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

**CWP-22112-2020
Date of Decision:24.02.2021**

Tarun Kapoor and another

...Petitioners

Versus

IDFC First Bank Ltd and others

...Respondents

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

Present: Mr. Saurabh Bhardwaj, Advocate for the petitioners.

Mr. Harsh Chopra, Advocate
for respondent No.1-IDFC First Bank.

Ms.Shruti Jain Goyal, DAG, Haryana
for respondents No.2 and 3.

JASWANT SINGH, J. (ORAL)

Tarun Kapoor (Petitioner No.1), being the sole proprietor of the concern-M/s Sterling Motor Co and Pawan Kapoor (Petitioner No.2), being the co-borrower, had raised a loan of Rs.20 crores approximately, in the year 2015 by way of two loan agreements, from a Non-Banking Financial Company, namely, Capital First Ltd. The said financial institution subsequently merged into IDFC First Bank Private Limited.

Both the accounts were declared NPA on 31.07.2018. Thereafter, a notice dated 16.08.2018 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act, 2002') was issued. It transpires that the original financial institution i.e.

Capital First Limited had approached Delhi High Court under Section 9 of the Arbitration and Conciliation Act, 1996 in view of the arbitration clause in the loan agreement, seeking to restrain the principal borrowers from disposing of the secured asset. In the meantime, a settlement dated 21.12.2018 was arrived at, whereby the principal borrowers(petitioners herein) had agreed to make the deposit of payment of outstanding loan amount in conformity with the rescheduled timeline. Since the conditions of settlement were not complied with by the principal borrowers, the respondent-Bank invoked the proceedings under the SARFAESI Act, 2002 in the light of violation of the terms of the conditional settlement. The petitioner has also contended that another financial creditor namely Volkswagen Finance Pvt. Ltd. has filed an application under Section 95 of Insolvency and Bankruptcy Code, 2016 pertaining to personal insolvency of guarantor, i.e. the petitioners which is yet to be admitted and hence proceedings under SARFAESI Act, 2002 are uncalled for.

The proceedings progressed to the stage of an order dated 20.10.2020 passed by the District Magistrate, Gurugram on a fresh application under Section 14 of the SARFAESI Act by the Bank, whereby direction was issued to Tehsildar, Gurugram concerned for providing assistance to take over physical possession of the secured asset. Thereafter, the petitioners have approached the learned Debts Recovery Tribunal, Chandigarh by filing Securitisation Application No.119 of 2020, inter alia, assailing the order passed by the District Magistrate.

Hence, the present writ petition was filed in the light of apprehension that the actual possession of the secured asset will be taken over on 21.12.2020 with the averments in para 2 of the petition, which read as under:-

> *"That at the outset, it is submitted that the petitioners are constrained to approach this Hon'ble Court and have already approached the Hon'ble Debt Recovery Tribunal, Chandigarh thereby filing a Securitisation Application under Section 17 of the SARFAESI Act, 2002 and same is pending adjudication and listed today i.e. On 17.12.2020 as item 85 before the Ld. Debt Recovery Tribunal-2, Chandigarh, but same shall not be taken up on the account of the presiding officer being "on leave" for next 3 days & the same is adjourned to 21.12.2020."*

This Court on 18.12.2020, passed the following order:-

> *"It is contended that in view of the due compliance, by depositing the required arrears of outstanding amount as also payment of monthly EMIs in terms of the settlement agreement dated 21.10.2018 (Annexure P-4) by the petitioners, the previous notices issued under Sections 13(2) as well as 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short "the SARFAESI Act") were required to be withdrawn by respondent No. 1-Bank, however, in the absence of any fresh proceedings for any default, the impugned order dated 20.10.2020 (Annexure P-1) has been passed by the District Magistrate, Gurugram (respondent No. 2) for providing official assistance for securing the physical possession of the secured asset(s), which is impermissible as per the procedure prescribed in the provisions of the SARFAESI Act, 2002 read with SARFAESI Rules, 2002.*
>
> *Notice of motion for 19.01.2021.*
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> *At this stage, Er. Sandeep Suri, Advocate, has put in appearance through video conferencing and accepts notice on behalf of respondent No. 1 – IDFC First Bank Ltd. He also*

prays for time to apprise the Court of the factual position.

Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana, accepts notice on behalf respondent Nos. 2 & 3 / State.

Till the next date of hearing, status quo with regard to possession, as existing today, shall be maintained."

The respondent-Bank has filed a detailed reply.

At the time of resumed hearing today, it is not disputed by the parties that S.A. filed by the petitioners has since been taken up for consideration by the learned Debts Recovery Tribunal and the next date fixed is 30.03.2021. It is, thus, contended by learned counsel for the respondent-Bank that the premise upon which the jurisdiction of this Court was invoked, is not longer available to the petitioners. It is urged that the petitioners should be relegated to pursue their remedy already initiated before the learned Debts Recovery Tribunal as no parallel proceedings can be availed for the same cause of action.

In response, learned counsel for the petitioners does not dispute the aforesaid factual position. However, he prays for maintaining status quo, existing as on today, qua the properties of petitioners / principal guarantors till the interim application filed by the petitioners along with their aforesaid SA is decided by the learned Debts Recovery Tribunal.

We find the prayer of the counsel for the petitioners to be reasonable and the same is accepted in the interest of justice.

Accordingly, the present petition is disposed of with the permission to the petitioners to pursue their remedy before the learned Debts Recovery Tribunal. It is further directed that status quo as noticed above shall be maintained till the decision of the interim stay application by the learned Debts Recovery Tribunal. The learned Debts Recovery Tribunal is also requested to decide the application for interim direction as early as possible preferably within 30 days of the next date of hearing.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

24.02.2021
mks

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