IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-19701-2019
Date of Decision:22.07.2019

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M/s KMG A To Z Systems Private Limited

. . . . . Petitioner

Vs.

Oriental Bank of Commerce and another

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

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Present: - Mr.Rajesh Kumar Moudgil, Advocate,
for the petitioner.

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RAKESH KUMAR JAIN, J.

The only prayer made by the petitioner is for the issuance of a writ in the nature of certiorari for quashing the order dated 12.6.2019 passed by the District Magistrate, Gurugram on an application filed by respondent No.1 under Section 14 of the Securitisation and Reconstruction of Financial Assests and Enforcement of Security Interest Act, 2002 [for short 'the Act'].

In brief, the facts of the case are that the petitioner had obtained fund based and non-fund based limit from respondent No.1 which were also enhanced from time to time. It is averred in the petition that on 18.6.2015, respondent No.1 had approved the following credit facilities: -

a) Cash credit limit at existing level of 29.00 Crore @ ROI BR+3.50%.

b) Inland letter of credit of 10.00 Crore as a sub limit of Inland Bank of Guarantee limit.

c) Renewal cum reduction of BG limit from 70.00 Crore to 57.40 Crore.

d) Permitting one way interchangeability (sub limit BG) from LC to CC (Hyp.) up to 10 Crore.

The aforesaid facilities were extended with the mortgage of collateral securities, details of which are given as under: -

Description (Res./Com./Agr. Land) and Address	*Total Area Sq./ft./Yd./ meters*	*Name(s) of Owner(s)*	*Value (in Crore)*			*Date & Basis of Valuation*
			Last Sanction RV	*Present*		
				MV	*RV*	
Existing:						
Factory land & Building: C049, Sector 81, Noida (UP)	*1950 sqm.*	*KMG A to Z Systems Pvt. Ltd.*	*4.62*	*5.14*	*4.62*	*15.04.2014*
Residential: At A-99, Sector 49, Noida	*250.20 sqm.*	*Sh. S.P. Goyal & Smt. Santosh Goyal*	*2.37*	*2.64*	*2.37*	*15.04.2014*
Industrial Plot: At C-48, Sector-81, Noida	*1950 sqm.*	*KMG A to Z Systems Pvt. Ltd.*	*5.13*	*5.70*	*5.13*	*15.04.2014*
Factory land & Building: B-60, Sector 57, Noida.	*800 sqm.*	*M/s Gadeo Electronics*	*4.17*	*4.64*	*4.17*	*15.04.2014*
Factory land & Building: B-150, Sector 63, Noida.	*925 sqm.*	*Sh. Rajiv Mittal*	*5.56*	*6.17*	*5.56*	*15.04.2014*
Residential: At House No. D-76, Sector 52, Noida.	*200 sqm.*	*Sh. Anil Aggarwal*	*2.86*	*3.18*	*2.86*	*15.04.2014*
Total			*24.71*	*24.47*	*24.71*	
Fresh			*0.00*	*0.00*	*0.00*	
Grand Total			*24.71*	*27.47*	*24.71*	

The bank issued the recovery notice under Section 13(2) of the Act on 8.1.2016 calling upon the borrower/guarantor to repay the outstanding amount within a period of 60 days. As there was a default on the part of the borrower/guarantor in repayment of the recalled amount, the proceedings under Section 14 of the Act were initiated by respondent No.1 calling upon the District Magistrate to provide assistance in taking possession of the secured asset. M/s. Gadeo electronics was a guarantor.

After the death of R.K. Mittal, one of the partners of the said firm, a request was made by the petitioner to release the mortgaged property of the guarantor and in lieu thereof offered the following two properties:

I *Property situated at Flat No. 001, Mahagun Maestro, Plot No. F-21A, Sector 50 Noida in the name of Sh. Mast Ram Atter valued ₹2.28 Crores as per valuation of,*

II *Property situated as Business Suite No. 508, The Peach Tree, 5th Floor, C-Block, Sushant Lok, Phase-I, Gurgaon, Haryana in the name of Sh. Sanjeev Krishan Sharma valued ₹1.12 Crores as per valuation of M/s Jayant Consultants – Gurgaon.*

The petitioner was informed by respondent No.1, vide letter dated 17.7.2015, that the aforesaid two properties were mortgaged with the Bank on 13.7.2015 and their matter has been sent to the head office and the property of the guarantor would be released only after receipt of permission by the competent authority, obtaining of the CDR for the difference amount of ₹1.24 crores and NOC from the Canara Bank. After the letter dated 17.7.2015, purported to have been sent by respondent No.1 to the petitioner, there is no evidence to show that the request made by the petitioner was ever accepted by the competent authority.

Learned counsel for the petitioner has submitted that the property situated in Gurugram was not originally mortgaged at the time of securing the financial assistance from the bank rather it was mortgaged for the purpose of getting the property of the guarantor released but respondent No.1 has not released the property of the guarantor and is trying to take possession of the said property.

We have heard learned counsel for the petitioner and perused the record with his able assistance.

The writ petition is totally silent about any offer having been made by the petitioner after the year 2015 in respect of the property in question, who has awakened from the slumber only when the District Magistrate has passed the order in the year 2019.

Thus, in view of this manner, we do not find any merit in the writ petition, at this stage, and therefore, the same is hereby dismissing but leaving a room for the petitioner to approach the bank again for the purpose of release of its property in question by making a detailed representation. In case any such representation is made within a period of one week from the date of receipt of certified copy of this order, the bank is further directed to decide the same positively by passing a speaking order after giving an opportunity of hearing to the petitioner, within a period of 15 days thereafter.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

22.07.2019
Vivek

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No