IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.22456 of 2022

Rajendra Prasad Panda .... ***Petitioner***

Mr. Ramesh Agarwal, Advocate
with Mrs. R. Rajgarhia, Advocate

-versus-

Chief Manager & Authorised Officer, Bank of Baroda, Main Branch, Cuttack & Others .... ***Opp. Parties***

Mr. Sambit Samal, Advocate for the Bank
Ms. Tilatama Muduli, Senior Manager, (Legal) for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
18.11.2022
(Hybrid Mode)

Order No.

04. **1.** The petitioner is the Proprietor of M/s. Cheetal Infotech and had raised five loans for different sums in different years from Bank of Baroda, Dhenkanal Branch for his business activities. The loan amounts were secured by equitable mortgage of a residential building and another immovable property owned by the petitioner. Due to financial indiscipline, the loan amount was classified as NPA leading to issuance of a demand notice dated 07.07.2020 issued under Section 13(2) of the SARFAESI Act, 2002 (for short "the Act, 2002"). The symbolic possession of the mortgaged properties was assumed on 18.06.2021 by issuance of notice under Section 13(4) of the Act, 2002.

2. It transpires that an OTS settlement was sanctioned in favour of the petitioner vide Memo dated 04.03.2022, whereby the petitioner was required to pay an aggregate sum of Rs.42,00,000/- plus other legal expenses towards full and final settlement. A sum of Rs.7,00,000/- was to be paid as upfront with the next installment of Rs.15,00,000/- to be paid by 15.03.2022, the next installment of Rs.10,00,000/- by 15.04.2022 and the last installment of Rs.10,00,000/- plus legal expenses by 15.05.2022. The petitioner admittedly apart from payment of Rs.8,00,000/- including sum of Rs.7,00,000/- as upfront has not paid any installments by 15.05.2022 leading to the cancellation of the OTS sanction in terms of the conditions of the settlement. Resultantly the Bank proceeded to issue a sale notice on 30.06.2022/ 04.07.2022 (Annexure-2) fixing the auction sale of the mortgaged property on 20.07.2022.

3. By filing the present writ petition, the challenge has been laid to the aforesaid sale notice (Annexure-2) as also a direction for permitting the deposit of the remaining balance of the sanctioned

OTS, i.e., a sum of Rs.34,00,000/- by extending the time period of the sanctioned OTS.

4. Upon willingness of the petitioner to clear the entire outstanding liability along with compensation to the successful auction purchaser, this Court had issued notice to the Bank as also the auction purchaser, who is impleaded as O.P. No.3.

5. On one of the dates of hearing, i.e., on 22.07.2022, the Demand Drafts/cash deposits for a sum of Rs.35,00,000/- offered by the petitioner in tune with his initial stand, was ordered to be accepted by the Bank and to be kept in an interest bearing "No lien Account". Some more amounts have been deposited subsequently by the petitioner.

6. At the time of hearing today, learned counsel for the Bank submits that in view of the petitioner having miserably failed to honour the schedule of repayment as per the sanctioned OTS, he is not entitled to any extension of time for deposit of almost the entire balance of the installments in terms of the sanctioned OTS. He further submits that this Court had issued notice upon the willingness of the petitioner to clear the entire outstanding liability, and for which apart from deposit of Rs.37,00,000/- pursuant to the orders passed by this Court, the petitioner is required to pay another sum of Rs.15,00,000/- including amount of compensation to the auction purchaser. He further submitted that the auction purchaser is not willing to accept anything less than Rs.6,00,000/- as compensation in view of he having already deposited the entire sale price of Rs.37,50,000/-. Lastly, learned counsel for the Bank submits that the petitioner has already filed a S.A. No.80 of 2021 before the DRT, Cuttack challenging the recovery process under the SARFAESI Act and the challenge to the auction proceedings can also very well be made either by amending the present S.A. or by filing a fresh in accordance with law.

7. In the light of the original assurance to clear the entire outstanding liability, an offer to deposit a sum of Rs.15,00,000/- in next fifteen days subject to adjustment was made to the learned counsel for the petitioner, who upon instructions submitted that his client would be unable to do so.

8. Faced with the aforesaid developments, we are not inclined to entertain the writ petition any further as the entire basis of clearing the entire outstanding liability is not being honoured by the petitioner. Accordingly, the writ petition is liable to be dismissed by relegating the petitioner to seek his available remedy in accordance with law before the DRT under Section 17 of the SARFAESI Act.

9. Ordered accordingly.

The Bank is directed to refund the amounts deposited (Rs.37,00,000/- plus interest earned if any) by the petitioner in compliance of the orders passed by this Court at the earliest, not later than fourteen working days of making such an application, failing which he shall be entitled to payment of interest @ 9% on the amounts of refund, which can be recovered by the Bank from the erring Officer.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

AKK 18th November, 2022
Cuttack