IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.10640 of 2020
Decided on: *July 27, 2020*

M/s Nuchem Limited, Faridabad

....Petitioner

Versus

Punjab National Bank & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JAWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Jagdish Manchanda, Advocate, for the petitioner.

Sant Parkash, J

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.

The instant writ petition has been filed under Article 226/227 of Constitution of India for issuance of writ in the nature of Certioari, quashing the action of respondent No.1, Punjab National Bank, who has illegally, arbitrarily and un-reasonably adjusted the BGs/LCS of the petitioner company issued against non–fund based facilities and quashing of sale notice dated 05.12.2019 (Annexure P-20) issued by the bank respondent No.1 while making advertisement in the local newspaper Rajdhani and quashing sale letter dated 11.02.2020 (Annexure P-21) issued by the respondent No.1 in favour of respondent No.4 as well as quashing the consequent proceedings, and issuance of writ in the nature of Mandamus directing respondent No.1 not to take the possession of the unit in question in view of the sale letter issued on 11.02.2020 without giving any intimation to the petitioner as well as without giving any opportunity of being heard in violation of the provisions of the Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act')', and further directing respondent No.1 to consider and grant sanction to the OTS proposal of the petitioner dated 02.03.2019 which was subsequently modified and submitted in accordance with the directions of respondent No.1 on 30.03.2019/31.03.2019 in pursuant to the Special Scheme for One Time Settlement of NPAs 2018 vide Sastra Division Circular No.30/18.

The petitioner - company is the manufacturer of Medium Density Fibre Boards, which are being manufactured at its plant located at Tohana. The petitioner - company is being represented through its Director - Prathamesh Brar. The petitioner company availed financial assistance from number of banks/financial institutions, including respondent No.1 - Punjab National Bank, Rajendra Bhawan, Rajendra Place, New Delhi as well as from IFCI Limited and Punjab & Sind Bank Limited which were secured by way of first charge creating mortgage over properties of petitioner - company, as described in Para 9 of the petition.

In the year 2007, Government of India eased the import norms of products being manufactured by the petitioner - company, which affected its performance and the petitioner had to face financial crunch, which resulted in defaults in repayments of financial assistance. Resultantly, the money lending banks/financial institutions consisting of IFCI, Punjab National Bank, Punjab & Sind Bank, Allahabad Bank, Canara Bank etc. issued notices under Sections 13(2) and 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') against the assets/properties of the petitioner company, in respect of which, charge by way of mortgage was created by the company in favour of banks/financial institutions at the time of taking loan, whereafter, IFCI, the lead bank of the lending consortium, by invoking Section 13(4) of the SARFAESI Act, took over the possession of all the assets/properties of the petitioner company vide possession notice dated 12.11.2011.

Employees of the petitioner - company also filed a petition under the Payment of Wages Act, 1936 and vide Award dated 10.01.2012 (Annexure P-2), the Labour Court directed the petitioner - company to deposit a sum of ₹ 65,74,704/- (₹ 16,43,676/- + ₹ 49,31,028/-) on account of unpaid salary/wages as detailed to the schedule plus three times compensation of such amount, in respect of 48 employees as per details given in the schedule and as shown in the schedule to the claim within 30 days, it was directed that necessary process of recovery of total awarded amount would be initiated.

The petitioner challenged the aforesaid award through Arun Brar, Managing Director, by way of **CWP No.5462 of 2012** which was dismissed as withdrawn to enable the petitioner to avail the remedy of appeal. Appeal was also dismissed on 03.02.2014. Thereafter, petitioner - company through Arun Brar filed writ petition viz. **CWP No.5441 of 2014**, which was dismissed by this Court vide judgment dated 05.08.2014 while observing as under:-

> "The appeal of the petitioner was dismissed on 03.02.2014 on the ground that he had failed to deposit a sum of ₹ 16,00,000/-, which was the requirement under Section 17(1A) of the Payment of Wages Act, 1936, before filing of the appeal."

In this view of the matter, the dues towards salary, provident fund, ESI to its employees remained unpaid. However, the dues of IFCI and

Punjab & Sind Bank, having first charge of the properties of petitioner, were settled through sale of property No.53-A, NIT, Faridabad.

