IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 ***2023:PHHC:055983-DB***

CWP No. 23402 of 2022 (O & M)
Date of Decision: 20.04.2023

M/s. Chawla Traders .....Petitioner(s)

Versus

DBS Bank India Ltd. and another ....Respondent(s)

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

Present: None for the petitioner.

Ms. Priyanka Negi, Advocate,
for Ms. Manjari Joshi, Advocate,
for respondent No.1-Bank.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the securitization proceedings including notice dated 02.05.2022 (Annexure P-4) issued under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') wherein on account of the outstanding of Rs.2,74,64,322.45/-, the petitioner had approached this Court. The following contention was noted on 12.10.2022:-

"Notice of motion for 14.12.2022.

Ms.Manjari Joshi, Advocate, accepts notice on behalf of respondent No.1 and seeks time to file reply. May do so, on or before the next date of hearing with a copy in advance to the counsel opposite.

Subject to the petitioner paying Rs.12.5 lakh towards the OTS request made on 30.09.2022 (P5) by 14.10.2022, respondent No.1 shall consider the said request of OTS made by the petitioner within two weeks and communicate its decision to the petitioner. Till such *decision is communicated to the petitioner, petitioner shall not be dispossessed from the secured asset by respondent No.1."*

2. There was a dispute regarding the compliance of the same and accordingly, the bank filed an application for vacation of stay that the petitioner though had approached the bank but had not committed to make the payment by any mode. Thereafter, he could not be contacted as his phone was switched off as such and prayer was made for vacation of stay granted on 10.11.2022. The following contention was noted on the said date:-

> *"The counsel for the petitioner states that though the petitioner went to the first respondent-Bank to make deposit the cash on 13.10.2022, it was declined by the officers of the first respondent-Bank, and that the petitioner had then got prepared a demand draft on 14.10.2022, and approached the first respondent-Bank to make the deposit, but the official of first respondent-Bank did not accept it. This fact is disputed by counsel for first respondent.*
>
> *Be that as it may, since the petitioner had produced the photocopy of the demand draft taken by him on 14.10.2022, and also passed on a copy to the counsel for the first respondent-Bank, the petitioner is permitted to pay the same to the first respondent-Bank by tomorrow i.e.11.11.2022 by 5.00 PM, and the same shall be accepted by the first respondent-Bank, which shall then proceed to consider the request of the petitioner for OTS <u>within two weeks</u> thereafter. Till such decision is communicated to the petitioner, the petitioner shall not be dispossessed from the secured asset by the first respondent-Bank.*

3. Thereafter on 14.12.2022, the following order was passed:-

> *"It is stated by counsel for the petitioner that the*

demand draft of Rs.12.5 Lakhs has been given to respondent No.1-Bank today in the morning. Time for making said deposit is extended from the last date till today. The OTS request of the petitioner be considered by respondent No.1- Bank within two weeks from today and its decision be communicated to the petitioner.

Adjourned to 19.01.2023.

Till the next date of hearing the petitioner shall not be dispossessed from the secured asset by respondent No.1-Bank."

4. Eventually on 19.01.2023, counsel informed this Court that the OTS proposal put forth by the petitioner had been considered and not found feasible. Accordingly, proceedings were deferred to complete instructions and take necessary legal recourse.

5. Counsel for the petitioner did not appear thereafter on 20.02.2023 though enjoying the interim order which had already been passed. As per the written statement, the loan facilities which are outstanding are to the tune of over draft of Rs.1,70,07,608.44/-, WCTL of Rs.95,73,371.60/- and ECGLS facility of Rs.36,35,369.78/-. Resultantly, it has been averred that the petitioner had been intimated and his accounts had been declared as NPA on 31.12.2021 in accordance with RBI guidelines.

6. Keeping in view the above, we are of the considered opinion that as per law laid down by the Apex Court in ***State Bank of India vs. Arvindra Electronics Pvt. Ltd., (2023) 1 SCC 540,*** the bank cannot be compelled to enter into the OTS and since the alternative remedy is available under Section 17 to challenge the proceedings under Section 13(4) of the Act, there is no scope for further keeping this writ petition pending. The petitioner's remedy lies elsewhere and sufficient indulgence have been granted to him and the bank has been estopped from recovering the public money.

7. Accordingly, the petition stands dismissed. Interim orders also stand vacated.

(G.S. SANDHAWALIA)
JUDGE

20.04.2023 (HARPREET KAUR JEEWAN)
shivani JUDGE

Whether reasoned/speaking Yes
Whether reportable No