

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2775 of 2017

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M/s Pareena Motors Private Limited a Company registered under Companies Act, 1956 through its Director Sri Akhourri Gopal, S/o Late Akhourri Banshidhar having its Registered office at Banshi Sadan, At Mohalla- Chandchaura, P.S. Civil Lines, Gaya Anchal- Chandauli, Distt.- Gaya.

... .. Petitioner

Versus

1. State Bank of India Branch at Dakbunglow Road, Patna SBI specialised Commercial Branch, Account migrated at State Bank of India, Stressed Assets Management Branch, 5th Floor, SBI Patna, Zonal office Building, J.C. Road, Patna, through Assistant General Manager.
2. Presiding Officer, Debt Recovery Tribunal Karpuri Thakur Sadan, Ashiana Digha Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Arbind Kumar Jha, Advocate
For the Respondent/s : Mr.Kaushlendra Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 20-09-2019

In this writ application the petitioner is seeking to challenge the order dated 27.10.2016 passed the learned Presiding Officer, Debts Recovery Tribunal in exercise of his power under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'Act of 1993'). By the impugned judgment and order the petitioner – Company who is the borrower, it's directors and guarantors have been found liable to pay a sum of Rs. 4,74,70,671.56/- together with



pendente lite and future interest at contractual rate from 01.08.2015 till realization of the entire sum due and recoverable with costs. They have also been debarred from transferring, alienating encumbering or otherwise dealing with or disposing of the mortgaged or hypothecated or any other properties and assets without paying the aforesaid adjudicated dues to the applicant Bank.

Let it be recorded that in the present writ application it is only the petitioner company who is one of the certificate debtors has challenged the impugned judgment.

Mr. Arbind Kumar Jha, learned counsel representing the petitioner has challenged the impugned judgment by submitting that the learned Presiding Officer, Debts Recovery Tribunal has exercised his power under Section 19(1) of the Act of 1993 in a manner which would render the impugned judgment wholly without jurisdiction. It is his submission that an application under Section 19 of the Act of 1993 may be maintained only when the account has become a Non-Performing Asset (in short 'NPA'). Learned counsel submits that in the present case no doubt the respondent Bank had sanctioned a cash credit facility



under Electronic Dealer Finance Scheme (in short 'EDFS') of Rs. 10 Crore on 22.03.2013, the account of the Company was classified as NPA on 30.09.2014 when the ledger balance of the Company was within the limit as it was only Rs. 6,59,19,692.07 as on 30.09.2014. It is his further submission that on 26.09.2014 the petitioner Company had made request to the respondent Bank for conversion of entire outstanding of Fund Based Working Capital (in short 'FBWC') limit sanctioned under eDFS facility and the bank had issued a letter of arrangement dated 08.10.2014, whereunder the respondent bank agreed for sanction/renewal of working capital limits and/or term loan limits at existing/enhanced levels subject to certain conditions.

It is his submission that after the sanction/renewal of the Working Capital/or Term Loans Limits at existing/enhanced level by the competent authority on 08.10.2014 and the petitioner had executed documents on 08.10.2014 the respondent Bank came out with a plea that the loan account had been classified 'NPA' on 30.09.2014 i.e. prior to submission of the letter of arrangement and deed of guarantee. According to the petitioner, the statement



of account of eDFS it would appear that the quarter ending 30.09.2014, the date on which the account was declared NPA, the ledger balance was within the limits and in terms of clause 3.1.1 of the Reserve Bank of India Circular which deals with income recognition policy, reversal of income and appropriation of recovery of NPAs and interest application. The account of the petitioner company could not have been declared NPA.

Learned counsel for the petitioner submits that for declaration of NPA none of the conditions were present in this case and since there was no default on the part of the borrower there was no cause of action for the Bank to file an application under Section 19 of the Act of 1993. The petitioner is aggrieved by rejection of his objection to the aforesaid effect by the learned Tribunal while passing the impugned judgment.

