IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-32631-2018

Date of Decision: 20.12.2018

M/s Everest Engineering Corporation, Ludhiana and another
...Petitioners

Versus

State Bank of India
...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SUDIP AHLUWALIA.

PRESENT: Mr. Rohit Suri, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, a prayer for quashing of demand notice dated 21.12.2017 (Annexure P-6), possession notice dated 4.6.2018 (Annexure P-7) and publication of possession notice dated 20.11.2018 (Annexure P-10) has been made.

2. Petitioner No.1 is in the business of manufacture of fasteners, nuts, bolts, washers and other related products. In the year 2012, it achieved registration under ISO 9001:2008 as a manufacture exporter of auto parts, nuts and bolts as is clear from the Registration Certificate dated 2.6.2012 (Annexure P-1). The firm is also registered vide registration, Annexure P-2, with the Ministry of Micro, Small and Medium Enterprises, Government of India under the MSMED Act as a Micro Scale Manufacturing Enterprise bearing UAM No. PB12A0028485 showing the commencement of business as 01.4.1979. The petitioners have been issued provisional registration under GST vide certificate dated 25.6.2017 (Annexure P-3). In the year

2016, the petitioner was sanctioned enhanced CC Limit of ₹ 40 lakhs and EPC Limit of ₹ 100 lakhs. The agreement provided security towards the Term Loan Facilities being first charge over the plant and machinery as well as the equitable mortgage of the factory land and building. The account of the petitioners was regular on 9.5.2017 and all the transactions were being regularly carried out to their account. However, a cheque dated 10.5.2017 amounting to ₹ 50,233/- issued by the petitioners in favour of Gateway Rail Freight Limited was dishonoured by the respondent on 15.5.2017 as is clear from Annexure P-4. Even the export payments realized in EPC account were not released to the petitioners. The balance in EPC account as on 29.5.2017 was ₹ 77.48 lakhs and ₹ 39.03 lakhs in Cash Credit account against the sanctioned limit of ₹ 100 lakhs and ₹ 40 lakhs, respectively. A notice dated 10.8.2017 (Annexure P-5) was issued to the petitioners raising a demand of ₹ 1,19,40,763/- as on 7.8.2017. Subsequently, the said notice was withdrawn. Again a demand notice dated 21.12.2017 (Annexure P-6) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the SARFAESI Act") was issued to the petitioners classifying their account as NPA and claiming an amount of ₹ 1,22,96,719/- as on 11.12.2017. Thereafter, possession notice dated 4.6.2018 (Annexure P-7) under Section 13(4) of the SARFAESI Act was issued to the petitioners for taking over symbolic possession of the property. Accordingly, the petitioners sent a representation dated 10.9.2018 (Annexure P-8) to the respondent for waiving off the penal interest and charge interest on MCLR and to allow the operation of the account by making available EPC limit, but no response has been received till date. Thereafter, the petitioners sent a letter dated

24.10.2018 (Annexure P-9) to the respondent for restructuring of the loan account, but to no effect. However, the respondent issued publication dated 20.11.2018 (Annexure P-10) for taking over the physical possession of the unit. The petitioners are income tax payee and for the assessment year 2018-19, they had paid income tax of ₹ 52,000/- as is clear from the challan, Annexure P-11. As per statement of account, Annexure P-12, after the classification of the account of the petitioners as NPA in June, 2017, a sum of ₹ 20,74,062/- had been deposited. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioners have moved a representation dated 10.9.2018 (Annexure P-8) to the respondent, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing the respondent to take a decision on the representation dated 10.9.2018 (Annexure P-8), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of ten days from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

December 20, 2018
gbs

(SUDIP AHLUWALIA)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**