NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 2034 of 2020

M/s Ganpati Steel Through Its Partner Mr. Ashish Gupta S/o Late Ramchandra Gupta, Aged About 46 Years, R/o Plot No. 134 G Light Industrial Area Bhilai, District Durg Chhattisgarh 490026.

---- Petitioner

Versus

Canara Bank Through Authorized Officer SME Branch Bhilai, District Durg Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. Anand Shukla, Advocate
For Respondent	:	Mr. Sunil Pillai, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

23/09/2020

1. The challenge in the present writ petition is to the demand notice Annexure P/1 dated 03.12.2019, a notice issued under Section 13(2) of the SARFAESI Act, 2002.

2. The facts of the case is that the petitioner, a partnership firm, is running a business of manufacturing HB Wire, GI Wire, Barbed Wire, Stay Wire. The petitioner-firm have a manufacturing unit situated at plot No. 134-G at the Light Industrial Area, Bhilai, District Durg. The petitioner-firm were operating their business after obtaining a term loan from the respondent-Bank and thereafter at regular intervals as per requirement, the term loan was enhanced. On account of the non-repayment of the loan within the stipulated period the bank authorities started initiating action against the petitioner. Meanwhile, the petitioner has sent a

proposal for restructuring of the working capital and term loan, which the petitioner had made in terms of the guidelines laid down by the Reserve Bank of India. The respondent-Bank considered the request of the petitioner for the restructuring of the loan and vide letter dated 12.07.2019 restructured the credit limits and the loan. Even after the restructuring being provided, when there was a further defaults on the part of the petitioner, the respondents authorities classified the account of the petitioner as a Non Performing Asset (NPA) and vide impugned demand notice dated 03.12.2019 initiated the proceedings under Section 13(2) of the Act of 2002. It is this notice which is under challenge in the present writ petition.

3. The impugned notice is primarily challenged on the ground that the respondent-Bank has not properly considered and appreciated the restructuring proposal made by the petitioner. The other ground of challenge is that of the respondent-Bank having not considered the MSME advances restructuring guidelines framed by the Reserve Bank of India. The further contention of the petitioner was that as per the restructuring of the limits and the loans of the petitioner, he was required for repayment of the entire loan in 51 monthly installments starting from January, 2020 closing on March, 2024. However, even before the installment could be started to be paid, the respondents have issued the impugned notice dated 03.12.2019. Thus, the impugned notice Annexure P/1 is in total contravention to the restructuring permitted by the respondent-Bank as per their letter dated 12.07.2019 and thus deserves to be quashed at this

juncture permitting the petitioner to make the regular payments as per the restructuring. The contention of the petitioner further was that after the 13(2) notice, the petitioner had submitted a representation as per Section 13A of the Act of 2002, which however in a mechanical manner without application of mind and without giving any reasons have been rejected by the respondents vide their order dated 30.01.2020.

4. On the contrary, the respondent-Bank opposing the petition submits that the writ petition is too premature at this juncture to be entertained by this Court invoking the writ jurisdiction of the High Court under Article 226 of the Constitution of India. The further contention of the counsel for the respondent-Bank was that the petitioner after the issuance of the notice under Section 13(2) of the SARFAESI Act had submitted a representation as per the provision of Section 13(3)A and since the representation also has been rejected, there is hardly any scope of interference left for the Writ Court to be invoked. Moreover, the contention of the respondent-Bank is that even after the restructuring was done, the over dues that were payable by the petitioner beyond an amount of Rs.284 lakhs were to be cleared immediately and unconditionally. This condition was already acceptted by the petitioner as is evident from the document of restructuring Annexure P/4 filed by the petitioner. According to the respondent-Bank having accepted the restructuring documents, they how cannot be permitted to turn around and question the restructuring, nor can they question the notice under Section 13(2) initiated by the respondent-Bank.

5. Having heard the contentions put forth on either side and on perusal of record, the admitted factual position as it stands from the pleadings is that the petitioner had been provided with working capitals, term loans, WCTL by the respondents. However, there appears to be a default on the part of the petitioner in the repayment of the loans obtained from the respondent-Bank. The petitioner had requested for restructuring of the loan, which was considered and accepted by the respondents vide restructuring scheme dated 12.07.2019, which is Annexure P/4 with the writ petition. There was yet again defaults on the part of the petitioner in honoring the restructuring package also and it is then that the respondents had initiated the proceedings under the SARFAESI Act, 2002 and a notice under Section 13(2) was issued to the petitioner.

6. What is relevant to be considered at this juncture is that the instant writ petition was filed only in August, 2020. The notice under Section 13(2) was issued as early as on 03.12.2019 i.e. the writ petition was filed practically after more than 9 months.

7. Another aspect, which cannot be lost sight of is the fact that the restructuring of the loan account of the petitioner was done on the 12.07.2019, for well over an year, the petitioner did not had any objection in respect of restructuring done by the respondent-Bank and the present writ petition is being filed after a period of around 13 months questioning the restructuring done by the respondent-Bank. While the restructuring of the working capital and the term loan account of the petitioner was being done, it was made clear that in the restructuring order itself that the over dues payable by

the petitioner have to be cleared immediately. The petitioner has failed to clear the over dues nor has he shown any bona-fides in this regard. The bank have their own style of financing and it is necessary to take note of the fact that the bad debts of the bank have to be recovered in accordance with law. The very purpose of enacting the SARFAESI Act was to strengthen the bank and financial institutions enabling them to speed-up the recovery of the defaulting loans and to reduce the mounting levels of non-performing assets of the banks and financial institutions. Keeping the very aim and object of the enactment of the SARFAESI Act, and taking into consideration the facts of the present case, it clearly reflects that the petitioner-firm is a defaulter, so far as the respondent-Bank is concerned and the respondent-Bank also has the responsibility for ensuring that the recovery process is initiated at the earliest so that the volume of non-performing asset gets reduced substantially.

8. For all the aforesaid reasons, this Court does not find any strong case made out by the petitioner calling for an interference to the impugned notice under Section 13(2) issued on 03.12.2019, even otherwise the petitioner would still have the remedy of raising all these grounds in a proceeding under Section 17 after the respondent obtaines an order under Section 14 from the concerned District Magistrate.

9. As a consequence, the writ petition fails and the same stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved