HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3575 of 2019

1. M/s Devashish Fuels Through Proprietor Smt. Monika Dewangan W/o Shri Risab Dewangan Aged About 37 Year, R/o Devashish Fules, Bhitarras, Post - Sihava, Tehsil - Nagari, District - Dhamtari, Chhattisgarh.

2. Shri Rishabh Dewangan, S/o Shri Ishwar Chand Dewangan, Aged About 41 Years, R/o 184 Kallamav Para, Acchotta, Ward No. 10, District - Dhamtari, Chhattisgarh.

---- Petitioners

Versus

- Oriental Bank Of Commerce Through Authorised Officer, Address Branch Office New Bus Stand Dhamtari, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Ashutosh Shukla, Advocate
For Respondent	:	Shri Shorabh Jain, Advocate

Hon'ble Shri Justice Goutam Bhaduri, Judge

Order On Board

03/10/2019

Heard.

1. The present petition is against the measures taken by the bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002(for short SARFAESI Act, 2002). The petition is filed for following reliefs:-

> 10.1 The Hon'ble Court may kindly be pleased to call fro the entire records.
>
> 10.2 That this Hon'ble Court may kindly be pleased to issue a suitable writ/order/ direction to set aside the entire Proceedings from the stage of Notice U/s 13(2) of the Act 2002 to be quashed.
>
> 10.3 That this Hon'ble Court may kindly be pleased to issue a suitable writ/order/ direction to the respondent authorities to re-consider the petitioner's grievance, as the same has been passed without giving opportunity of hearing to the petitioner.
>
> 10.4 Pass such other and further orders as may be deemed fit and proper in the facts and circumstance of the present case in the interest of justice.

2. It is contended that a notice having been served under Section 13 (2) of the Act of 2002, the petitioner had thereafter filed a representation vide Annexure P-4 on 03.09.2019, therefore, as per mandate of sub section (3A) of Section 13, of the Act of 2002, the Bank was obliged to decide the representation/ objection of the petitioner so made and any action taken by the Bank without considering the representation would be bad in law.

3. Learned counsel for the respondent vehemently opposes the same and would submit that within a period of 60 days, no objection was made and was made. It is further submitted that after the measures were taken under Section 13(4), the issue went up before the Debt Recovery Tribunal (DRT) and the petitioner appeared in person and assure for repayment, therefore, the objection which was made after issuance of notice under Section 13(2) was beyond time and the Bank was not required to decide the same.

4. Perusal of the document would show that the notice under the Section 13 (2) of the SARFAESI Act 2002 for default was served to the petitioner by Annexure P-1 dated 05.02.2019. As per sub Section 2 of Section 13 of the Act of 2002, when the notices are issued calling upon the borrower in writing to discharge the liability, the borrower can pay the amount within an outer limit of 60 days and if at all an application/ objection is filed after receipt of notice under Section 13 (2), if any, the Bank the secure creditor, shall consider the same as per Sub Section (3A) of Section 13 of the Act of 2002. Meaning thereby after receipt of notice under Section 13 (2) if an objection is filed under sub Section (3A) then bank/ secure creditor has to decide the same. Here in the instant case the borrower/ petitioner after receipt of notice of Section 13 (2) filed his representation much beyond the period of 60 days i.e. on 03.09.2019 by Annexure P-4, as such the bank was not required to put the clock back. Furthermore, the Annexure P-6 the proceeding

before the DRT would show that the petitioner appeared in person before the DRT and assured for repayment of certain amount. Therefore, under the circumstances no relief can be granted to the petitioner and prima facie no default appears to be made by the bank in enforcement of security interest under Section 13 (2) of the Act of 2002.

5. Accordingly, the petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti