

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5646-2022

Reserved on: 22.03.2022

Date of Decision: 06.04.2022

Subhash Chand Sharma

. . . . Petitioner

Vs.

Haryana Financial Corporation Ltd. and others

. . . . Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE JASJIT SINGH BEDI**

Present: - Mr. Rajesh K. Kataria, Advocate, for the petitioner.

M.S. RAMACHANDRA RAO, J.

The Background facts

The Writ Petitioner is a shareholder of M/s Surendra Enterprises Pvt. Ltd., a Company incorporated under the Companies Act, 1956 (for short 'the Company').

The Company was engaged in a manufacture of commercial sheets of brass and copper and was having a unit at Rewari in the State of Haryana.

A term loan of ₹28.60 lakh was sanctioned by the Haryana Financial Corporation Limited [respondent No.1] on 24.11.1982. Subsequently, another term loan of ₹37.00 lakh was sanctioned by respondent No.1 on *parri passu* charge with HSIIDC. The Company also availed a loan of a sum of ₹27.19 lakh and executed a registered mortgage deed dt.06.01.1983 mortgaging land with building situated in Rewari apart from machinery. An

additional loan of ₹31.00 lakh was also sanctioned by respondent No.1 on 10.04.1986.

On account of defaults in payment of loan installments after 1987, respondent No.1 attached the industrial unit, building as well as machinery of the Company in 1989.

Petitioner claims to be the Managing Director of the company at the time of the said attachment.

The above mentioned property of the Company was sold by respondent No.1 through a public auction on 12.04.1990 for ₹55,55,000/- to one M/s Bittoo Enterprise Private Limited.

Petitioner alleges that the said sale was conducted without fixing any reserve price and at a very low valuation.

15 years later, respondent No.1 issued a letter dt.30.06.2005 (P3) to the petitioner stating that it had introduced a policy for compromise settlement of Chronic Non Performing Asset of respondent No.1 and invited the petitioner to liquidate the loan account advanced to the Company.

Petitioner contends that after receiving the said letter, he visited the office of respondent No.1 and then came to know that the auction bid amount given by the highest bidder in the auction said to have been held in 1990, was declined by respondent No.1, and the highest bidder had filed a Civil Suit which was decreed; that an appeal was filed by respondent No.1 which was dismissed by the Additional District Judge, Rewari and the same was also questioned in RSA-597-1992 by respondent No.1.

Petitioner alleges that the petitioner was informed that the benefit of the Scheme as per the letter dt. 30.6.2005 (P3) cannot be given to the petitioner and during the pendency of RSA-597-1992, respondent No.1 will not be in a position to handover the *industrial unit* of the Company to the petitioner.

Petitioner made a representation on 12.7.2005 (P4) seeking settlement, and when that was not considered by respondent No.1, the Company filed CWP-4161-2006.

On 29.08.2006, the said Writ Petition was disposed of directing respondent No.1 to consider petitioner's representation dt.12.7.2005 (P4) within six weeks after giving an opportunity of hearing to the petitioner.

Thereafter, a speaking order was passed by the Managing Director of respondent No.1 on 18.09.2006 (P6). In the said order the liability of the company was fixed at ₹1264.98 lakh.

According to the petitioner, this is erroneous since the management of the Company had already been taken over by respondent No.1 along with the *industrial unit* and it had put the same to auction in 1990.

Respondent No.1 again offered, through a letter dt. 05.07.2007 (P7), to the petitioner a compromise-settlement under Loss Account Scheme. Petitioner then made a fresh representation on 11.07.2007 (P8) seeking settlement at ₹52 lakh.

Petitioner also challenged the speaking order dt.18.09.2006 (P6) passed by respondent No.1 rejecting the benefit

of the *Compromise-Settlement Scheme* by filing CWP-15325-2007. He sought a Writ of Mandamus directing respondent No.1 to consider his representation dt.11.7.2007 (P8) under the *NPA Scheme* and not to charge any additional interest/penalty from the date of auction.

On 01.10.2007, the said Writ Petition was also disposed on directing respondent No.1 to dispose of the said representation within two months.

Again the petitioner's representation dt. 11.07.2007(P8) was rejected by respondent No.1 by passing another reasoned order dt. 01.10.2007 (P9).

According to the petitioner, he made several representations for settlement of the account of the Company, but the respondents did not do so and said that they will consider the same after RSA-597-1992 was disposed of.

