IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-7564-CWP-2023 IN/AND
CWP-3035-2019 (O&M)
DATE OF DECISION: 01.05.2023

M/S ADVANTAGE ORGANIC NATURAL TECHNOLOGIES PVT. LTD.

......PETITIONER

Vs.

UNION OF INDIA AND OTHERS

.........RESPONDENTS

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Rajiv Kataria, Advocate,
for the applicant-petitioner.

Mr. Gaurav Goel, Advocate,
for the respondent-Bank.

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HARPREET KAUR JEEWAN, J.

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of '*mandamus'* directing respondent No. 3 (wrongly mentioned as respondent No. 2) to restructure the loan account of the petitioner-company as per directions/policy of respondent No. 1 of the year 2015.

1.1 A direction was also sought against respondent No. 3 (wrongly mentioned as respondent No. 2) to reclassify the account of the petitioner-company from NPA to regular account and not to take the physical possession of the mortgaged property situated in the Himachal Pradesh under the securitisation proceedings initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 (for short 'the Act').

1.2 Further direction was sought against respondent No. 3 (wrongly mentioned as respondent No. 2) to handover the physical possession of the mortgaged sole residential-cum-registered office of the property situated in New Delhi.

2. As per the version of the petitioner, he had availed a loan from respondent No. 3-Bank which was sanctioned on 04.08.2014. The petitioner also got a comprehensive insurance policy for the building under construction for a sum of ₹3,00,00,000/- from the National Insurance Company Ltd. at the instance of the Bank. In the year 2015 the construction activities got stalled due to floods, as such the project got delayed and the default accrued in repayments.

3. As per the version of respondent No. 3-Bank, the petitioner-company had availed the credit facilities, i.e. the Cash Credit Limit of ₹4,00,000/-, Term Loan-I of ₹3,40,00,000/-, Term Loan II of ₹ 6,60,00,000/-, Limit of ₹30,00,000/-, i.e. total credit facilities of ₹14,80,00,000/- from the respondent-Bank Branch at Sector 8 Panchkula. In order to secure the repayment of the said loan facilities, the petitioner company had mortgaged the House No. B-5, Second Floor, East Kailash, New Delhi owned by Sh. Rajiv Rai Sachdev, and factory land building situated at Village Dochi, Sadhupul near Durga Temple Kanda Ghat, District Solan (HP) owned by the petitioner company.

3.1. Respondent No. 3-Bank has further alleged that the said loan account was declared as the Non-Performing Assets on 29.11.2017. The respondent-Bank issued a notice dated 22.03.2018 (Annexure P-21) under Section 13 (2) of the Act to the petitioner-company and its Directors. As per the said notice, the outstanding amount is shown to the tune of ₹14,57,64,199.91/- The petitioner company failed to re-pay the said dues and thereafter, the respondent-Bank issued a notice dated 27.06.2018 (R-3/15) under Section 13 (4) of the Act to its Directors and the guarantors. An application under Section 14 of the Act was filed before District Magistrate, Solan for taking physical possession of the mortgaged property situated in Solan (Himachal Pradesh) and order dated 15.10.2018 (R-3/16) was passed by the District Magistrate granting the permission to the respondent-Bank to take physical possession. The physical possession of the mortgaged property situated in Delhi was taken on 17.09.2018.

3.2. Respondent No. 3-Bank further submitted in the written reply that the petitioner-company filed Securitisation Application No. 259 of 2018 before the Debts Recovery Tribunal-I, New Delhi (for short 'the Tribunal') on 09.08.2018 and later on MA No. 614 (2018) was filed by the petitioner-company which was dismissed on 13.02.2019. Even the appeal against the said order was dismissed. Counsel for respondent No. 3 bank placed on record a copy of the order dated 08.01.2019 passed in Miscellaneous Appeal No. 614 of 2018 by the DRAT, Delhi.

4. The petitioner company also filed CWP-145-2019 before the High Court of Himachal Pradesh at Shimla and thereafter, the petitioner had invoked the extra-ordinary writ jurisdiction of this Court by filing of the present writ petition which is not maintainable, as per the counsel for the Bank.

5. Learned counsel for the petitioner has submitted that as per the order 11.01.2015 (Annexure P-29) passed by the High Court of Himachal Pradesh at Shimla since the substantive relief was sought against the Bank of Baroda Branch, Sector 8, Panchkula, therefore the said writ petition was disposed of on the request of the petitioner who sought permission to withdraw the same and to file a petition on the same cause of action before this Court.