While opposing the writ application, learned counsel for the respondent-Bank has at the outset taken an objection on the ground of there being an adequate and equally efficacious remedy of appeal provided under Section 20 of the Act of 1993 whereunder the petitioner



could have challenged the impugned judgment before the Debts Recovery Appellate Tribunal. Referring to the judgments of the Hon'ble Supreme Court in the case of **Punjab National Bank Vs. O.C. Krishnan** reported in **2001 Supp (1) SCR page 466 = (2001) 6 SCC 569** and in the case of **United Bank of India Vs. Satyawati Tondon** reported in **(2010) 8 SCC 110** learned counsel submits that this court has been consistently taking a view that the Act of 1993 being a special statute which provides for the remedy of appeal to the aggrieved party, the writ application need not be entertained and the aggrieved party be left to seek his/her remedy before the appellate forum.

On factual matrix learned counsel has submitted inter alia that the cash credit eDFS facility was availed by the petitioner against the primary security of hypothecation of inventory procured out of bank finance and personal guarantee was given by directors of the petitioner company as also third party guarantee was given by one Kalindi Devi and Chakradhar Mishra towards the payment of loan amount.

It is submitted that the petitioner company and one M/s Ramanandi Automobiles Pvt. Ltd. are owned by



same person, these are private limited companies and the directors and the guarantors are the same person in both the companies to whom the loan was advanced as group accounts. It is stated in the written notes of argument that in this account, no collateral security has been taken, neither any properties has been mortgaged and only personal guarantee of directors has been taken by the respondent bank for the due repayment of the loan amount.

It is further pointed out that the cash credit account of M/s Ramanandi Automobiles Pvt. Ltd. was classified as NPA on 30.09.2014 in accordance with the RBI Circular. When the respondent Bank found that the directors of the petitioner's company are the same person holding entire capital and had significant influence in another company namely Ramanandi Automobiles Pvt. Ltd. Hence, this is an associated company under Section 2(6) of the Companies Act, 2013. In view of this fact that the petitioner company is an associate company of M/s Ramanandi Automobiles Pvt. Ltd. in accordance with paragraph 2.2.2 of the RBI Master Circular, the account has been declared NPAs.



Further clarifying the issue with regard to the fresh sanction granted on 08.10.2014 it has been stated that the petitioner company itself had made request to the bank for conversion of entire outstanding of 'FBWCL' under eDFS facility, hence in the instant case no fresh loan was sanctioned.

Learned counsel has further submitted that the petitioner has wrongly quoted the various provisions of the Master Circular No. RBI/2014-15/25 UBD.BPD.(PCB) MC No. 3/09.14.000/2014-15 dated 01.07.2014. The respondent Bank has relied upon para 2.2.1 (Record of Recovery) which permits the Bank to treat an account as NPA on the basis of the record of recovery. Under para 2.2.1, where there is a threat of loss or the recoverability of the advances is in doubt, the asset should be treated as 'NPA'. Learned counsel for the bank, therefore, submits that the writ application is not fit to be entertained and it is to be dismissed at the outset.

Let it be recorded that when the writ application was taken up for consideration, this court expressed it's views that there being an adequate and equally efficacious



remedy of appeal under Section 20 of the Act of 1993, following the judgment of the Hon'ble Supreme Court in the case of **Satyawati Tondon (supra)**, this court would not entertain the writ application, however, the petitioner may be at liberty to seek it's remedy in appeal, if so advised, in accordance with law, but Mr. Jha, learned counsel representing the petitioner submitted that since the writ application involves an issue of jurisdiction and according to him the learned Debts Recovery Tribunal has committed a jurisdictional error by entertaining the application under Section 19 of the Act of 1993, this issue is required to be looked into by this court and hence the writ application be considered.

After hearing learned counsel for the parties on 16.08.2019, the matter has been heard afresh on 19.09.2019.

After hearing learned counsel for the parties and on perusal of the records this court finds that the only contention of learned counsel for the petitioner is that in the given facts and circumstances the application under Section 19 of the Act of 1993 should not have been entertained by the Debts Recovery Tribunal.



It is his submission that because the account of this petitioner was not in default, the action for recovery of the loan amount could not have been taken. Learned counsel however does not dispute the factual position that the two private limited companies namely, this petitioner and one M/s Ramanandi Automobiles Pvt. Ltd. are under the control of the same person and directors and in fact they have the ultimate control over the affairs of the two companies. In this regard, the statements made in the counter affidavit of the bank has remained uncontroverted and despite indulgence granted on 16.09.2019, no rejoinder has come. Let it also be recorded that no adjournment has been sought on 19.09.2019 and parties have argued afresh.

