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

CWP No. 7412 of 2018 (O&M)
Decided on : 18.09.2018

Rekha Luthra ...... Petitioner

Versus

Bank of Baroda ...... Respondent

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

Present : Mr. Jatinderpal Singh, Advocate
for the petitioner.

Mr. Rajiv Joshi, Advocate
for the respondent.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of notice dated 19.01.2018 (Annexure P-4) issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for brevity, 'the SARFAESI Act') as the petitioner is ready and willing to regularise the cash credit limit by making the payment of overdue amount along with interest.

2. The petitioner is a proprietor of M/s Gunjan Jewellers, Civil Lines, Jalandhar City, Punjab. Bank of Baroda, Adarsh Nagar Branch, Jalandhar, has been arrayed as respondent in the present writ petition.

3. The petitioner vide sanction letter dated 09.07.2014 availed a cash credit limit of ₹2 crores and term loan of ₹20 lakhs from respondent-

bank. The term loan was to be rapaid in 60 equal monthly installments. In order to secure the credit facilities, the following properties were given as security :-

Working Capital:

Hypothecation of all kinds of stocks and book debts both present as well as future.

Term Loan:-

i. Hypothecation of Plant & Machinery & Entire Misc. Fixed assets of the firm.

ii. EM of built up Showroom Land & Building situated at Civil Line, Makhdumpura, Near Jyoti Chowk, Jalandhar City and measuring 994 Sq.Ft. or 4.80 Marlas (1M=207 Sq. Ft.) as per sale deed & 975 Sq. Ft. or 4.71 Marlas (1M=207 Sq. Ft.) as per site, part of property No.ES-44 (within Lal Lakir) bearing Municipal No.BIX/2/2361, as per TS.1 of Municipal Corporation, Jalandhar belonging to Smt. Shakuntla Devi W/o Sh. Tarsem Parkash (Guarantor).

Further the property documents are available with the branch concerning the cash credit account of the petitioner firm, description of which is as under:-

Other documents	1. Original title deed number 5930 dated 14.10.2004 of property at ES 102, Nakodar Road, Jalandhar in the name of Mrs. Shankuntla Devi wife of Late Sh. Tarsem Lal. 2. Original title deed number 7977 dated 15.12.2004 of property at ES 102, Nakodar Road, Jalandhar in the name of Mrs. Shankuntla Devi wife of Late Sh. Tarsem Lal.

Facility-I: Cash Credit (Hypothecation of Stocks and Book Debts)

Limits : Rs.200 lakhs

Security Documents	1. Joint & Several D.P.Note Duty Executed by the firm and its proprietor (LDOC-3B) 2. Letter of Sole Proprietorship (LDOC-3B) 3. Letter of Continuing Security (LDOC-7) 4. Letter of undertaking for book debts (LDOC-51) 5. Hypothecation of entire Raw Materials Stock – In – Process, Stores & Spares, Packing Materials, Finished Goods & Book – Debts of the firm, both present and future (LDOC -17 B) 6. Irrevocable Power of Attorney For Book – Debts duly Notarized (LDOC-86) 7. Composite Undertaking 8. Undertaking not to allow withdrawal of unsecured loans during currency bank's finance (LDOC-64) 9. Other documents/undertaking applicable to such credit facility-borrower as per other terms & conditions of sanction

A copy of certificate to above effect is appended herewith as Annexure P-2.

Facility-II: Term Loan

Limits : Rs.20 lakhs

Security Documents	1. Joint & Several D.P.Note duly executed by the firm and its Proprietor (LDOC-3B) 2. Letter of Sole Proprietorship (LDOC-38) 3. Hypothecation of entire machineries, electric installments, furniture & fixtures, office equipments and other movable fixed assets of the firm, situated at factory building, present & future (LDOC -17 B) 4. Letter of installment with acceleration clause (LDOC -57) 5.Authority to make direct payment to suppliers (LDOC -72) 6. Composite Undertaking 7. Undertaking not to allow withdrawal of unsecured loans during currency bank's finance (LDOC-64) 8. Other documents/undertaking applicable to such credit facility-borrower as per other terms & conditions of sanction

4. There was a default in repayment and the accounts were classified as non performing assets (NPA) on 11.12.2017. The respondent-bank issued notice under Section 13(2) of the SARFAESI Act on 14.12.2017. As per the notice, there was an outstanding amount of ₹2,05,59,470/- against the cash credit limit and ₹7,39,527/- towards the term loan.

5. Revised notice dated 19.01.2018 was issued under Section 13 (2) of the SARFAESI Act claiming an amount of ₹2,03,61,471/-against the cash credit limit and ₹5,47,013/- against the term loan.

6. The petitioner approached the bank on 06.03.2018 for regularising the account and tendered a cheque of ₹10 lakhs. But no

effective step was taken by the bank and hence being aggrieved, the present petition has been filed.

7. Learned counsel for the petitioner contended that against the cash credit limit of ₹2 crores, the due balance is ₹2.10 crores. The petitioner has already submitted a cheque of ₹10 lakhs and would further deposit a sum of ₹15 lakhs within one week. It was further submitted that the petitioner has requested the bank to reduce the cash credit limit from ₹2 crores to ₹1.5 crores. It was stated that the term loan had already been repaid. Notice of motion was issued on 26.03.2018 subject to the petitioner's depositing ₹15 lakhs within one week. Status quo regarding physical possession of the secured assets was ordered to be maintained.

8. The petitioner deposited ₹15 lakhs as per order dated 26.03.2018.

9. Heard learned counsel for the parties.

10. Learned counsel for the petitioner argued that the petitioner would approach the respondent-bank for reducing its cash credit limit of ₹2 crores to ₹1 crore. Further, it was contended that there is an overdue amount of less than ₹30 lakhs and the petitioner would clear the same.

11. Learned counsel for the respondent-bank contended that no such request has been made to the bank and the bank would not be able to decide such a request without verifying the stocks etc. available with the petitioner.

12. Without expressing any opinion on the merits of the case, the writ petition is disposed of with the following directions:-

1. The petitioner within seven days from today shall approach the respondent bank with an application for reduction of

the cash credit limit to ₹1 crore. Along with the application, the petitioner shall deposit a demand draft of ₹30 lakhs.

2. On receipt of the application, the bank shall decide the same in accordance with law after affording an opportunity of hearing to the petitioner. The decision shall be taken at the earliest, but not later than one month from receipt of the application. It is clarified that it would be upto the bank to decide the issue of reduction of cash credit limit to ₹1 crore or to any other amount as per the physical stock etc. available with the petitioner;
3. After the decision of the bank, the petitioner shall clear the overdue amount as determined by the bank within 10 days from the date of decision.
4. In case of failure of the petitioner to clear the overdue amount, the physical possession of all the secured assets shall be handed over to the bank.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 18, 2018
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Whether speaking/reasoned: Yes

Whether reportable : Yes