HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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103 **CWP-21917-2020 (O&M)**

Reserved on: 17.12.2021

Pronounced on: 19.01.2022

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RKM Worldwide ... Petitioner

VS.

HDB Financial Services Ltd. ... Respondent

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Coram: **Hon'ble Mr. Justice M.S. Ramachandra Rao**
Hon'ble Mr. Justice Jasjit Singh Bedi

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Present: Mr. Vikas Bali, Advocate for the petitioner

Mr. Vipul Dharmani, Advocate for the respondent

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M.S. Ramachandra Rao, J.

The background facts

(1) The petitioner is a sole proprietorship concern dealing in the export of various sport goods operating from Jalandhar.

(2) Respondent is a non-banking financial company doing the business of lending loans to desirous parties.

(3) The petitioner approached respondent for a loan against property for Rs.3,76,99,983/- to expand its business and the loan was sanctioned on 04.09.2017.

(4) A residential property consisting of land and building was mortgaged by the petitioner to respondent.

(5) The loan was to be repaid in 180 equated monthly instalments for 15 years @ Rs.4,08,664/- per month.

(6) Till August, 2019 the petitioner claims to have paid the loan instalments regularly but contends that on account of slow down in the global economy, the introduction of GST etc. it could not pay the EMIs for the months of September, October and November, 2019.

(7) The loan account of the petitioner was classified as Non-Performing Asset (NPA) on 04.12.12019.

(8) Thereafter, a notice dated 29.01.2020 under Section 13(2) of the SARFAESI Act, 2002 (for short 'the Act') was issued to the petitioner by respondent demanding Rs.3,91,51,355/-. In this notice, a demand for Rs.16,50,857/- allegedly due from the petitioner towards pre-payment charges @ 4.72% on outstanding principle was also included.

(9) Objections were filed by the petitioner to the said notice raising several contentions, but the same were rejected and notice under Section 13(4) of the Act was issued on 06.07.2020.

(10) The petitioner then wrote a letter on 07.07.2020 for recasting of the loan account claiming the benefit of RBI circular dated 01.01.2019 in regard to the MSMEs.

CWP-10123-2020

(11) The petitioner then filed CWP-10123-2020 in this Court against respondent.

(12) On 17.07.2020 notice of motion was ordered to respondents for 30.07.2020 and the petitioner was directed to deposit Rs.19 lakhs with respondent on or before 21.07.2020, and subject to such deposit, the respondents were directed not to take any coercive steps to take over the secured assets.

(13) Reply/affidavit was filed by respondent disputing the maintainability of the writ petition in view of the alternative remedy available to the petitioner.

(14) On 17.08.2020 when the matter was listed, the Court took note of the deposit of the amount of Rs.19 lakhs pursuant to its interim

order dated 17.07.2020 and also the fact that in all Rs.22.4 lakhs were paid by the petitioner to respondent, and also that the dispute subsisting was with regard to the charge of penal interest during the COVID-19 pandemic.

(15) At that stage the counsel for respondent offered that if the petitioner approaches respondent and makes a representation or a proposal for settlement, respondent would consider the same within one week.

(16) The Court disposed the Writ Petition on 17.8.2020 directing the parties to make attempt for settlement, and till the decision is not taken, respondent was directed not to take any coercive steps towards recovery against the petitioner.

<u>The proposal of petitioner for settlement</u>

(17) On 24.08.2020, a proposal for settlement was made by the petitioner to the respondent.

(18) On 25.08.2020, respondent wrote to the petitioner that the petitioner's representation dated 24.08.2020 was put up before the competent authority.

<u>The rejection of petitioner's proposal by the respondent on 27.8.2020</u>

(19) Thereafter, on 27.08.2020, the proposal for settlement made by the petitioner was rejected by respondent vide email dt. 27.08.2020 (P14).