Respondent No.1 launched a special scheme for One Time Settlement (OTS) of NPAs 2018 vide Sastra Division Circular No.30/2018 on 15.06.2018 which was initially valid till 31.12.2018 and subsequently extended till 31.03.2019. The petitioner - company, through its Director, prepared demand drafts of ₹ 70 lac, being 10% value of OTS amount of ₹ 7 Crore and approached respondent No.1 alongwith OTS proposal and original demand draft of ₹ 70 lac, on 30.03.2019 but respondent No.1 refused to accept the OTS proposal on the ground that petitioner - approached after the closure of office. The petitioner emailed to the higher officers of respondent No.1 - Bank and couriered OTS proposal dated 31.03.2019 alongwith original demand drafts of ₹ 70 lac to the office of Chairman, respondent No.1 - Bank. Despite all these efforts, respondent No.1 - Bank has been refusing to consider and accept the OTS proposal on the ground that the same was not received within the validity period of OTS Scheme.

The respondent - Bank issued notice dated 30.09.2019 (Annexure P-14) under Section 13(4) of the SARFAESI Act informing the petitioner - company that Bank has issued the sale notices qua its properties on 30.09.2019. The petitioner filed a **Writ Petition (C) No.6647 of 2019** before the Hon'ble High Court of Delhi at New Delhi, which was disposed of vide order dated 05.11.2019 (Annexure P-15) with the following directions (relevant part):-

> "9.1 Counsel for respondent no. 1 bank will accept the demand drafts/cheques having a cumulative value of Rs. 1.14 crores without prejudice to its rights and contentions.

> 9.2 Respondent no. 1 bank will communicate its decision qua OTS proposal dated 03.10.2019 submitted by the petitioner within three weeks from today.
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> 9.3 The petitioner will make other "additional payments" as noted in its OTS proposal dated 03.10.2019 over and above the aforementioned amount i.e. Rs. 1.14 crores. Respondent No. 1 bank will communicate the exact figure to the petitioner within three weeks from today.
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> 10. In view of the fact that no bids have been received by respondent no. 1 bank for fresh steps for auction will not be taken by respondent no. 1 bank for a further period of three weeks which is the timeframe for consideration of the OTS proposal dated 03.10.2019 submitted by the petitioner."

Pursuant to the aforesaid order, the petitioner - company submitted OTS letter dated 03.10.2019 (Annexure P-16) for an amount of ₹ 11.38 crore towards full and final settlement alongwith upfront amount of ₹ 1.14 crore vide demand draft of ₹ 72 lac and three cheques i.e. cheque for an amount of ₹ 8 lac and two cheques of ₹ 17 lac each, totalling to ₹ 1.14 crore. Besides, ₹ 40 lac will be paid on receipt of OTS letter and on receipt of payment, the Bank will allow the petitioner to start dismantling and removing the material lying on the premises at 54, Industrial Area, Faridabad.

The cheque of ₹ 8 lac was cleared whereas the other two cheques of ₹ 17 lac each were returned unpaid as the fund could not be arranged by the petitioner. Respondent No.1 - Bank issued letters dated 18.12.2019 and 24.12.2019 [Annexure P-18 (Colly)] mentioning that out of the total amount of ₹ 1.14 lac, ₹ 80 lac has been cleared on 07.11.2019 against 10% upfront of OTS. Request was made to the petitioner to collect the cheques and inform RTGS details of its account so that funds may be remitted. Vide letter dated 24.12.2019, it was informed that demand draft of ₹ 80 lac dated 18.12.2019 has been delivered at B - 4, Chloris Apartment, Mahendra Apartment, Sector 19, Faridabad.

The respondent Bank issued sale notice dated 05.12.2019 (Annexure P-20) by including the properties of the petitioner - company viz. 20/6 Milestone, Mathura Road, Faridabad; 54 Industrial Area, NIT Faridabad; D-9 Roop Mahal NH-2, NIT Faridabad; Shop No.319-B, Vardhman Star Mall, Sector 19, Faridabad owned by Prathamesh Brar and D-10, Roop Mahal, NH-2, NIT, Faridabad, owned by R.C. Brar. The Recovery Officer issued sale proclamation by putting on auction the other properties as mentioned in Para 40 of the petition, for reserve price of ₹ 14.50 crore, ₹ 10.80 crore and ₹ 2.25 crore, thereby fixing the date of auction as 11.02.2020 (Annexure P-21).

