IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-7095-2019

Date of Decision: 15.3.2019

Assets Care & Reconstruction Enterprise Ltd., New Delhi

...Petitioner

Versus

Excise & Taxation Officer-cum-Assessing Authority, Karnal and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Manish Jain, Advocate with
Mr. Mayur Kanwar, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 18.12.2017 (Annexure P-1) passed by respondent No.1. Further, a writ of mandamus has been sought directing respondent No.1 to refund 3 41,08,395/-.

2. Respondent No.1 vide order/letter dated 18.12.2017 (Annexure P-1) raised a demand of ₹ 82,16,789/- from respondent No.3 regarding VAT outstanding. The IFCI Ltd. had sanctioned various credit facilities to M/s JEG Hospitality Holding Pvt. Ltd. vide sanction letter dated 31.10.2010 against the immovable property of respondent No.3 as mentioned in para 3 of the writ petition. Since the borrower failed to repay the loan amount, its

account was declared as Non-Performing Account (NPA). A notice dated 1.7.2011 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 and thereafter symbolic possession of the property in question was taken on 3.12.2011. The IFCI also issued demand notices to the borrower and guarantors on 18.1.2012 for the payment of outstanding amount of ₹ 113,46,19,000/- along with interest. Since the borrower failed to make the payment, the IFCI filed OA-6-2012 before the Debts Recovery Tribunal-I, Delhi (hereinafter referred to as "the Tribunal") for the recovery of ₹ 111,27,64,440.25 as on 31.1.2012. The said OA was decreed by the Tribunal vide order dated 27.2.2014 and a recovery certificate was issued in favour of IFCI Ltd. Subsequently, the IFCI Ltd. executed a Deed of Assignment dated 10.10.2014 in favour of the petitioner which was registered in the office of Sub Registrar-V, New Delhi. In view thereof, the petitioner had become the full and absolute legal owner of the assigned debt along with all securities and receivable etc. and the physical possession of 'Karnal Haveli' came in the hands of the petitioner. The petitioner made attempts to sell the said property under Section 13(4) of the SARFAESI Act, but to no effect. Accordingly, the petitioner appointed respondent No.2 for managing the affairs of 'Karnal Haveli' for a period of three years from 19.11.2014 to 18.11.2017 vide appointment letter dated 10.12.2014 (Annexure P-2). After expiry of three years, the petitioner took back management and possession of 'Karnal Haveli' from respondent No.2 on 18.11.2017. Respondent No.1 framed assessment under Section 15 of the Haryana Value added Tax act, 2003 for the assessment year 2014-15 directing respondent No.3 to pay the tax for the said period. However, during the said period, respondent No.2 was operating the property in question. Respondent No.1 sent a letter directing the petitioner to make the payment of ₹ 82,16,789/- outstanding against respondent No.3. In response thereto, the petitioner issued a cheque dated 20.2.2018 of ₹ 41,08,395/- towards 50% of the demand under duress and sent to respondent No.1 vide letter dated 20.2.2018 (Annexure P-3). The petitioner vide letters dated 22.6.2018 and 26.6.2018 (Annexure P-4 Colly) informed respondent No.1 that it was not responsible for the said amount and requested for refund of ₹ 41,08,395/-. Again the petitioner vide letter dated 8.10.2018 (Annexure P-5) requested respondent No.1 for refund of the said amount, but to no effect. Respondent No.1 vide letter dated 9.10.2018 (Annexure P-6) directed M/s Burger King not to make any payment to the petitioner and remit all the payments to it. The petitioner vide letter dated 26.10.2018 (Annexure P-7) informed respondent No.1 that it is not a dealer and was not responsible for any payment of VAT and requested respondent No.1 to refund the amount of ₹ 41,08,395/-, but no response has been received till date. The petitioner also filed OA against respondent No.2 for realization of ₹ 13.49 crores before the Tribunal. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent the letters dated 22.6.2018 and 26.6.2018 (Annexure P-4 Colly) to respondent No.1, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.1 to take a decision on the letters dated 22.6.2018 and 26.6.2018 (Annexure P-4

Colly), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

March 15, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**