6. Learned counsel for the petitioner further submitted that the petitioner is entitled for restructuring the loan in view of the guidelines issued by the Reserve Bank of India (respondent No. 2). Though the petitioner had filed a Securitisation Application before the Tribunal, at Delhi but the said relief has not been granted by the Tribunal and the said SA is still pending.

7. On the other hand learned counsel for respondent No. 3-Bank submitted that the present writ petition is an abuse of process of law and is liable to be dismissed since the proceedings have already been challenged under Section 17 of the Act and there is huge outstanding.

8. We have considered the aforesaid submission and perused the paper-book.

9. In the present writ petition, the relief has been sought for issuance of a direction to the respondent-Bank to restructure the loan account of the petitioner.

10. As per the interim order dated 04.02.2019 passed by the co-ordinate Bench in this petition, the contentions raised by the petitioner were noted that the petitioner is willing to clear the liability, in case the same is

re-structured by respondent No. 3-Bank.

11. The outstanding as per the notice under Section 13 (2) of the Act are to the tune of ₹14,57,64,199.91/- (Annexure P-21). As per the version of learned counsel for respondent No. 3-Bank, till today no payment has been made by the petitioner to show his *bona fide* and to clear some part of the said outstanding.

12. As per the interim order dated 06.11.2019, learned counsel for the respondent-Bank pointed out that the plea had already been taken by the petitioner in SA filed before the Tribunal under Section 17 of the Act and which has been dismissed and the appeal thereof has also been dismissed, therefore, the petitioner cannot take this plea before this Court again as he is estopped by the principle of estoppel. The petitioner sought for an adjournment to cite law as to how the present writ is maintainable *de hors* the aforesaid facts and circumstances. The said order is reproduced as under:-

> *"The petitioner has prayed for the issuance of a writ in the nature of mandamus to direct respondent No. 2 restructure its loan account as per policy dated 01.07.2015 (Annexure P-1).*
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> *Counsel for the petitioner has submitted that the petitioner had availed three loan facilities. The account of the petitioner had become irregular and was declared as Non Performing Asset (NPA) and as a result thereof, notice under Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") were issued to the petitioner. The petitioner challenged the proceedings of notice issued under Section 13(2) of the Act by way of*

Securitization Application (SA) filed under Section 17 of the Act before the Debts Recovery Tribunal, Delhi (for short "DRT, Delhi").

We have perused the order of the DRT, Delhi in which it is recorded that the petitioner has also argued that since, the petitioner had suffered the natural calamity, therefore, his case is covered by the policy, therefore, the petitioner deserves restructure of his account. The DRT has also recorded that the petitioner has submitted that the account may be, thus, made standardized.

Counsel for the respondents has pointed out that once the plea which has been taken in this case has already been taken by the petitioner in the SA filed before the DRT under Section 17 of the Act which has been dismissed and the appeal thereof has also been dismissed, therefore, the petitioner cannot take this plea before this Court again as he is estopped by the principle of estoppel.

Faced with these observations, counsel for the petitioner prays for an adjournment to cite law as to how he can maintain this petition de hors the aforesaid facts and circumstances.

On his request, adjourned to 03.12.2019."

13. We may further observe that as per the interim order dated 03.12.2019, interim directions were issued by the co-ordinate Bench that the petitioner may approach the respondent-Bank with the proposal for restructuring of the loan account and respondent-Bank should deal with it in accordance with law.

14. Today, counsel for the respondent-Bank has also pointed out that the proposal given by the petitioner has already been considered and rejected, as such, and the intimation was given to the petitioner vide letter 08.02.2022 and the said letter was allowed to be placed on record vide

interim order 30.03.2022. The reasons recorded by the Bank for dismissal of the request for reconstructing of the loan as mentioned in the said letter are reproduced as under:-

> *"We refer to your request for restructuring of the account in compliance of directions issued by Hon'ble Punjab and Haryana High Court whereby documents were submitted by you on 05.11.2021 and clarification and additional information was provided by you on 02.12.2021 and write to inform you that the matter was placed before the Competent Authority and the same was decided with observations as under:-*
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> 1. *The unit is non operative since 2018 as the company not registered any sales since past 4 years.*
> 2. *The inventory and debtors are stagnant since past 2 years indicating there is no movement of goods/no activity.*
> 3. *The GSTIN registration for its Himachal Unit is cancelled.*
> 4. *For consideration of restructuring proposal TEV study had to be carried out and all expenses for TEV study to be borne by borrower but Borrower denied for payment of same.*
> 5. *For want of TEV study there is no viability report suggesting that the activity is technically feasible and economically viable and non-compliance of all relevant guidelines of circular dated 07.06.2019 issued by RBI of the Prudential Framework for Resolution of stressed assets.*
> 6. *As per ROC report the company has not filed Balance Sheet since FY-19-20 & FY 20-21)."*
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> *Hence, in view of the above, prima facie the project appears to be unviable as unit is also closed for past 4 years therefore your request for restructuring has not been considered favorably by the competent authority."*