It is the contention of counsel for the petitioner - company that petitioner filed an OA before the Debt Recovery Tribunal (DRT), New Delhi, on 12.02.2020 by mentioning all the aforestated facts and it wanted to settle the amount under OTS scheme alongwith interest on the delayed payment, even then, respondent No.1 - Bank executed the sale deed in favour of respondent No.4 on 05.03.2020. The petitioner - company wanted to settle the dispute with the respondent No.1 - Bank. The respondent No.1 - Bank has not served any notice on the petitioner with regard to sale of properties. Thus, the impugned sale notice and execution of sale deed are nullity, and liable to be set aside as petitioner is even ready to pay the remaining OTS amount alongwith on delayed payment of interest. In support of this contention, he has relied upon decision of Supreme Court in **Desh Bandhu Gupta vs. N.L. Anand and Rajinder Singh, 1993(5) JT 313**.

We have heard learned counsel for the petitioner but do not find any force in the submissions made by him.

A financial institution, in case of defaults in repayment of dues by the loanee, is bound to obtain the best possible price of the mortgaged assets. In view of repeated defaults on the part of the petitioner – company, the respondent – Bank has rightly issued sale notice dated 05.12.2019 and its action in execution of sale cannot be faulted with. The judgment cited by the petitioner in the case of **Desh Bandhu Gupta (supra)** is not applicable to the facts and circumstances of the present case as it talks of the fact that absence of notice to judgment debtor regarding sale of his property is a material irregularity. However, in the case in hand, the petitioner – company was duly served with sale notice dated 05.12.2019, in regard of which, there is no denial from the side of the petitioner. Therefore, the judgment cited by the petitioner in above regards is distinguishable on facts and circumstances of the present case. Moreover, there is no reason to put a stay with regard to possession of the land in question when sale has already been confirmed in favour of respondent No.4 vide sale deed dated 11.2.2020 (Annexure P-21).

Learned counsel for the petitioner has also cited another decision of the Hon'ble Supreme Court in case **M/s Devidayal Castings Pvt. Ltd. Vs. Haryana Financial Corporation and another**, **2016(8) Scale 697** to contend that he was ready and willing to abide by the terms of OTS Scheme and approached the respondent alongwith OTS letter dated 03.10.2019 (Annexure P-16) for an amount of ₹ 11.38 crore towards full and final settlement alongwith upfront amount of ₹ 1.14 crore vide demand draft and cheques but they refused to accept the same. The aforesaid judgment cited by the petitioner is also distinguishable in as much as pursuant to the directions issued by the Hon'ble High Court of Delhi vide its order dated 05.11.2019 (Annexure P-15), respondent No.1 – Bank was directed to accept the demand draft/cheques having a cumulative value ₹ 1.14 crore without prejudice to its rights. Accordingly, the petitioner issued cheques, but the same were bounced. In this regard, the plea of the petitioner that there was marriage of son of prospective buyer of its properties on 08.11.2019 and it requested the respondent No.1 - Bank to present the cheques after 2/3 days of the marriage, is not persuasive. The petitioner itself issued the cheques in order to comply with the terms & conditions of OTS scheme and in compliance of directions of the Delhi High Court, therefore, it does not lie in its mouth that Bank presented the cheques without its consent. If there was any shortage of funds in its account, it was well within its domain to give the post dated cheques or to communicate with the Bank to present the cheques informing the date from which the funds would be available in its account. In this view of the matter, the judgment in case **M/s Devidayal Castings Pvt. Ltd. (supra)** is also distinguishable and is not applicable to the facts of the present case.

Lastly, the petitioner – company has efficacious remedy available before the appropriate authority i.e. Debt Recovery Tribunal. The law in this regard is very clear that when appropriate forum is provided under the SARFAESI Act, this Court stands injuncted from interfering with any matter arising out of the proceedings under the SARFAESI Act. Therefore, no ground for interference is made out particularly, in view of the judgement of the Supreme Court in the case of **United Bank of India vs. Satyawati Tandon and others**, reported as **(2010) 8 SCC 110**, wherein the Apex Court held as under:-

"17. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pas interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

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27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

The aforesaid finding rendered in **Satyawati Tandon (supra)** has further been reiterated by the Supreme Court in case **<u>Authorised Officer, State Bank of Travancore and another vs. Mathew K.C.</u>**, reported as **2018(2) R.C.R. (Civil) 1**.

In view of the above, we do not find any merit in the instant petition and the same is dismissed.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

July 27, 2020
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Whether Speaking : Yes/No
To be reported or not : Yes/No