

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

**CWP No. 17529 of 2020
Date of decision: 28.10.2020**

Muskan Banquet and Caterers

.....Petitioner

v.

Punjab National Bank

.....Respondent

**Coram: Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Sant Parkash**

Present:- Mr. Kirti Uppal, Senior Advocate assisted by
S/ Sh. Sidharth Chopra, Aditya Awasthi and
Ms. Janya Sirohi, Advocates, for the petitioner.

Mr. Arvind Rajotia, Advocate, for the respondent.

Jaswant Singh, J.

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

The petitioner-borrower has filed the present petition seeking setting aside of the impugned order dated 07.10.2020 (Annexure P-1) passed by the Debts Recovery Tribunal-II, Chandigarh in SA No. 236/2019.

On 16.10.2020, learned counsel for the respondent-bank-caveator submitted that auction conducted on 29.9.2020 had been confirmed for Rs. 2.98 crores approximately and sale certificate issued. He, therefore, raised a preliminary objection regarding the maintainability of the present writ petition and contended that the petitioner has an alternative remedy under Section 17 of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), which was already pending and hence two parallel remedies were not permissible. The order dated 16.10.2020 passed by this Court reads as under:-

“The defaulter-borrower is before this Court assailing the interim order dated 07.10.2020 (Annexure P-1) passed by the DRT-II, Chandigarh, whereby the prayer of the applicant/ petitioner by way of IA No. 206 of 2020 moved in the pending SA, challenging the auction which was successfully conducted on 29.09.2020, no ad interim stay was granted qua the further proceedings, while issuing notice of the application for 24.12.2020.

At the outset, counsel for the Caveator-Bank submits that not only the auction conducted on 29.09.2020 for a sum of Rs.2.98 crores (approximately) stands confirmed, but even the sale certificate *qua* the secured asset stands issued in favour of the Auction Purchaser. He thus submits that the remedy available at this stage for the petitioner is only with the DRT, therefore, prays for time to file a short affidavit of the Authorized Officer concerned in the aforesaid regard.

List on 28.10.2020 for further consideration.”

At the time of resumed hearing today, an affidavit dated

27.10.2020 of Sh. Dinesh Kumar Shrivastav, Chief Manager /

Authorized Officer, Punjab National Bank, Branch Office Sector-15, District Faridabad, has been filed, the para No. 2 of the same reads as under :-

“ 2. *That the mortgaged property i.e. Land & Building comprised in 470 Sq. Yards situated at Plot No. H-138, Sector 10, Block H, DLF, Model Town, Urban Estate, Faridabad is sold by the deponent being the Authorized Officer in public auction to Mrs. Priya Makkar W/o Mr. Gaurav Makkar, R/o 2012, Sector 23-A, Faridabad. The bid amount i.e. Rs. 2,98,50,000/- was deposited by the auction purchaser as per the terms & conditions of the auction and accordingly the sale certificate dated 15.10.2020 was issued to Mrs. Priya Makkar. It is pertinent to mention here that on the basis of the aforesaid sale certificate, the sale deed is also executed in favour of Mrs. Priya Makkar. For kind consideration of this Hon'ble Court, the copy of the sale certificate is annexed herewith and marked as **Annexure R/1.** ”*

Counsel for the petitioner has argued that the entire sale consideration has not been deposited prior to issuance of the sale certificate and the whole process of confirming and issuance of sale certificate in hot haste suffers from legal *mala fide*.

Per contra counsel for the Bank has seriously contested the factual argument raised by contending in terms of the contents of the aforesaid affidavit dated 27.10.2020.

Having heard both sides, we feel that since the sale has been confirmed and the sale certificate has already been issued, the petitioner has an equal and efficacious remedy of challenging the sale and the sale certificate in terms of Section 17 of the Act before the Debts Recovery Tribunal. Further, the question being raised at

the time of hearing with regard to the legality/ irregularity, if any, in the process of sale including issuance of sale certificate, etc. we feel that such pleas can also be raised before the Debts Recovery Tribunal where the proceedings are stated to be pending.

In view of the above, the present petition is disposed of with liberty to raise all the pleas available to the petitioner before the DRT in the pending proceedings or any further fresh proceedings to be filed in accordance with law.

(Jaswant Singh)
Judge

28.10.2020.
joshi

(Sant Parkash)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No