IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10742 of 2017
Decided on : 08.04.2019

Amrit Lal Generator House ...... Petitioner

Versus

Principal Nodal Officer & ors. ...... Respondents

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

Present : Mr. Deepak Girotra, Advocate
for the petitioner.

Mr. R.S.Bhatia, Advocate
for the respondents.

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Manjari Nehru Kaul, J.

The instant writ petition has been filed under Articles 226/227 of the Constitution of India inter alia for issuance of writ in the nature of Mandamus for direction to respondent No.1 for conducting an inquiry into the matter or for releasing the Earnest Money Deposit (EMD) along with interest @ 24% per annum from 20.05.2015 till the date of its realisation.

2. Brief facts of the case are that the petitioner is a proprietor of M/s Amrit Lal Generator House. On 13.04.2015, respondent Nos.2 and 3 had put an e-auction sale notice (Annexure P-1) to the general public for sale of plant and machinery of M/s Arcee Ispat Udyog Ltd. situated at 7th KM Stone, Barwala Road, Talwandi Rana, Hisar at the reserve price of ₹ 2.90 crores. The petitioner in pursuance to the sale notice deposited the amount of ₹ 29 lakhs as EMD on 17.04.2015 with respondents No.2 and 3

and participated in the e-auction. The petitioner being the successful bidder visited the site where the machinery was placed. He came to know that the plant and machinery were owned by one M/s Riddhi Steel and Tubes Pvt. Ltd. and a litigation was going on. On 21.05.2015, the petitioner-firm made a written request to respondent Nos.2 and 3 for cancellation of the bid and to refund the EMD along with interest. Thereafter, the petitioner on enquiry further learnt that M/s Riddhi Steel and Tubes Pvt. Ltd. had filed a case before Debts Recovery Tribunal, Chandigarh (for short 'the Tribunal') and also approached this Court by filing CWP No.11109 of 2015. The petitioner sent a legal notice dated 17.04.2017 (Annexure P-6) to the respondents for refunding the EMD of ₹ 29 lakhs along with interest. However, no action was taken upon the said legal notice. Feeling aggrieved, the present petition has been filed.

3. Learned counsel for the petitioner-firm submitted that it deposited ₹ 29 lakhs as EMD in pursuance to sale notice dated 13.04.2015 (Annexure P-1) with respondent Nos.2 and 3 for sale of plant and machinery of M/s Arcee Ispat Udyog Ltd. It was urged that they were misled by respondent Nos.2 and 3 into believing that the petitioner-firm had emerged as a successful bidder in the e-auction, which had purportedly taken place. However, on a visit to the site of M/s Arcee Ispat Udyog Ltd., it came to their notice that there was litigation going on qua the said asset and a case was pending before the Tribunal. On further enquiry, they learnt that no e-auction had in fact taken place.

4. Per contra, learned counsel for the respondent-bank has urged

that the petitioner-firm as per their own admission in the legal notice dated 14.04.2017 (Annexure P-6) sent by them to the respondent-bank they participated in the e-auction. Learned counsel further submitted that the petitioner firm had admitted that being the successful bidder, it along with the bank officials visited the site/unit also. Learned counsel for the respondents in support of their case placed reliance upon the decision of the Apex Court in ***Agarwal Tracom Pvt. Ltd. vs. Punjab National Bank and others, AIR 2017 SC 5562*** to contend that petitioner has alternative remedy before the Tribunal and thus, the writ was not maintainable.

5. We have heard learned counsel for the parties and perused the paper book with their assistance.

6. It could not be disputed that highly disputed questions of fact are involved in the present writ petition. Moreover, alternate remedy under Section 17 of the Act is available to the petitioner under the Act.

7. The Apex Court in ***Agarwal Tracom Pvt. Ltd.'s case(supra)*** held that the appellant had alternative statutory remedy of filing an application under Section 17 of the Act challenging the action of the respondent in forfeiting the deposit money of the appellant. The relevant observations made by the Apex Court are reproduced as under:

> *"27. Reading of the aforementioned Sections and the Rules and, in particular, Section 17(2) and Rule 9(5) would clearly go to show that an action of secured creditor in forfeiting the deposit made by the auction purchaser is a part of the measures taken by the secured creditor under Section 13(4).*
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> *28. The reason is that Section 17(2) empowers the*

> *Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "provisions of this Act and the Rules made thereunder" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13(4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2),(3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?*

8. In view of the above, the present petition is disposed of by relegating the petitioner to approach the DRT in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

08.04.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No