IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

102 **CWP-18067-2018 (O&M)**
Date of Decision : 16.11.2019

M/s National Electronics Corporation and another
... Petitioners

Versus

Authorized Officer, Punjab National Bank

...Respondent

CORAM:HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Rajat Khanna, Advocate for the petitioners.

Mr. Gaurav Goel, Advocate for respondent No.1.

None for respondent No.2.

RAKESH KUMAR JAIN, J.(ORAL)

The petitioners have challenged the order dated 22.06.2018 passed by the Debt Recovery Tribunal-III, Chandigarh by which the Securitization Application filed by the petitioners was dismissed as not maintainable on the ground that the petitioners have not lost their physical possession over the mortgaged property.

During the pendency of this petition, the Supreme Court has held in the case of ***M/s Hind Forge Pvt. Ltd. and another Versus State of Uttar Pradesh through District Magistrate Ghaziabad (SC),*** 2018(4) RCR (Civil) 948, that once the possession notice is given under Rule 8 (1) and 8 (2) of the Security Interest (Enforcement) Rules, 2002 by secured creditor, the borrower cannot deal with the secured asset at all and, therefore, the petition filed under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'SARFAESI Act, 2002') would be maintainable before the Debt Recovery Tribunal despite the fact that the physical possession is not lost. It is submitted by counsel for the petitioners that case of ***M/s Hindi Forge's*** cited (supra) has been followed by this Court in CWP No. 19318 of 2018, ***M/s Shree Shayam Cotex Private Limited and another Versus State Bank of India and others*** and has also referred to a decision of this Court in CWP No. 27431 of 2018, ***Shanta Arora Versus Debt Recovery Tribunal-II, Chandigarh and others*** to contend that the impugned order is illegal after the aforesaid decisions have been rendered by the Courts. Counsel appearing on behalf of respondent No.1-Bank has fairly conceded to the preposition of law propounded by counsel for the petitioners.

Thus in view thereof, the impugned order dated 22.06.2018 passed by the Debt Recovery Tribunal-III, Chandigarh is hereby set aside and the matter is remanded back to it to decide the same on merits.

It is needless to mention that with the disposal of this petition, all the interim orders passed by this Court have come to an end but petitioners are at liberty to raise the issue of stay in the proceedings before the DRT after the remand of this matter.

Parties are directed to appear before the DRT on 04.12.2019.

(RAKESH KUMAR JAIN)
JUDGE

(SUVIR SEHGAL)
JUDGE

16.11.2019
pooja saini

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*