

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(114+260)

CWP-24824-2021 (O&M)

Decided on :24.04.2023

M/s Datsun India and others

....Petitioner(s)

Versus

ASREC (India) Limited

.... Respondent(s)

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

Present: Mr. Ankur Pandit, Advocate for
Mr. Manuj Nagrath, Advocate for the petitioner(s).

Ms. Neha Arora, Advocate for
Mr. KPS Dhillon, Advocate for the respondent-Bank.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the auction notice dated 03.11.2021 (Annexure P-12) and for issuing directions to decide the OTS proposal.

2. A perusal of the paper-book would go on to show as per the said possession notice a sum of Rs.3,69,83,436.86 were due as on 01.07.2016. On 08.03.2022 directions were issued to deposit Rs.1 crore in a no lien account without prejudice to the rights of the petitioners, if the sale proposed was to be held but the same was not to be confirmed until further orders. It was a conditional order and in default of the same, the stay was to be vacated.

3. On 17.03.2022 the stay order was modified by giving the liberty to the petitioner that Rs.50 lakhs would be paid within five days and another sum of Rs.50 lakhs within four weeks, which was also a conditional order. Various applications have been filed for extension of time thereafter. On 23.02.2023 the authorized representative of the petitioner-M/s Datsun India had undertaken to furnish a demand draft of Rs.1.32 crores in favour of the respondent-Bank on the adjourned date. Similarly on 01.03.2023 more time was sought to get the demand draft. On 20.03.2023, CM-4932-CWP-2023 was filed for staying the auction notice which was dismissed since demand draft of Rs.1.32 crores was not available in spite of two opportunities granted.

4. A perusal of the paper-book would also go on to show that **SA No.291 of 2017** filed by the petitioners before the Tribunal challenging the SARFAESI notices was dismissed on 03.04.2017 and the said order was unsuccessfully challenged before this Court. It also transpires that **CWP No.38956 of 2020** was filed which was dismissed on 19.05.2022 on the ground that the matter had been settled between the parties.

5. It has also been averred in the written statement that SA has not been revived and the physical possession of the property was with the Bank, but the petitioners tried to forcibly break the locks. A perusal of the paper-book further goes on to show that notice under Section 13 (4) of the 2002 Act (for short ‘2002 Act’) has been issued on 15.10.2016 (Annexure P-5) and apparently in pursuance of the same the securitization application had been filed by the petitioners. The outstandings are huge and the recovery of public money has been held up. Even otherwise in spite of an undertaking given the petitioners have not complied with the same and it also amounts to contempt of this Court, but this Court does not wish to go into the said issue.

6. Resultantly, keeping in view the fact that there is an alternate and efficacious remedy available before the Tribunal, which was availed, we are of the considered opinion that no further purpose would be served by keeping the matter pending since the petitioners are not willing to deposit the amount as undertaken. Accordingly, the present writ petition is disposed of with the liberty to the petitioners to approach the Tribunal, as and when cause of action arises, under section 17 (3) of the 2002 Act, in view of the law laid down in **SLP No. 22021-22022 of 2022, M/s. South India Bank Ltd. and others vs. Naveen Mathew Philip and another** decided on 17.04.2023.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

24.04.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No