13.04.2023
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WPA 4711 of 2023
With
CAN 1 of 2023

Maa Chandi Durga Ispat Limited & Anr.
-Vs-
State Bank of India & Ors.

Mr. Surajit Nath Mitra,
Mr. Suman Dutta,
Mr. Siddhartha Banerjee,
Mr. Soumitava Mukherjee
Mr. Kausik Biswas,
Mr. Soumo Mukherjee,
Mrs. Sweta Mukherjee,
Mr. Sayantan Banerjee
… for the petitioners

Mr. Tilak Kumar Bose,
Mr. Soumyo Roy,
Mr. Santosh Mahato,
Mr. Benazir Kazi
… for the respondents

The petitioners pray for a *mandamus* on the respondent State Bank of India (SBI) for giving effect to a contract between the petitioner no. 1 and the SBI as contained in a letter dated 11.11.2021 and a letter issued by SBI on 10.1.2022. The petitioners also pray for a direction commanding SBI to accept a sum of Rs. 5,50,86,000/- or any other amount as may be fixed by the Court which the petitioners propose to pay to SBI within 3+ months (prayer (c) states 3 months 25 days) in terms of the contract between the parties.

The petitioners rely on a letter of 11.11.2021 issued by the petitioners to SBI whereby the petitioner no. 1 proposed a settlement of the petitioners' dues in the form of a payment schedule. According to the letter, the petitioner would pay Rs. 6.50 crores in several tranches to SBI.

Learned counsel appearing for the petitioners also relies on SBI's letter of 10.1.2022 referring to the petitioners' letter of 11.11.2021 for settlement and submits that the Bank had agreed to a balance compromise amount to be paid in terms of a payment schedule. Counsel further submits that the Bank disregarded the correspondence between the parties and issued a notice under section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and further issued a notice on 2.1.2023 for transfer of the stressed loan exposure of SBI at a reserve price of Rs. 7.09 crores. Counsel submits that while the petitioners were given 60 days to pay their liabilities in full to the Bank, the Bank proposed to transfer the loan exposure to an Asset Reconstruction Company (ARC) before expiry of the 60 days time limit.

Learned counsel appearing for the respondent State Bank of India places a long list of compromise proposals in respect of the loan amounting to Rs. 30 crores taken by the petitioners. Counsel submits that the Bank extended several proposals from 2015 onwards which however were repeatedly dishonoured by the petitioners. Counsel submits that the Bank has a statutory right to take steps for assessment of the debts under sections 5 and 6 of the SARFAESI Act, 2002 and that the Bank has also declared the highest bidder on 24.1.2023 in terms of the auction notice. It is further submitted that the auction purchaser has made full payment of Rs. 17.59 crores in March, 2023.

The admitted facts, which would appear from the submissions of the parties and the material placed before the Court, is that SBI gave 5 proposals for settlement to the petitioners in 2015, 2018, 2019 and 2020, even before the last settlement offered by the Bank on 10.1.2022 which gives rise to the present cause of action. The fact that 5 proposals had earlier been extended indicates that the petitioners made nominal repayments each time on account of the total outstanding dues.

The relevant paragraph of the settlement dated 10.1.2022 which the petitioners seek enforcement of, states in unequivocal terms that the Bank reserves the right to cancel the compromise settlement if the compromise amount or any of the instalment as indicated in the payment schedule is not received within the proposed time period. The petitioners evidently did not comply with the time period for payment which led the Bank to issue letters on 9.2.2022 and 5.5.2022 bringing the petitioners failure on record. The letter of 5.5.2022 records that instead of Rs. 6.50 crores, the Bank has only received Rs. 66.64 lacs in 3 tranches as on 28.3.2022 whereas the petitioners were to make payment of Rs. 2.50 crores by 31.3.2022. The letter further records that the compromise sanction approval is not valid and the amount deposited is forfeited. Significantly, the petitioners wrote to the Bank on 30.7.2022 stating that the petitioners would pay the entire balance amount with reference to the compromise settlement by 31.8.2022. There is nothing on record however to show that the petitioners took any steps with regard to their stated position in the letter of 30.7.2022. The Bank thereafter issued a notice under section 13(2) of the SARFAESI Act, 2002 on 22.11.2022.

