IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.5047 of 2021(O&M)

Date of Decision:-12.03.2021

M/s N.S. Metal Works & Anr.

......Petitioners.

Versus

Executive Magistrate, District Jalandhar & Ors.

......Respondents.

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

Present:- Mr. Kuldeep V. Singh Ahluwalia, Advocate for the Petitioners.

Mr. KPS Dhillon, Advocate for respondent Nos.2 & 3-Bank.

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JASWANT SINGH, J.(ORAL)

Petitioner no.1 is a proprietorship concern, engaged in the manufacturing of pipe fitting machineries. It has been sanctioned a term loan of Rs.20 lacs and Cash Credit Limit of Rs.12 lacs on 06.03.2012 by respondent-Bank of Baroda. Both the accounts were declared NPA on 31.12.2014. The petitioners offered a compromise proposal of their accounts on 26.03.2018 (P-2) detailing the proposed scheduled of repayment of the outstanding loan of Rs.28 lacs. The said compromise proposal was accepted vide memo dated 27.03.2018 (P-3), whereby the petitioners were required to pay a total sum of Rs.28 lacs (sacrificing a sum of Rs.4.32 lacs approximately by the Bank) by

30.09.2018.

It is a conceded case that the petitioners deposited only an amount of Rs.15,75,000/-. Thus, the terms of the One Time Settlement were not adhered to. Then the petitioners filed CWP No.3705 of 2021 seeking quashing of the proceedings initiated by the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for taking physical possession.

Meanwhile, the Respondent-bank issued a letter (P-8) directing petitioner to discharge the settled obligations in 3 months time. Surprisingly, Respondent-Bank issued another **letter dated 16.02.2021 (P-9)** directing petitioner to deposit the remaining amount of Rs.11,85,000/- on or before 20.02.2021 i.e within 4 days of issuing such letter.

The stand of the petitioner is that they are ready and willing to deposit the entire settled amount as per the compromise/OTS and seeks 3 months time to deposit the same as per Annexure P-8.

This Court on 03.03.2021 after issuing notice of motion, directed petitioner to deposit Rs.2 Lakh before 10.03.2021. Relevant part of Order 03.03.2021 is reproduced hereunder:-

> " With regard to short time period granted to deposit the remaining amount of the earlier OTS, the limited prayer of learned counsel for the petitioners is for extension of time till 31.03.2021 to clear the entire outstanding amount. Petitioners are stated to be ready and willing to deposit a sum of Rs. 2 Lakh upfront.
>
> Notice of motion.
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> Mr. K.P.S.Dhillon, Advocate accepts notice on behalf of the respondents No. 2 and 3-Bank.

> Let an amount of Rs. 2 Lakh be deposited before 10.03.2021 with an undertaking before this Court stating therein that the entire outstanding shall be deposited till 31.03.2021.
>
> List on 12.03.2021. ”

In pursuance of the said Order 03.03.2021, the petitioner filed an undertaking by way of affidavit dated 12.03.2021 stating that the petitioner had deposited Rs. 2 lacs on 09/03/2021 (Annexure A-1). Petitioner also states that he is unable to deposit the settled amounts of earlier OTS and thereby proposes a new schedule for payment and undertakes to deposit the remaining amount along with interest by post three cheques, details of which are as follows- (drawn on UCO Bank, Industrial Area, Jalandhar)

Cheque No. 00134 dated 12.04.2021	Rs. 2,85,000
Cheque No. 00135 dated 12.05.2021	Rs. 3,50,000
Cheque No.00136 dated 12.06.2021	Rs. 3,50,000

Petitioner is also ready to pay interest of 3 months which shall incur on account of cheques.

However, during the course of hearing today, the counsel for the petitioners, on instructions has showed his helplessness in adhering to the undertaking dated 12.03.2021 given by the petitioners as they do not have the requisite funds to pay the remaining amount of Rs.11,85,000/- along with interest.

We are inclined to interfere in the matter only because the petitioners had shown their willingness to pay the outstanding amount within reasonable time and it would have been in the interest of justice that the proceedings could culminate amicably. Otherwise, as per law, we do not see how the present petition is maintainable, as the petitioners expect us to interfere in the due process of law adopted by respondent Nos.2 and 3-Bank. The petitioners, as best, have an alternative efficacious remedy to approach the Tribunal under the provisions of SARFAESI Act, 2002.

A similar issue, as raised in the present petition has already been discussed in detail by us and decided on 22.03.2001 against petitioner therein in CWP No.5010 of 2021 titled as M/s Hamdard Engineering Vs. City Union Bank Limited and Anr., by relying upon a few Supreme Court Judgments, holding that such a recourse of directly approaching the High Court without exhausting its statutory remedy before Debt Recovery Tribunal is not permissible.

In view of the above, finding no merit in the instant writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

March 12, 2021
mks/Vinay

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