(20) In the said e-mail, respondent stated that the loan account of the petitioner had turned into NPA on 04.12.2019 and respondent was justified in invoking the proceedings under the Act. It stated that the petitioner's request for moratorium cannot be entertained since the moratorium was applicable on the basis of credit history with the lender

and the petitioner cannot claim it as a matter of right; that the petitioner had failed to maintain financial discipline by not paying the loan as per the repayment schedule appended to the loan agreement; and that the rate of interest and other charges were levied as per the sanction letter and loan agreement between the parties.

(21) The petitioner was directed to meet the officials of respondent for any further assistance in terms of the compliance of the repayment of the outstanding dues or for closure of the loan account within 03 days failing which it was stated that it will continue the proceedings under the Act.

<u>SA-51-2020 (P15) filed by petitioner before the Debt Recovery Tribunal</u>

(22) The petitioner then filed SA-51-2020 (P15) before the DRT-I Chandigarh but the same was rejected on 24.11.2020.

(23) The Tribunal held that there was no illegality committed by respondent and even the charging of interest by respondent was as per the loan agreement.

(24) This order was not challenged by the petitioner before the Debt Recovery Appellate Tribunal under Section 18 of the Act.

<u>Application by respondent under Sec.14 of the Act</u>

(25) Respondent-Bank then filed application under Section 14 of the Act before the District Magistrate, Jalandhar.

(26) The petitioner then withdrew CWP-10123-2020 on 23.09.2020 with liberty to assail the order dated 27.08.2020 passed by respondent rejecting the petitioner's proposal for settlement.

The instant Writ Petition

(27) On 14.12.2020, the instant Writ Petition has been filed by the petitioner challenging the action of respondent in filing the application under Section 14 of the Act and also challenging the reply dated 27.08.2020 issued by respondent rejecting the petitioner's offer for settlement. In addition thereto, the petitioner also challenged the notice dt.29.01.2020 issued under Section 13(2) of the Act, notice dt. 06.07.2020 issued under Section 13(4) of the Act and also order dt. 24.11.2020 passed by the DRT-I Chandgiarh. Apart from these reliefs, the petitioner wanted a restraint order against respondent from taking any coercive steps under the Act, and also a direction to respondent to grant re-structuring of the loan and continuance of the moratorium also for the months of June, July and August, 2020 in continuation of the previous moratorium granted by respondent for the months of March, April and May, 2020.

Events after filing of the Writ Petition

(28) On 18.12.2020, this Court directed the petitioner to deposit Rs.15 lakhs within 2 weeks from that date, and on such deposit, it directed that there shall be a stay of the taking of coercive steps against the residential house of the petitioner till the next date of hearing.

(29) The matter underwent an adjournment on 07.01.2021 and on 26.02.2021, this Court directed the petitioner to deposit a further amount of Rs.18 lakhs.

(30) However, the petitioner paid only an amount of Rs.8,17,328/- and after February, 2021 did not make any payment to respondent.

The contentions of respondent

(31) Counsel for Respondent contends that as on 14.12.2021, the total outstanding is Rs.4,33,38,720/-, the overdue amount is Rs.74,60,160.50., that keeping in mind the magnitude of the dues of the petitioner, and the failure of the petitioner to challenge the order of DRT-I, Chandigarh in SA-51-2020 before DRAT and the non-compliance by the petitioner of order dated 26.02.2021, the petitioner cannot be granted any relief.

(32) It is also stated that on 27.11.2020, the District Magistrate, Jalandhar had passed the orders under Section 14 of the Act permitting the respondent to take over physical possession of the residential house of the petitioner. It is contended that the petitioner's prayer for regularizing or upgrading this account, cannot be accepted since once the account is classified as NPA, it cannot be straightaway regularized or upgraded by paying the overdue amount as per the RBI guidelines until and unless regular payments are made for at least a period of one year in terms of the said guidelines. It is stated that the petitioner did not make any substantial payments and so the recovery process cannot be delayed any further.

