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WPO/1609/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S KAVITA MARKETING PVT LTD
VS
STATE BANK OF INDIA AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 27th September, 2023.

Appearance:
Mr. Suddhasatva Banerjee, Adv.
Mr. Ishan Saha, Adv.
Ms. Sananda Ganguly, Adv.
Mr. Shubradip Roy, Adv.
. . .for the petitioner.

Mr. Anirban Pramanik, Adv.
Mr. P. Nath, Adv.
. . .for the respondents.

The Court: Learned counsel for the bank today, in continuation of the arguments made on the last occasion, cites *United Bank of India vs. Satyawati Tandon & Ors.* reported at *AIR 2010 SC 3413* and argues that in case of proceedings under the SARFAESI Act, the Writ Court does not ordinarily interfere. Learned counsel places reliance on the findings of the Supreme Court that the High Court must keep in mind that the legislation enacted by Parliament and State legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of dues

but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person.

Learned counsel for the bank places reliance on certain documents, which were executed by the petitioner/guarantor subsequent to the issuance of the previous notice under Section 13(2) dated January 18, 2018. By relying on the said documents, learned counsel argues that the petitioner/guarantor admitted its liability regarding repayment of the entire loan amount of Rs.36.05 crores along with interest. It is, thus, submitted that the argument of the petitioner that the liability of the guarantor stood crystallised to the amount of Rs.4,71,38,280.27 is not acceptable.

Learned counsel for the bank further submits that vide order dated November 21, 2019, the Presiding Officer of the Debts Recovery Tribunal 1 Calcutta directed the bank to file present status of the NCLT cases along with the order, relevant papers and minutes of the meeting of COC and inform the outcome of the settlement.

A perusal of the deed of guarantee, which is the corporate guarantee furnished by the petitioner as guarantor, annexed at page 50 of the writ petition, indicates that the same restricted the liability of the petitioner/guarantor to credit facilities by way of Working Capital Term Loan (WBCTL) and Funded Interest Term Loan (FITL) and such other facilities as may be agreed upon from time to time between the bank and the borrower for sums not exceeding the aggregate sum of Rs.36.305 crores.

In Clause 1 of the said document, it is stipulated that if at any time default shall be made by the borrower in payment of the principal sum of Rs.36.305

crore together with interest, costs etc. and/or other monies for the time being due to the bank in respect of or under the aforesaid credit facilities, the guarantor shall forthwith on demand pay to the bank the whole of the principal sum not exceeding 36.305 crores together with interest, cost etc. as may be then due to the bank in respect of the aforesaid credit facilities.

A perusal of the notice sent by the bank under Section 13(2) of the SARFAESI Act, 2002 dated January 18, 2018 shows that the bank specifically quantified the outstanding liabilities of the petitioner as guarantor for the above borrower in aggregate to the tune of Rs.4,71,38,280.27p. Admittedly and as corroborated by the documents annexed to the writ petition, the said amount was paid in full by the petitioner to the bank. Again, in the impugned subsequent notice under Section 13(2) of the said Act dated July 17, 2023, the bank renews the similar claim, now quantifying the amount allegedly due from the petitioner to a sum of Rs.8,64,15,886.12 p.

Learned counsel for the petitioner is justified in contending that substantially there is no difference in the quality and texture of the dues enumerated in two notices under Section 13(2) of the SARFAESI Act, dated respectively January 18, 2018 and July 17, 2023. Hence, even after the petitioner having paid the entire amount which the bank itself enumerated to be the total outstanding liabilities of the petitioner as guarantor “to discharge in full” the liabilities of the petitioner towards the total secured amount of Rs.36.05 crore, the bank could not have claimed the same amount or issued a notice under Section 13(2) of the SARFAESI Act on the self-same cause of action.

By virtue of payment of the entire amount as claimed by the bank by its notice under Section 13(2) dated January 18, 2018, the entire claim of the bank from the petitioner on such score stood extinguished. The plinth of the bank's submission today seems to be the subsequent exercise of one time settlement entered into between the borrower, the petitioner guarantor and the bank. Before embarking on an enquiry in that regard it must be kept in mind that admittedly the borrower company is at present in a CIRP proceeding.

Seen from such perspective, the letter dated October 30, 2019, a copy of which has been handed over by the bank today, authored by the petitioner/guarantor indicates that the amount already paid by the petitioner to the bank may be adjusted with the entire loan amount due from the borrower to the bank. The entire premise of the said letter and the supporting Board resolution of the petitioner company revolves around the concept of the amount which has already been paid by the petitioner, in full and final settlement of its liabilities as guarantor, to be *adjusted* with the entire loan amount payable by the borrower to the bank.

The letter dated October 30, 2019, in its second paragraph reads that the petitioner requests and authorises the bank to adjust the amount of Rs.4,76,83,300/- paid to the bank by the petitioner company from time to time against the amount payable by DIL (the borrower) towards the one time settlement (OTS).

Even the Board resolution backing up such communication, also handed over by the bank today, shows that the borrower had intimated the petitioner of the OTS and had requested the petitioner to approach the bank "to adjust"

Rs.4,76,83,300/- which was given by the company time to time, “against the settlement amount payable by DIL to SBI”.

Hence, the liability of the petitioner in the capacity of guarantor does not hinge on the said resolution of the Board or the communication whereby the petitioner merely communicated to the bank its willingness to have the amount paid by the petitioner in lieu of its liability as guarantor to be adjusted with the total amount payable by the borrower.

Hence, nothing in the said communications regarding OTS has any bearing on any further liability being cast on the petitioner in the capacity of guarantor.

Thus, irrespective of the fact that the OTS has failed, I do not find any subsequent cause of action for the bank to renew its claim and issue a second notice under Section 13(2) of the SARFAESI Act, after the entire claim of the bank from the petitioner as guarantor having been extinguished by virtue of full payment by the petitioner.

Thus, the confusion sought to be raised by the bank with regard to the alleged further liability of the petitioner lies in thin air and does not have any basis to stand on.

In such view of the matter, nothing in the subsequent OTS exercise confers any further right on the bank to issue a fresh notice under Section 13(2) of the SARFAESI Act.

In so far as the cited judgment of *Satyawati Tandon (supra)* is concerned, the same pertains to the jurisdiction of this Court where measures have already been initiated under Section 13(4) of the SARFAESI Act.

There is a sea difference between a notice under Section 13(2) and a measure being taken under Section 13(4) of the 2002 Act.

At present, the petitioner has only given a reply under Section 13(3A) of the SARFAESI Act to the notice under Section 13(2). Even if such reply has been given by the petitioner, the said fact *per se* cannot give rise a defence for the bank to say that the petitioner ought to have a taken recourse under Section 17 of the SARFAESI Act. The bank has not been taken any measure under Section 13(4) nor would have done so in view of the notice under Section 13(2) being de horse the law. Hence, there is no bar to this Court to assume jurisdiction in the matter.

Accordingly, in view of the above findings, WPO 1609 of 2023 is allowed on contest, thereby setting aside the impugned notice issued by the respondent bank under Section 13(2) of the SARFAESI Act, 2002 dated July 17, 2023 and directing the respondent bank to return the title deeds kept with the respondent bank by the petitioner as guarantor to the loan in question within three weeks from date. Any action, if taken pursuant to and in terms of the notice under Section 13(2) which has been quashed above, stands automatically cancelled.

(SABYASACHI BHATTACHARYYA, J.)

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