04.2017, learned counsel for the petitioners took time to submit a one time settlement proposal to the respondent-Bank within two weeks. The said proposal was ultimately made in August 2017. The Bank was directed to take decision on one time settlement vide order dated 17.08.2017. The respondent-Bank on 29.09.2017 informed this Court that one time settlement proposal is not acceptable to Bank as the petitioners have submitted the proposal to pay Rs.72 lakhs against the due amount of Rs.3.73 crores. It was further informed that the SA filed by the petitioner has been dismissed on 25.04.2017. It was contended that the appeal of the petitioners is pending and the Presiding Officer of DRAT, New Delhi, has been appointed. The case was adjourned as learned counsel for the petitioners sought time. On 24.11.2017, learned counsel for the petitioners contended that the petitioners had rented out the building to the Bank in the year 1988 and the lease expired in the year 2003. The Bank has neither vacated the premises nor paid any rent thereafter. Time was sought to place on record the documents to substantiate the plea. The case was adjourned twice providing opportunity to the counsel for the petitioners to place on record the documents for substantiating his plea. On 05.04.2018 learned counsel for the respondent-Bank informed this Court that the claim of the landlord for recovery of rent before Rent Controller, Hissar, has been dismissed and the appeal against the same is pending before the Appellate Authority.

The petitioners have not honoured the undertaking given in this Court at the time of issuance of notice of motion, that the entire dues would be paid latest by 30.09.2017. One time settlement proposal has already been rejected by the Bank. Thereafter, plea regarding rent due from the Bank was raised which also did not find favour with the Rent Controller. The grievance of the petitioners regarding dismissal of stay application no longer subsists as the main SA has already been dismissed.

The writ petition is accordingly dismissed. The Presiding Officer of DRAT New Delhi, has been appointed. However, it is clarified that the petitioners would be at liberty to avail the legal remedies available to them in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

09.08.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No