15. We may observe that the petitioner had filed an IA No. 1259 of 2018 before the Tribunal, at Delhi during the pendency of SA No. 259 of 2018 seeking interim relief and for quashing and setting aside the

possession notice dated 29.08.2018 and the order dated 10.08.2018, passed by CMM, under Section 14 of the Act, with respect to the property situated in New Delhi and sought a restrain order against the Bank from taking any further measure for the property in question till the disposal of the said SA. In the said petition similar plea was raised, i.e. the petitioner was stressed due to natural calamity and that there are provisions of the Reserve Bank of India pertaining to natural calamities which would be applicable in the present matter. However, the Tribunal observed that the RBI's guidelines appear to be available for the agriculturalists and not the elite services whereas the petitioner is running a big project which has buyers in several countries. The Tribunal also observed that the account was declared NPA in November 2017 and during that period there was no such natural calamity. As such, the applicant was held not entitled to the protection as provided by the RBI's guidelines. Even the appeal filed by the petitioner against the said order has been dismissed by the DRAT, Delhi vide order dated 08.01.2019.

16. We are of the considered opinion that by raising the same claim parallel proceedings have been initiated by the petitioner by way of filing the present writ petition despite the fact that the said claim has been rejected by the Tribunal by passing the order dated 17.09.2018 (Annexure P-26) which subsequently stood confirmed in appeal vide order dated 08.01.2019/13.02.2019 on the ground that pre-deposit amount was not deposited.

17. We have also observed that the petitioner has taken a plea in the present writ petition that he has filed an appeal before the appellate

Tribunal against the order dated 17.09.2018 (Annexure P-26) passed by the Debts Recovery Tribunal at Delhi. It has also been alleged by the petitioner in the present writ petition that respondent-Bank had initiated the proceedings against the petitioner by way of filing an OA for recovery of ₹14,88,67,756/- from the petitioner and his company before the Debts Recovery Tribunal at Chandigarh. The petitioner is thus changing the forum and the forum shopping is not to be permitted and this Court would not exercise its writ jurisdiction in view of the present set of circumstances. Moreover, the remedy was available with the petitioner to file an appeal against the order of the Debts Recovery Tribunal, New Delhi under the provisions of Section 18 of the Act and not to resort to invoking the writ jurisdiction of this Court. The provisions of Section 18 reads as under:-

"**18. Appeal to Appellate Tribunal.—**

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to *not less than twenty-five per cent of debt referred to in the second proviso.*

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

18. The Apex Court in **Varimadugu Obi Reddy Vs. B. Sreenivasulu and others, 2023 (1) RCR (Civil) 34** while discussing an similar issue held that the orders passed by the Debts Recovery Tribunal are appealable and it is not for the Writ Court to exercise its extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India. The DRAT order is not subject matter of the present proceedings having not been challenged herein.

19. We have already noticed that the request made by the petitioner for reconstructing his loan which was made during the pendency of the present petition has been considered and declined by the Bank and communicated to the petitioner vide letter dated 08.02.2022.

20. While dealing with a matter where the Bank sanctioned One Time Settlement (OTS) and permitted the borrower to make the payment as per the said sanctioned OTS schedule but the borrower sought extension of time for making the payment, it was observed by the Hon'ble Apex Court in **State Bank of India vs. Arvindra Electronics Pvt. Ltd.** (2023) 1 SCC 540, that the Bank mutually can agree to extend the time which is permissible under Section 62 of the Indian Contract Act, 1872. However, the borrower as a matter of right cannot claim that though it has not made

the payment as per the sanctioned OTS scheme but still is liable to be granted further extension as a matter of right.

21. On the similar analogy, the relief sought by the petitioner regarding restructuring of the loan cannot be ordered by this Court while invoking the extra-ordinary writ jurisdiction especially, when there is huge outstanding; no *bona fide* has been shown by making any payment by the borrower, and the similar claim had been raised before the Tribunal under Section 17 of the Act and even the appeal preferred against the order passed by the Tribunal, has been dismissed.

22. Consequently, we are of the considered opinion that the present writ petition has no merits and the same is hereby dismissed.

23. All interim orders stand vacated and pending miscellaneous application(s), if any, also stand disposed of.

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This application was listed today at serial No. 108, praying for issuance of necessary directions to release the insurance amount in favour of the applicant-petitioner.

Since the main writ petition has itself been dismissed by this Court, this application is also dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

May 01, 2023
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