(33) It is also stated that no payments were made by the petitioner from 06.08.2019 till 20.07.2020 and that valid reasons have been given not only in the reply dt.30.03.2020 issued by the Bank rejecting the objections filed by the petitioner under Section 13-A but also in the order dt. 27.08.2020 rejecting the petitioner's representation.

(34) It is stated that the regulatory package introduced by the Government of India through RBI on account of the COVID-19 pandemic will not apply to the petitioner since the petitioner's loan account was

classified as NPA on 04.12.2019, much before the threshold date of 28.02.2020 specified by the RBI, and the petitioner cannot take advantage of COVID-19 pandemic.

Rejoinder of the petitioner

(35) A rejoinder was filed by the petitioner reiterating the stand in the Writ petition. It contends that the petitioner had already paid a sum of Rs.1,39,66,600/- and so the petitioner cannot be denied restructuring or rescheduling of the loan account. It is also stated that the petitioner intended to clear the overdue amount of Rs.28 lakhs at the time of filing of the Writ petition and wanted to deposit Rs.4,82,672/- by way of demand drafts, but the respondent did not accept it.

The consideration by the Court

(36) We have noted the contentions of both sides.

(37) From the respective contentions of the parties, it is clear that the petitioner was sanctioned on 04.09.2017 a loan for Rs.3,76,99,963/-, but on account of the petitioner not paying the loan EMIs, petitioner's loan account was classified as NPA on 04.12.2019 and proceedings under the Act had been initiated against the petitioner by issuing of notice under Section 13(2) of the Act on 29.01.2020 and demanding the petitioner to pay within 60 days Rs.3,91,59,355/-.

(38) Admittedly, for 3 months prior thereto no loan EMIs payment had been made by the petitioner for the months of September, October and November, 2019.

(39) Petitioner's objections filed on 15.03.2020 to the Section 13(2) notice were rejected on 30.03.2020.

(40) The petitioner waited for 5 months till August, 2020 and then filed CWP-10123-2020 and during the pendency of the said Writ petition deposited Rs.22.40 lakhs and later withdrew the Writ petition after the OTS offer of the petitioner dt. 24.08.2020 was rejected on 27.08.2020.

(41) When this Writ petition was filed, the petitioner was granted an interim order initially on deposit of Rs.15 lakhs on 18.12.2020, but when the petitioner was again asked to deposit a further sum of Rs.18 lakhs on 26.02.2021, the petitioner deposited only Rs.8,17,328/-.

(42) Thus in all, after August, 2019, till date (for about 28 months), the petitioner has deposited only Rs.22.40 lakhs + Rs.15 lakhs + Rs.8,17,328/-, totaling to a sum of Rs.45,57,328/- , though every monthly instalment even according to the petitioner is Rs.4,08,664/-.

(43) Also when the SA was rejected on 24.11.2020, the petitioner did not avail the appellate remedy before the DRAT though the Appellate Tribunal was functional, and he filed this Writ petition straightaway in December, 2020.

(44) According to the respondent, the total outstanding as on 14.12.2021 was Rs.4,33,38,720/- and the overdue instalment was Rs.74,60,160/-.

(45) Having regard to the track record of the petitioner in avoiding in making payment of substantial amounts to respondent after August, 2019 till date, for more than a period of 2 years, one cannot blame the respondent for not acceding the petitioner's request for settlement in the manner demanded by the petitioner.

(46) The petitioner has not been able to show before us that though the petitioner is entitled to the relief under the RBI Guidelines with

regard to the loan rescheduling or moratorium, the petitioner was wrongfully denied the same by the respondent.

(47) We, therefore, do not find any illegality or unreasonableness in the action of the respondent in proceeding to recover the dues from the petitioner under the provisions of the Act.

(48) Accordingly, the Writ Petition is dismissed.

(49) No costs.

(M.S. Ramachandra Rao)
Judge

19.01.2022
Vvishal

(Jasjit Singh Bedi)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*