Neutral Citation No. 2023:PHHC:060986-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(205) **CWP-21705-2022 (O&M)**
Decided on :28.04.2023

M/s Sahara PG and another

……Petitioner(s)

Versus

State Bank of India and another

……Respondent(s)

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

Present: Mr. Vishisht, Advocate for the petitioner (s).

Ms. Madhu Dayal, Advocate for the respondent-Bank.

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G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is made to the securitization proceedings and to the notice dated 03.09.2022 (Annexure P-6) issued under Section 13 (4) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '2002 Act').

2. On 22.09.2022 the following order was passed:-

> "Heard learned counsel for the parties.
>
> Counsel for respondent No.1-Bank has produced in the Court today notices dt.27.05.2022, 06.06.2022 and 17.06.2022 issued to the petitioners under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, but is unable to produce proof of service of any of the above said notices upon the petitioners. Therefore, there shall be stay of all coercive action taken by the respondents against the petitioners.
>
> Counsel for respondent No.1-Bank seeks more time to file reply to the Writ Petition. May do so on or before the next date of hearing after service on the counsel for the petitioners.
>
> At her request, adjourned to 06.02.2023."

3. An application bearing CM-2550-CWP-2023 was filed on 14.02.2023 by the Bank, in which notice was issued on 20.02.2023. In the application it has been mentioned that the bank had cancelled the earlier notices and has issued a fresh notice dated 27.01.2023 to the borrowers and guarantors. Accordingly, it has been averred that the writ petition has been rendered infructuous. It has also been pointed out that there are dues of ₹1,20,35,056/- against the petitioners and the petitioners had availed the benefit of re-structuring.

4. Resultantly, we are of the considered opinion that the petitioner has to be non-suited on two accounts; firstly the writ petition has been rendered infructuous since fresh notice under Section 13 (2) of the 2002 Act has been issued and the argument which was raised that he had not been served no longer survives, as fresh notices have been issued which can be replied by filing objections under Section 13(3), in case not already filed.

5. The petitioner is thereafter also at liberty to challenge the notice under Section 13 (4) of the 2002 Act, if issued, since the Apex Court in **SLP (Civil) Nos.22021-22022 of 2022** titled **M/s South Indian Bank Ltd. & others Vs. Naveen Mathew Philip & another**, decided on 17.04.2023 has held that the petitioner has a right to approach the Tribunal if any such proceedings are initiated.

6. In **Sardar Associates and others Vs. Punjab & Sind Bank and others, (2009) 8 SCC 257,** the Apex Court has held that if there is violation of statutory provisions, the Tribunal is well vested with the power to examine above said issue. Relevant paragraphs of the said judgment read as under:-

> "31. It may be that no specific prayer was made but the same, in our opinion, keeping in view the provisions of the 2002 Act, did not preclude the Appellate Tribunal to consider the offer of the appellants. The Appellate Tribunal in terms of the provisions of the Act like the original Tribunal is interested only in recovery of the amount. While doing so, it, in our considered opinion, has the requisite jurisdiction to consider the prayer made by a debtor for one time settlement particularly in view of the fact that the same is within the purview of One Time Settlement Scheme of the Reserve Bank of India."
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> 32. If a public sector bank is otherwise bound by any guidelines issued by the Reserve Bank of India, we see no reason as to why the same cannot be enforced in terms of the provisions of the Act by the Tribunal and consequently by the Appellate Tribunal. It is not a case where the appellants had prayed for quashing of a policy decision taken by the respondent- Bank.

7. Resultantly, the present writ petition stands dismissed with the aforesaid liberty.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

28.04.2023
Naveen

Whether speaking/reasoned :	✓Yes	No
Whether Reportable :	Yes	✓No