Ultimately on 01.04.2010, RSA-597-1992 was allowed in favour of respondent No.1 holding that there was no enforceable contract between the auction purchaser and respondent No.1 and the suit itself was misconceived. The Court observed that the applications filed by the Company in the said RSA cannot be allowed as it was not a necessary party to the RSA.

Petitioner alleges that though the RSA was decided on 01.04.2010, respondent No.1 did not keep its terms to settle the account of the petitioner and informed the petitioner that the dues of the petitioner-Company have now become ₹17 crore.

Petitioner alleges that he made a representation on behalf of the shareholders of the Company for rehabilitation of the Company after settlement of the loan account under the NPA/Loss Account Scheme of respondent No.1 framed in 2005.

He also contended that the plant and machinery had been assessed at ₹55 lakh at the time of taking of possession by respondent No.1 in 1990 and this had turned into a scrap value of ₹ 3 lakh as per valuation report submitted in February 2012 by North India Technical Consultancy Organization Limited hired by respondent No.1.

Petitioner filed CWP-16129-2010, which was dismissed as withdrawn on 02.04.2013 (P13) granting liberty to the Company to submit proposal for OTS in terms of a subsequent Scheme of 2011, applicable to respondent No.1 as well as HSIIDC along with upfront amount. The Bench also took note of the fact that there was an interim order granted during the pendency of the said Writ Petition which was challenged in the Supreme Court in Special Leave to Appeal (Civil) No.30378 of 2011 and the Supreme Court in the said SLP vide order dt. 09.11.2011 directed the holding of a sale of one of the assets of the Company. It took note of the framing of the fresh OTS Scheme by respondent No.1 in 2011, and directed the petitioner to submit a proposal for OTS under the said scheme and directed respondent No.1 to consider the said proposal by keeping in mind the sale of one of the assets of the company which occurred in 2011.

We may state that the said sale of assets of the Company pursuant to the Supreme Court order had occurred on 14.06.2012 to M/s Bala Ji Enterprises, a proprietary concern of the petitioner's daughter-in-law for ₹10.95 crore became the highest bidder but, the auction purchaser defaulted in paying the balance consideration and so the amount of ₹678.20 lakh deposited by the auction purchaser was forfeited and the unit was repossessed.

Petitioner alleges that a proposal was submitted on 07.06.2013 by the petitioner alongwith upfront fee of ₹5,20,480/- i.e. 10% of the NPA amount as per letter dt. 30.6.2005, that he also got issued a legal notice dt.16.05.2017 (P14) demanding respondent No.1 to release the amount of auction sale of the *industrial unit* of the company after adjustment of the loan account in terms of 2005/2011 scheme/policy of respondent No.1.

The said notice was replied by respondent No.1 on 06.06.2017 stating that respondent No.1 had still to recover ₹27.40 crore with further interest from 01.06.2017 in A/c-I and ₹62.80 crore with further interest from 01.03.2017 in A/c-II from the Company; therefore, there is no question of release of any amount of sale proceeds of the unit to the petitioner. It was also pointed out that the auction purchaser was none other than the daughter-in-law of the petitioner and an amount of ₹678.20 lakh deposited by her was forfeited, and the unit was repossessed as per the conditions of the agreement with the auction purchaser. It was stated that the settlement of loan account of the borrower Company has to be

guided by the terms and conditions of the NPA Policy-2011 as per which the settlement amount had to be linked with the value of available mortgaged securities.

Petitioner then made an application under the RTI Act received on 09.02.2017, which was replied on 20.03.2017 (P16). It stated that the petitioner had sought settlement under the NPA policy-2011 and only made upfront payment of ₹5,20,480/- but, under the said Scheme amount payable is ₹6,74,062/-, and though the petitioner had deposited a cheque for an amount of ₹1,55,000/- on 30.04.2014 towards balance upfront amount, the same was dishonoured, and thereafter no further amount was deposited against the dishonoured cheque towards the balance upfront amount; and so there cannot be any settlement under the NPA Policy-2011.

Petitioner then filed CWP-13581-2018 for a direction to the respondents to settle the loan account of the Company after freezing the liability of the petitioner and other shareholders of the Company from the date of taking of physical possession or taking decision for auction of the *industrial unit* in 1990, and after deducting the assessed value of plant and machinery to the tune of ₹55,00,000/- by respondent No.1 at the time of auction on 12.04.1990 out of total outstanding of ₹68 lakh, and to refund the remaining amount of auction money of the unit received by respondent No.1.

But, the said Writ Petition was dismissed as withdrawn with liberty to file a fresh Writ Petition by furnishing better particulars and appending relevant documents.

Filing of Present Writ Petition

Thereafter the petitioner approached this Court with the instant Writ Petition.

Petitioner in the instant Writ Petition has sought the same relief as had sought in CWP-13581-2018.

Contention of the petitioner

Briefly, the contention of counsel for the petitioner is that the physical possession of the *industrial unit* of the Company was taken over by respondent No.1 on 18.3.1990; there was a sale in open auction on 12.4.1990 to M/s Bittoo Enterprises but, the highest bid of ₹55,50,000/- was declined by respondent No.1; and litigation initiated by the said auction purchaser continued till 01.04.2010 when RSA-597-1992 was decided in favour of respondent No.1; the Industrial unit was again sold in auction in 2012 to M/s Bala Ji Enterprises for ₹10.95 crores but, neither the amount was credited in the account of the Company nor the loan account of the Company was settled. He also stated that there was litigation pending between M/s Bala Ji Enterprises and respondent No.1. It is the contention of the petitioner that after taking over physical possession by respondent No.1, it can legitimately charge interest only upto the date of its decision to sell property and not thereafter. He relied upon a decision of the Supreme Court in ***Baldev Singh Vs. State of***

Punjab and others ¹ and a decision of this Court in ***M/s Advance Oil Private Limited Vs. Punjab Financial Corporation and others***².

Consideration by the Court

We are not impressed by the contention raised by the counsel for the petitioner.

The petitioner had approached this Court by filing CWP-13581-2018 seeking relief identical to the relief sought in the instant Writ Petition but withdrew the same on 27.08.2018 seeking liberty to file a fresh Writ Petition.

Three and a half years later, he has moved the instant Writ Petition without assigning any cause for the laches in filing the instant Writ Petition.

More importantly, the prayers in the Writ Petition deal with the settlement of the loan account of the Company and to freeze the liability of the petitioner and other shareholders of the Company from the date of physical possession or taking of decision for auction of the *industrial unit* of the Company in the year 1990; to refund the remaining amount of auction money of the said unit received by respondent No.1 which had been forfeited by respondent No.1.

According to the petitioner, the expected value of the plant and machinery at that time was ₹55 lakh; that the same had turned into scrap at the time of auction on 12.04.1990, and so

¹ Civil Appeal No.8163 of 2016 decided on 17.8.2016

² CWP-7152-1989 decided on 04.07.2006

respondent No.1 was duty bound to deduct only ₹13,30,000/- and adjust the balance towards the dues of respondent No.1.

Such a plea cannot be entertained because though the auction purchaser M/s Bittoo Enterprises quoted ₹55,55,000/- in the auction held on 12.04.2019, the said bid was never accepted by respondent No.1 and even the sum of ₹5.55 lakh paid by the auction purchaser was refunded to the auction purchaser.

Though the auction purchaser contested the said action of respondent No.1, he could not succeed and the decision in RSA-597-1992 on 01.04.2010 was in favour of respondent No.1.

Once the liability of the Company was not extinguished and the Company did not attempt to settle the account, it cannot insist that its offer of OTS must be accepted even though it did not fulfill terms of the said OTS. The petitioner has not been able to satisfy us that its deposit of upfront amount of ₹5,20,480/- under the NPA Policy-2011 was correct and respondent No.1's contention that he ought to have been deposited ₹6,74,062/- is incorrect. It is not disputed that the petitioner had issued a cheque of ₹1.55 lakh on 30.4.2014 towards balance upfront amount which was dishonoured, and thereafter the petitioner kept quiet.

We are therefore of the opinion that the Writ Petition deserves to be dismissed not only on the ground of unexplained laches on the part of the petitioner but, also on the ground of the petitioner was not entitled for the benefit under the NPA Policy-2011

of respondent No.1 since he did not make the requisite deposit of upfront amount .

Accordingly the Writ petition is dismissed. No Costs.

(M.S. RAMACHANDRA RAO)
JUDGE

06.04.2022
Vivek

(JASJIT SINGH BEDI)
JUDGE

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |