IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM Nos. 394 & 396-CWP of 2021 in/and
Civil Writ Petition No. 23128 of 2017 (O&M)
Date of Decision: 14.01.2021

M/s. Kiran Foundary Works, Ludhiana and others

.... Petitioners

Versus

ASREC (India) Ltd., New Delhi

.... Respondents

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

Present: Mr. Aalok Jagga, Advocate
for the non-applicants / petitioners.

Mr. Kamal Preet Singh Dhillon, Advocate
for the applicant – respondent / Company.
(CM Nos. 394 & 396-CWP of 2021)

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

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JASWANT SINGH, J. (ORAL)

Petitioner No. 1 *(M/s. Kiran Foundary Works)* is a Partnership Firm, whereas petitioner Nos. 2 & 3 *(S/Sh. Narinder Kumar & Raj Kumar, respectively)* are its partners, and engaged in the business of supply of auto components at Ludhiana. The Partnership Firm had raised three loans (i.e. one CC and two term loans) for a total amount of ₹ 11.20 crores during the periods from 2010 to 2012 from Allahabad Bank. The said loans were declared as Non-Performing Asset (NPA) on 24.06.2015 and amount due in all the three accounts as on 30.06.2015 was ₹ 12 crores (approximately) in terms of the Demand Notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the SARFAESI Act, 2002"). The collateral security for the aforesaid three (03) loans is comprised of four (04) properties delineated in para-5 of the writ petition. The proposal furnished by the petitioner – Firm under the One Time Settlement (OTS) Scheme for a sum of ₹ 5.10 crores towards liquidating the entire outstanding liability in the aforesaid three accounts, was rejected by the Allahabad Bank vide Memo dated 19.07.2017 **(Annexure P-20)**. Simultaneously, the proceedings culminated into a Sale Notice dated 30.08.2017 **(Annexure P-21)** *qua* all the four mortgaged properties. Hence, the writ petition challenging the rejection of the OTS, as also the Sale Notice dated 30.08.2017 **(P-21)**.

[2] This Court, while issuing notice of motion vide order dated 09.10.2017, had stayed the confirmation *qua* two of the properties upon the contention of the petitioner to offer more towards the sale price than offered by the Auction Purchaser. To check the *bona fide*, the Court directed the petitioner to pay a sum of ₹ 30 lacs, which, concededly, was not deposited, however, a sum of ₹ 10 lacs stood deposited without the intervention of the Court and before the order.

[3] Before the reply could be filed by the Bank, an application bearing *CM No. 8016-CWP of 2019* was filed by an assignee – Company [ASREC (India) Ltd.] of the lender Allahabad Bank for substitution of its name in the memo of parties, having acquired the debt on payment to the Bank under Section 5 of the SARFAESI Act, 2002. The said application was allowed vide order dated 10.09.2019, and the amended memo of parties was taken on record.

[4] This Court, keeping in view the chances of settlement, referred the parties to the Mediation and Conciliation Centre of this Court vide order dated 22.11.2019, resulting into a written settlement / agreement dated

06.03.2020 **(available at Flag-'A')**, whereby the petitioner was required to pay a total amount of ₹ 3.30 crores by specified installments by 30.06.2020.

[5] The main case stands adjourned to 03.03.2021.

[6] Now, the respondent – Company has filed an application bearing ***CM No. 394 of 2021*** seeking preponement of the date of hearing of the main case; and another application bearing ***CM No. 396 of 2021*** for placing on record the letter dated 14.01.2020 **(Annexure R-1)** vide which the OTS sanctioned, noticed in the settlement dated 06.03.2020, has been withdrawn due to non-payment of the specified amount of ₹ 3.30 crores by 30.06.2020, as also vacation of the interim stay order dated 09.10.2017 passed by this Court.

[6.1] Notice of both the aforesaid applications.

[7] Mr. Aalok Jagga, counsel for the non-applicants / petitioners, accepts notice of the applications, and states that *qua* the cancellation of the OTS, as also for seeking extension of time for deposit of money in terms of the settlement dated 06.03.2020, a separate writ petition bearing *CWP No. 22537 of 2020* stands filed based on a subsequent separate cause of action, whereas he has no objection to the preponement of the present case and **also prays** for permitting the petitioner to **withdraw** the present **writ petition**.

[7.1] Counsel for the respondent-Company can possibly has no objection to the similicitor withdrawal of the writ petition itself.

[8] In view of the aforesaid developments, the application bearing ***CM No. 394 of 2021*** is **allowed**; the hearing of the main case is preponed from 03.03.2021 and taken up today itself with the consent of the parties.

[9] The oral request of the counsel for the petitioners is accepted and the **writ petition** is itself permitted to be **dismissed as withdrawn**.

[9.1] Since the main case itself has been dismissed as withdrawn, no orders are required to be passed in the pending application(s), and the same stand(s) disposed of.

(JASWANT SINGH)
JUDGE

January 14, 2021
'dk kamra'

(SANT PARKASH)
JUDGE

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