There is little doubt that notwithstanding any other law for the time being in force, any Asset Reconstruction Company may acquire the financial assets of any Bank or Financial Institution (FI) by entering into an agreement with such Bank or FI for the transfer of financial assets to the ARC on the terms and conditions agreed upon between the parties – section 5(1)(b) of the SARFAESI Act, 2002. Section 5(2) further makes it clear that if the Bank is a lender in relation to any financial assets acquired under section 5(1) by the

ARC, the latter on acquisition, shall be deemed to be the lender and all the rights of the Bank in relation to such financial assets shall vest in the ARC. Section 6(1) provides for the Bank/FI to give a notice of acquisition of financial assets by any ARC to the concerned obligor and to the Registrar of Companies in whose jurisdiction the assignment is created if the Bank considers it appropriate. The term “obligor” has been defined in section 2(1)(q) of the Act to mean a person liable to the originator to pay a financial asset or to discharge any obligation in respect of a financial asset. The term “originator” has been defined in section 2(1)(r) to mean the owner of a financial asset which is acquired by an ARC. Hence in this case, the petitioner no. 1 is the obligor and SBI is the originator.

The documents placed also make it clear that the petitioners were put on notice of the proposed auction which was held by the Bank, which would appear from the letters from the petitioners’ lawyer to the Bank on 20.1.2023, 25.1.2023 and 10.2.2023. The Bank approved the highest bidder on 24.1.2023 pursuant to the auction. A mail dated 1.3.2023 from the Bank to the ARC/highest bidder records that the Bank gave final approval to the acquisition as per the bid submitted on 24.1.2023 for a bid amount of Rs. 17.59 crores. According to counsel appearing for the SBI, this amount has also been recently received by SBI.

The facts taken together with the balance of convenience would demand that the clock not be turned back to the pre-auction time. The auction for the assignment of debt was held in January, 2023 and the highest bidder declared on 24.1.2023. The Bank has also received payment of Rs. 17.59 crores consequent upon the auction. The Bank is entitled to an assignment of its stressed loan/debt to an ARC under section 5 of the SARFAESI Act, 2002. The petitioners' repeated failure to stick to the payment schedule as seen in the 5 compromise settlements from 2015 onwards does not inspire any confidence in the petitioners' payment capabilities. The petitioners have nothing to show in terms of honouring the payment schedule in the last compromise settlement of 10.1.2022. The Supreme Court in *State Bank of India v. Arvindra Electronics Private Limited; (2023) 1 SCC 540* held that a borrower who has not made payment as per the sanctioned One Time Settlement Scheme cannot claim any extension of the Scheme as a matter of right.

Last but not the least, the petitioners have not been able to show any particular prejudice resulting from the assignment of the stressed loan exposure to the ARC under any statute or otherwise. The ARC has not been made a party to the writ petition and the Court hence did not have the benefit of hearing the assignee/ auction purchaser of the debt.

This Court is not inclined to grant any relief in favour of the petitioners for the above reasons. Although affidavits have not been called for, counsel appearing for the parties have made detailed submissions in support of their respective cases. WPA 4711 of 2023 is accordingly dismissed without any order as to costs for want of merit or any ground made out for interference.

The petitioners have filed an application being CAN 1 of 2023 yesterday, i.e. 12th April, 2023 for addition of CFM Asset Reconstruction Pvt. Limited being the ARC which purchased the debt from the respondent Bank. This application which was filed subsequent to the order by which the Court proposed to pass orders in the writ petition, is also disposed of in terms of the above.

(Moushumi Bhattacharya, J.)