

22nd January,
2021.
(as)
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**W.P.A.9084 of 2020
With
CAN 1 of 2021**

(Via Video Conference)

**Brahm (Alloys) Ltd. & Anr.
-vs-
West Bengal Financial Corporation & Ors.**

Mr. Jishnu Saha, Sr. Adv.,
Mr. Kamalesh Jha,
Mr. Kausik Biswas,
Mr. Devdutt Mukherjee.
...for the Petitioner.

Mr. Joydeep Kar, Sr. Adv.,
Mr. Jishnu Chowdhury,
Mr. Aritra Basu,
Mr. Abhijit Sarkar.
...for the Respondents.

The petitioner no.1, a borrower, failed to repay the loan taken from the respondent no.1, a financial institution. Subsequently, sale notice was issued on January 30, 2018. To interdict, the petitioners took out a writ petition, which was dismissed on February 12, 2018. On an appeal being preferred from such order, a Division Bench of this Court disposed of the appeal by restructuring the schedule of repayment and granted a further opportunity to the petitioners to repay the debt, vide order dated February 13, 2018.

However, the petitioners failed to make the payments contemplated in such order of the Appellate Court. As such, a second sale notice was published by the

respondent no.1 on June 25, 2018. In connection with the second sale notice, the petitioners again preferred a writ petition, but have not moved the same as yet. The said writ petition is still pending.

Thereafter, the financial institution has issued a third sale notice, annexed at page-60 of CAN 1 of 2021.

Learned senior counsel appearing for the petitioners submits that the petitioners are already in touch with an Asset Reconstruction Company (ARC) regarding the loan being taken over by the said ARC. Such action on the part of the petitioners was already communicated to the respondent no.1. However, the respondent no.1 is taking a plea that there had been previous nonfulfillment by the petitioners of the liberty granted to the petitioners to repay the loan and that there is no provision in the State Financial Corporation Act for transferring such loan to an ARC.

Learned senior counsel submits that, in the pandemic situation, the petitioner No.1 Company was in doldrums, but is recovering now. If the sale takes place without giving an opportunity to the petitioners to repay the loan through the ARC, the entire business of the petitioner no.1 shall be stopped. Learned senior counsel places reliance on Section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to indicate that there is

sufficient scope under the provision for an ARC to acquire the debt and provide financial assistance to the borrower in repayment of loan. Learned counsel relies on a judgment reported at 2011 (4) SCC 171(*Kerala Financial Corpn. Vs. Vincent Paul*), wherein certain directions for sale of properties owned by the financial institution concerned were issued by the Supreme Court, in the absence of any rules or guidelines having been framed by the State in that regard. Learned senior counsel particularly highlights the direction that the authority concerned shall serve to the borrower a notice of 30 days for sale of immovable secured assets. Counsel further relies on another direction that the debtor should be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence whereof the sale would suffer from material irregularity where the debtor suffers substantial injury by the sale.

It is thus submitted that the petitioners ought to be given some time to finalize the arrangements with the ARC for the purpose of repayment of the loan advanced by respondent No.1.

Learned senior counsel appearing for the respondent authorities submits that the apparently innocuous prayer of the petitioners was preceded by patently recalcitrant conduct. Even after the first sale notice, a writ petition had been taken out by the

petitioners, which culminated in an order passed by the Appellate Court, whereby liberty was granted to the petitioners to repay the loan in question. However, the petitioners failed to take advantage of the same. As such, it is argued, the petitioners are now estopped from seeking a similar relief from this Court.

Even the second sale notice was followed by a writ petition by the petitioners, indicating that the petitioners are in the habit of trying to stop the process of sale, whenever a sale notice is put up. The conduct of the petitioners is evident from the fact that the second writ petition was never moved till date.

Learned senior counsel further submits that the offer given by the ARC, as annexed to the pleadings, was conditional, leaving scope for further negotiation. However, respondent no.1 does not want to prolong the recovery by sale, more so because public money is involved. A fresh process of negotiation was turned down by the respondent no.1 on such score. Hence, the ARC's negotiations cannot form a relevant basis for staying the process of sale which has now been undertaken.

In any event, learned senior counsel for the respondent no.1 submits, the petitioners may be given a chance to meet the highest price once the offers come in with regard to the latest auction sale. That will mitigate

the grievance of the petitioners of not getting an opportunity before the assets are sold out.

Although counsel for the petitioners is right in so far as there is scope for repayment of loan through an ARC within the purview of Section 5 of the 2002 Act, such provision becomes academic in the present context, in view of the petitioners having already been given an opportunity as long back as on February 13, 2018, but having failed to avail of the same.

Counsel for the respondents is justified in arguing that recovery of public money cannot wait indefinitely to suit the convenience of a particular borrower. In the present case, even the latest offer given by the concerned ARC, with whom the petitioners are negotiating, is patently conditional. As such, there is no final proposal, even at this stage, coming from the ARC at the behest of the petitioners for repayment of the loan.

In such circumstances, the respondent no.1 was fully justified in proceeding with the sale of the assets of the borrower, particularly in view of the previous conduct of the petitioners. A fresh lease of life cannot now be granted to the petitioners, since such opportunity was previously given to them but the petitioners miserably failed to avail of the same. Recovery of public money cannot wait indefinitely.

Accordingly, the WPA 9084 of 2020 is dismissed on contest without any order as to costs. However, respondent no.1 shall, after receiving adequate offers on the latest sale notice from prospective buyers, give reasonable opportunity to the petitioners to meet the highest offer. In the event the petitioners can give a concrete counter offer equal to or more than the highest offer, it will be open to the respondent no.1 to permit the petitioners to purchase back the property. However, on failure of the petitioners to do so, the respondents shall proceed with the sale in favour of the highest bidder.

CAN 1 of 2021 is also disposed of accordingly.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)