IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

*****

CWP-7294-2020 (O&M)
Date of Decision:07.05.2020

*****

M/s K.R. Feed Mills and others
....Petitioners

Vs.

Bank of India and others
..... Respondents

*****

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

*****

Present: - Mr.Mahavir Singh, Advocate, for the petitioners.

*****

RAKESH KUMAR JAIN, J.

Case taken up through Video Conferencing.

Petitioners are the borrowers and guarantors, who have prayed for the issuance of a writ in the nature of certiorari to quash notices dated 11.04.2015 (Annexures P-1 & P-2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [for short 'the SARFAESI Act"], notice dated 5.8.2019 (Annexure P-3) issued under Section 13(4) of the Act, e-auction sale notices dated Nil (Annexures P-8 & P-9) and notice dated 28.4.2020 (Annexure P-10) published by the respondent/Bank and have further prayed for the issuance of a writ in the nature of mandamus directing the respondents to allow the petitioners to deposit the balance amount within nine months in pursuance of the BOIOTS-19 Scheme.

In brief, as per the averments made in the petition, the petitioners-firm obtained the credit limits/loan facility of Rs.4,43,00,000/- and Rs.3,30,00,000/- from the respondents/Bank in the years 2010 & 2011 by mortgaging various properties. The accounts of the petitioners were declared Non Performance Assets [for short 'NPA'] in April 2015 and the respondents issued a notice under Section 13(2) of the SARFAESI Act on 11.4.2015 recalling the default amount of Rs.3,40,61,074/- & Rs.3,11,85,501/-. It appears from the pleadings that the petitioners did not file any objections to the notice issued under Section 13(2) of the SARFAESI Act which was followed by the notice of possession issued under Section 13(4) of the SARFAESI Act dated 05.08.2019 granting the petitioners 60 days time to pay Rs.3,40,61,074/-. The petitioners did not challenge the aforesaid notices whereas the respondents published e-auction sale notice on 20.02.2020 and the date of sale was fixed as 16.03.2020. The respondents made another publication of date of sale for 31.3.2020 which was further postponed to 27.4.2020. It is alleged that the respondents had simultaneously launched One Time Settlement Scheme called as BOIOTS-19 in which the last date was fixed as 31.3.2020. It is further averred in the petition that the petitioners made two applications dated 13.3.2020 requesting to deposit 70% of secured portion. The petitioners were allegedly allowed to deposit Rs.43 lakhs against the NPA accounts but they sought 3+6 months time to deposit the remaining amount. It is also averred in the petition that on 23.04.2020, the respondents had informed the petitioners that since they have expressed their inability to deposit 70% secured amount of outstanding amount in both the accounts, therefore, their prior applications for OTS were not considered favourably by them and were asked to withdraw the upfront fee/amount deposited in the No Lien Account of the Bank.

Counsel for the petitioners has submitted that on the one had the respondents has closed the case of the petitioners insofar as OTS is concerned and on the other hand the instructions were issued on 24.4.2020 extending the period upto 30.6.2020. It is also submitted that after the extension period was notified on 24.4.2020, the house (mortgaged property) was sold by the respondents by way of e-auction on 27.4.2020 for a sum of Rs.93,30,000/- against which 25% of the bid amount has also been deposited by the highest bidder and intimation was given to the petitioner vide letter dated 28.4.2020. It is submitted by counsel for the petitioners that the respondents should have considered the case of the petitioners sympathetically much less in view of the extended period notified vide instructions dated 24.4.2020 (Annexure P-11) enabling the petitioners to deposit the 70% of the secured portion in both the accounts in order to avoid the sale of their house of which bid had already taken place on 27.4.2020.

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

There is no doubt that the accounts of the petitioners were declared NPA in April 2015 and in the same month notice under Section

13(2) of the SARFAESI Act was served upon them. However, action for taking possession by way of notice under Section 13(4) of the SARFAESI Act was taken in the month of August 2019 granting them more than 4 years time but the petitioners neither made the payment of the outstanding amount nor did they challenge the notices issued under Sections 13(2) & 13(4) of the SARFAESI Act before the Debts Recovery Tribunal in accordance with law. Thereafter the respondents, in order to recover the amount involved, decided to sell the mortgaged property and issued e-auction sale notice in February 2020 and fixed the date for sale in the month of March 2020. The date of sale was extended till 27.04.2020 and in the meantime the petitioners were given an offer under the Scheme to avail the benefit of the Scheme but by making payment of 70% of secured portion. The petitioners had though deposited the upfront fee/amount but did not deposit the amount as claimed in terms of the Scheme by the respondents and therefore, the application of the petitioners for OTS was considered and rejected vide letter dated 23.4.2020 and the petitioners were advised to withdraw their upfront fee/amount which was lying deposited in the No Lien Account of the Bank. Thereafter, the respondents had issued the instructions on 24.4.2020 for extension of time for repayment of OTS amount till 30.6.2020 under the BOIOTS 2019 Scheme.

The counsel for the petitioners has claimed that the case of the petitioners fall in category A which says that *"OTS was approved and repayment due on or before March 01, 2020, repayments either as per original sanction or extension/modification approved as per* *scheme".* The relaxation in view of Pandemic (COVID-19), recommended for extension in repayment instalments upto 30.06.2020 and waiver of interest from 01.04.2020 to 30.06.2020 may be allowed.

However, in our considered opinion, case of the petitioners do not fall in this category because OTS was not approved as the petitioners had expressed their inability to enter into compromise/settlement on the ground that OTS amount was not acceptable by them. Moreover, the mortgaged property has already been sold on 27.4.2020 and the highest bidder had deposited 25% of the bid amount. The bidder has not been made as party in this petition.

Thus, looking from any angle, we do not find any reason to interfere in this petition and hence the same is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

07.05.2020
Vivek

Whether reportable *Yes/No*
Whether speaking *Yes/No*