The Act of 1993 was enacted when the banks and financial institutions were experiencing a lot of difficulties in recovering their loans and advances as also in enforcement of the securities available with them to secure the loans. Since a significant portion of the public money were being blocked due to procedural delay in recovery of the debts, committee on the financial system considered the setting up of the special tribunals with special powers for



adjudication of such matters, the object behind that was speedy recovery of the public money. After much deliberations at different levels the Act of 1993 came into force. Section 19(1) thereof reads as under:

19. Application to the Tribunal – (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction -

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises:
[Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery



Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.]

[(1-A) Every bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2, may, at its option, opt to initiate proceedings under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) to recover debts, whether due before or after the date of commencement of the Enforcement of the Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 from any person instead of making an application under this Chapter.

(1-B) In case, a bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2 has filed an application under this Chapter and subsequently opts to withdraw the application for the purpose of initiating proceeding under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) to recover debts, it may do so with the permission of the Tribunal and every such application seeking permission from the Tribunal to withdraw the application made under sub-section (1-A) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided that in case the Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.]

- (2)
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The word “Debt” has been defined under the dictionary section 2, Clause (g) which reads as under:

“2(g). “debt” means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institution during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any Civil Court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application [and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or];”

The contention of learned counsel for the petitioner is that this account was not in default but on lifting the corporate veil particularly in case of private limited company owned by individuals from the same



family it may be found that this company has rightly been said to be an associate company of M/s Ramanandi Automobiles Pvt. Ltd. Section 2(6) of the Companies Act, 2013 which defines the word “associate company” is extracted hereunder together with it’s explanation:

“Associate Company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation – For the purposes of this clause, “significant influence” means control of at least twenty percent of total share capital, or of business decisions under an agreement.”

It is not in dispute that the account of M/s Ramanandi Automobiles Pvt. Ltd. have been classified as NPA on 30.09.2014 itself in accordance with para 2.2.2 of Reserve Bank of India Master Circular. The relevant part of which has been quoted in the written notes of argument submitted on behalf of the Bank and the same is being reproduced hereunder:

“2.2.2 Treatment of NPAs – Borrower-wise and not Facility-wise

(i) In respect of a borrower having more than one facility with a bank, all the facilities granted by the bank will have to be treated as NPA and not the particular facility or part thereof which has become irregular.



(ii) However, in respect of consortium advances or financing under multiple banking arrangements, each bank may classify the borrower accounts according to its own record of recovery and other aspects having a bearing on the recoverability of the advances.”

Further para 2.2.1 (record of recovery) which provide for the treatment of account as 'NPAs' and has been quoted in the written notes of argument is extracted hereunder for a ready reference:

“(i) The treatment of an Asset as NPA should be based on the record of recovery. Banks should not treat an advance as NPA merely due to existence of some deficiencies which are temporary in nature such as non-availability of adequate drawing power, balance outstanding exceeding the limit, non submission of stock statement and the non-renewal of the limits on the due date etc. **Where there is threat of loss, or the recoverability of the advances is in doubt, the asset should be treated as NPA.**”

The submission of learned counsel for the petitioner that the bank had sanctioned a fresh loan has been clearly explained by the respondent bank saying that no fresh loan was sanctioned and, in fact, it was the entire outstanding of 'FBWCL' which was brought under eDFS facility.

To this court, there is no difficulty in coming to a conclusion that even if there was no default in the account



of this petitioner, the fact that the loan was advanced as a group account and one of the private limited companies which is owned and controlled by the same group of persons and directors had defaulted and the said loan account was declared as NPA on 30.09.2014, as also in terms of RBI Circular quoted hereinabove, if the respondent bank was of the view that there is a threat of loss or the recoverability of the advances is in doubt there was no infirmity in treating the account of the present petitioner NPA. No jurisdictional error may be found on the part of the Debts Recovery Tribunal in entertaining the original application under Section 19 of the Act of 1993. The issue raised by learned counsel for the petitioner is thus answered accordingly. No other point has been argued before this court to assail the impugned judgment.

In the opinion of this court, this Writ Application has no merit. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	19.09.2019
Uploading Date	20.09.2019
Transmission Date	

