

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.17085 of 2020(O&M)

Date of Decision:-21.12.2020

M/s Auto Needs, a Proprietorship Concern.

.....Petitioner.

Versus

District Magistrate, Gurugram & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present:- Mr. Aalok Jagga, Advocate for the Petitioner.

Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana
for respondent Nos.1 & 2.

Ms. Puja Chopra, Advocate for Respondent No.3.

JASWANT SINGH, J.(ORAL)

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

The Petitioner-Borrower, has approached this Court seeking quashing of notice dated 05.10.2019 (Annexure P-7) and notice dated 22.06.2020 (Annexure P-17) issued by Respondent No. 3, under Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “Act, 2002”) as also subsequent notice dated 25.09.2020 (Annexure P-19) whereby proceedings have been initiated by Respondent No. 3 under Section 14 of the Act, 2002 before Respondent No. 1 to seek physical possession of the secured assets. The petitioner *inter-alia* contends that the bank could not have proceeded to issue possession notice or approach the District Magistrate under Section 14 without deciding the objections dated

29.11.2019 (Annexure P-13), submitted by the petitioner under Section 13(3-A) of the Act, 2002 pursuant to notice dated 05.10.2019 (Annexure P-7) issued by the Respondent No. 3 bank under Section 13(2) of the Act, 2002 and places reliance on the judgment of Hon'ble Supreme Court in ***Mardia Chemicals V/s Union of India 2004(4) SCC 311***. He further submits, that in terms of Clause 2.1 of the Reserve Bank of India Circular dated 17.03.2016 (Annexure P-11) titled as "Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises" it was incumbent upon Respondent No. 3 bank to have placed the case of the petitioner, suffering from incipient stress before the designated committee before classifying the account NPA on 01.05.2019 which it failed to do so as the petitioner is a Medium Scale Enterprise. Petitioner further submits that vide letter dated 29.11.2019 (Annexure P-12), petitioner had itself invoked Clause 2.3 of the said guidelines dated 17.03.2016, but the bank did not constitute the Designated Committee as required under Clause 3.3 and consequently, did not refer the case of the petitioner for rehabilitation before the said Committee. The petitioner is stated to have submitted various proposals to the Respondent No. 3 bank including proposal dated 26.08.2020 (Annexure P-23) and 5.10.2020 (Annexure P-27), but Respondent No. 3 did not consider placing the same before the Designated Committee. He has further contended that as per Clause 3.3 of the RBI Guidelines dated 17.03.2016, it is mandatory for the bank to make efforts for inclusion of a Government Nominee into the said Committee, so that the same is constituted at the District level in order to enable it, to consider the rehabilitation proposal.

On the other hand, learned Counsel appearing for Respondent No. 3 has stated that she does not wish to file written statement, as the Respondent No. 3 Bank, has agreed to place the proposal of the petitioner before the Designated Committee in terms of the said Guidelines dated 17.03.2016. She further states that she would have no objection in case if the present petition is disposed off in

view of the decision rendered by this Court in **CWP No.19692 of 2017** titled as **Vishwas Tractors Vs. Central Bank of India** (Annexure P-30) decided on 31.08.2017.

In view of above, we deem it appropriate to direct Respondent No.2 to constitute the Designated Committee in terms of Clause 3.3. of the Reserve Bank of India Guidelines dated 17.03.2016 in order to consider the case of the petitioner for rehabilitation. It is clarified that in case if Respondent No.3 would require further documents from the petitioner to consider its case for rehabilitation, it would inform the petitioner of its requirement and on receipt of such information, the same shall also be considered by the Designated Committee. Till such time the matter would engage the attention of the Designated Committee proceedings before Respondent No.1 shall remain in abeyance. As regards, the contention of the petitioner that the proceedings of Respondent No.3 are invalid on account of its objections filed under Section 13 (3-A) of the Act, 2002, having remained undecided, the said issue is left open to be decided at the appropriate stage, if need so arise.

The writ petition stands **disposed off**, in the aforesaid terms.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

December 21, 2020
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No