NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2970 of 2020

M/s Yadav Construction Through Partner Naresh Yadav S/o Shri Yogi Prasad Yadav, Aged About 43 Years, R/o Post Ramanujganj District Balrampur-Ramanujganj, Chhattisgarh. **--- Petitioner**

Versus

1. Bank of Baroda through Chief Manager/authorized Officer Stressed Assets Management Branch, Branch Ambikapur Deviganj Road Ambikapur Pin 497001, District : Surguja (Ambikapur), Chhattisgarh

2. District Magistrate Raipur Chhattisgarh

3. District Magistrate Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

4. District Magistrate Balrampur-Ramanujganj Chhattisgarh

5. Superintendent of Police Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh **--- Respondents**

For the applicant : Mr. Apoorva Tripathi, Advocate

For respondent no.1 : Mr. Ankit Singhal, Advocate.

For respondents 2 to 5 : Mr. Amrito Das, Addl. Advocate General

---

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

16.12.2020

1. The instant petition has been filed for the following relief(s) :

> "10. RELIEF(S) SOUGHT :
> It is, therefore, prayed that this Hon'ble Court may kindly be pleased to grant the following reliefs and issue appropriate writ, directions and orders :
> **10.1** That, this Hon'ble Court may kindly be pleased to quash/set aside the impugned Annexure P-3, P-4 & P-5 and the entire proceedings initiated by the District Magistrate/ Respondents no.2 to 4;
> **10.2** That, the Hon'ble Court may kindly be pleased to call for the entire record pertaining to passing of the impugned order (Annexure P-3, P-4 & P-5)"

10.3 That, any other relief the Hon'ble Court deems fit may kindly be granted to the petitioner.”

2. Learned counsel for the petitioner submits that the loan account of petitioner was wrongly classified as Non-Performing Asset (NPA) on 08.10.2019 despite the fact that the documents and statement of accounts reveal that on 23.09.2019 he made a deposit of around more than Rs.30 lakhs and subsequently on 27.03.2020 he deposited Rs.29 lakhs. It is stated that as per the guidelines 4.24 & 4.2.5 of RBI master circular, when the arrears of interest and principal amounts are brought down, then it cannot be classified as NPA, consequently, the recovery proceedings and notice will not fall within the term of discrepancy and the respondents are required to follow the guidelines of RBI. He further submits that the respondents themselves have approached the DRT on earlier occasions therefore recovery and auction may be stayed.

3. Learned counsel for respondent No.1 would submit that the account of the petitioner was declared as Non-Performing Asset on 08.10.2019 and thereafter notice u/s 13(2) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “SARFAESI Act”) was served on 01.12.2019 and the notice for possession was given on 17.1.2020. Therefore, the petitioner instead of availing remedy u/s 17 of the SARFAESI Act has filed this petition and as per the latest decision of the Supreme Court in *K. Virupaksha Versus State of Karnataka (2020) 4 SCC 440*, the measures of like nature cannot be entertained by the High Court.

4. Perused the documents. It is not in dispute that the

classification of the loan account of the Petitioner as Non-Performing Assets (NPA) was made on 08.10.2019. In respect of the account with the temporary deficiency, the RBI guidelines 4.2.4 & 4.2.5 contained in master circular, read as under :

> **4.2.4 Accounts with temporary deficiencies**
>
> The classification of an asset as NPA should be based on the record of recovery. Bank should not classify an advance account as NPA merely due to the existence of deficiencies which are temporary in nature such as non-availability of adequate drawing power based on the latest available stock statement, balance outstanding exceeding the limit temporarily, non-submission of stock statements and no-renewal of the limits on the due date, etc. in the matter of classification of accounts with such deficiencies banks may follow the following guidelines:
>
> (i) Banks should ensure that drawings in the working capital accounts are covered by the adequacy of current assets, since current assets are first appropriated in times of distress. Drawing power is required to be arrived at based on the stock statement which is current. However, considering the difficulties of large borrowers, stock statements relied upon by the banks for determining drawing power should not be older than three months. The outstanding in the account based on drawing power calculated from stock statements older than three months, would be deemed as irregular.
>
> A working capital borrowal account will become NPA if such irregular drawings are permitted in the account for a continuous period of 90 days even though the unit may be working or the borrower's financial position is satisfactory.
>
> ii) Regular and ad-hoc credit limits need to be reviewed/regularized not later than three

months from the due date/date of ad-hoc sanction. In case of constraints such as non-availability of financial statements and other data from the borrowers, the branch should furnish evidence to show that renewal/review of credit limits is already on and would be completed soon. In any case, delay beyond six months is not considered desirable as a general discipline. Hence, an account where the regular/ad-hoc credit limits have not been reviewed/renewed within 180 days from the due date/date of ad-hoc sanction will be treated as NPA.

4.2.5 Upgradation of loan accounts classified as NPAs

If arrears of interest and principal are paid by the borrower in the case of loan accounts classified as NPAs, the account should no longer be treated as non-performing and may be classified as 'standard accounts'. With regard to upgradation of a restructured/rescheduled account which is classified as NPA contents of paragraphs 12.2 & 15.2 in the Part-B of this Circular will be applicable.

5. The notice u/s 13(2) of the SARFAESI Act was served to the petitioner on 1.12.2019 and possession notice was given on 17.01.2020 which was published on 21.01.2020.

6. The Supreme Court in ***K. Virupaksha Versus State of Karnataka (2020) 4 SCC 440*** has observed as under:

15. The SARFAESI Act is a complete Code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance, as already taken note of by the High Court in writ proceedings, if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, DRT is vested with the power to set

aside such auction at the stage after the secured creditor invokes the power under Section 13 of the SARFAESI Act. This view is fortified by the decision of this Court in *Indian Overseas Bank v. Ashok Saw Mill (2009) 8 SCC 366* wherein it is held as under :

34. The provisions of Section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower, but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising secured assets, subject to the conditions indicated in the two provisos to clause (b) of sub-section (4) of Section 13.

35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority and conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

37. The consequences of the authority vested in the DRT under sub-section (3) of Section necessarily implies that the DRT is entitled to

question the action taken by the secured ceditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr. Gopalan and Mr. Atlaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted."

(Emphasis supplied)

7. Reading of the aforesaid case law would show that even if there is a discrepancy in the procedure of classifying the loan account of the petitioner as NPA, the Debts Recovery Tribunal is vested with the power to set aside such action. In view of the guidelines of the RBI and the case law laid down by the Supreme Court (supra), even if the petitioner feels aggrieved that the petitioner's loan account was wrongly classified as NPA with temporary deficiency despite the payment, the jurisdiction to arrest it would vest with DRT. Therefore, this Court cannot exercise the power under Article 226 of the Constitution of India warranting interference. Accordingly this writ petition is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE

Rao