IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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(PROCEEDINGS THROUGH V.C.)

CM-13574-CWP-2020, CM-13575-CWP-2020
WITH CM-191-CWP-2021 IN/AND CWP-2790-2020
DATE OF DECISION: JANUARY 19, 2021

M/S AA AGRO ENERGY PRIVATE LIMITED & ORS

.....Petitioners

VERSUS

PUNJAB NATIONAL BANK & ANR

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA

Present: Mr. Pankaj Jain, Advocate,
for the petitioners.

Mr. Arvind Rajotia, Advocate,
for the respondent-Bank.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-191-CWP-2021

Application is allowed as prayed for subject to all just exceptions.

Reply alongwith affidavit on behalf of the petitioner is taken on record.

CM-13575-CWP-2020

Application is allowed as prayed for subject to all just exceptions.

Short reply by way of affidavit on behalf of respondent Bank is taken on record.

CM-13574-CWP-2020

Prayer in the instant application is for vacation of interim stay granted by this Court vide order dated 03.02.2020.

The Court is of the view that it would be appropriate if the main case is heard instead of hearing arguments in the application as for deciding the application the merits of the case will have to be gone into. The main case is fixed for 16.03.2021, so we prepone the hearing of the same to today and take the same on board.

The civil miscellaneous application, thus, stands disposed of as infructuous.

CWP-2790-2020

Petitioners have approached this Court, praying for issuance of a writ of certiorari for quashing the impugned notice dated 27.04.2017 (Annexure P-8) issued under Section 13(2) of the Securitization & Reconstruction of Financial Assets Enforcement of Security Interest, Act 2002 (hereinafter referred to as "the SARFAESI Act"), including notice dated 07.05.2018 (Annexure P-18) issued under Section 13(4) of the SARFAESI Act, with a further prayer for quashing of communication dated 30.04.2019 (Annexure P-32), whereby One Time Settlement proposal dated 14.03.2019 (Annexure P-30) submitted by the petitioners has been rejected illegally and arbitrarily and the impugned communication dated 14.08.2019 (Annexure P-35) whereby the second proposal dated 20.07.2019 (Annexure P-34) submitted by the petitioners has been rejected without assigning any reason whatsoever and further for quashing of communication dated 16.01.2020 (Annexure P-39), whereby the bank authorities have declined to settle the account of the petitioners despite the same having been submitted on the proposal made by respondent No.1 and despite having accepted the upfront amount of ₹10 lacs paid by the petitioners and executing a settlement in part by adjusting subsidy of ₹50 lacs in favour of the petitioners. Prayer has also been made for quashing of e-auction notice as communicated to the petitioners vide communication dated 12.12.2019 (Annexure P-38).

It is the contention of learned counsel for the petitioners that the petitioners have put forth the proposals before the respondent-Bank in pursuance of various orders, which have been passed by this court but the same have arbitrarily been rejected by the respondents. He further submits that the proposal dated 03.02.2019 was submitted to the Chairman-cum-Managing Director of the respondent-Bank after communication and, therefore, binding on the respondent Bank, which could not have been rejected.

On the other hand, counsel for the respondent-Bank has contended that the writ petition is not maintainable in the light of the provisions as contained in the SARFAESI Act as the matter is required to be agitated before the Debt Recovery Tribunal. That apart, he has asserted that none of the proposals, as submitted by the petitioners, has been accepted. As regards proposal dated 03.02.2019 is concerned, it was a one sided proposal, which has come from the side of the petitioners, which, after consideration, stands rejected by the competent authority. Petitioners, in the garb of interim order, which has been passed by this Court on 03.02.2020, is delaying the process of sale of the property, which is worth ₹25 crores and the liability of the petitioners, as of now, is more than ₹32 crores.

Having considered the submissions made by counsel for the parties and keeping in view the law laid down in various judgments, which have been passed by the Hon'ble Supreme Court, especially Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C., 2018 (3) SCC 85, wherein it has been held, after discussing the law on the question of jurisdiction of the High Court under Article 226 of the Constitution of India, that if an effective alternative remedy is available to an aggrieved person, the said remedy should be exhausted first. This rule applies with greater rigor in matters involving recovery of taxes, cess, fees and other types of public money and dues of banks and other financial institutions. Hon'ble Supreme Court, while referring to various judgments, which have been passed by it, especially United Bank of India Vs. Satyawati Tandon, 2010 (8) SCC 110, wherein, in Para 55, it has been held that it is a matter of serious concern that despite repeated pronouncements of the Hon'ble Supreme Court, the High Courts continued to ignore the availability of statutory remedy under the Debt Recovery Tribunal Act and the SARFAESI Act and exercised jurisdiction under Article 226 of Constitution of India of passing orders, which have serious adverse impact on the rights of the banks and other financial institutions to recover their dues. Reference has also been made to the judgment of Hon'ble Supreme Court in Union Bank of India and another Vs. Panchanan Subudhi, 2010 (15) SCC 552, wherein in Para 7, it has been held that the approach adopted by the High Court was erroneous, especially when the borrower failed to comply with the terms of One Time Settlement. There was no justification for the High Court to entertain the writ petition and that too by ignoring the fact that a statutory alternative remedy was available to the borrower under Section 17 of the

SARFAESI Act .

In the light of the above, we do not find any exceptional circumstance, which would fall within the exceptions as carved out by the Hon'ble Supreme Court in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffanagar, AIR 1969 SC 556, Whirlpool Corporation Vs. Registrar of Trade Marks, 1999 (1) RCR (Civil) 220 and Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. and others, 2003 (2) SCC 107 to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India in the present case and further in view of the fact that the petitioners have an alternative efficacious remedy for redressal of its grievances under Section 17 of the SARFAESI Act.

The writ petition, therefore, stands dismissed, leaving it open to the petitioners to agitate the matter, if so advised, in accordance with the statutory remedy available to it.

(AUGUSTINE GEORGE MASIH)
JUDGE

January 19, 2021
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(ASHOK KUMAR VERMA)
JUDGE

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