2023:PHHC:165970-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25932 of 2022(O&M)
Date of Decision: 21.12.2023

Tuli International and others

......Petitioners

Versus

Indiabulls Commercial Credit Limited and others

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr.Anand Chhibbar, Sr. Advocate
with Mr. Shikhar Sarin, Advocate
for the petitioners.

Mr. Akshay Bhan, Sr. Advocate
with Mr. Shaurya Khanna, Advocate
for respondents no.1 and 2.

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LISA GILL, J.

1. Prayer in this writ petition is for setting aside classification of loan accounts of petitioners as detailed in writ petition as 'Non Performing Asset' (for short 'NPA') allegedly, in violation of various circulars issued by Reserve Bank of India (RBI) including Circular dated 07.02.2018, 07.04.2021 and 01.07.2013. There is a further prayer for setting aside all proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, Act 2002 (for short 'SARFAESI Act') initiated against petitioners being illegal and arbitrary, in contravention of the applicable statute, rules and RBI circulars. Petitioners also seek direction to respondents no.1 and 2 to positively consider One Time Settlement (OTS)

proposal dated 31.12.2021 and 25.04.2022 submitted by petitioners and settle account of petitioner no.1.

2. Taking of credit facility by petitioner no.1 and subsequent default on its part, with proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act ('for short SARFAESI Act) being initiated by respondents no.1 and 2, is a matter of record. Petitioner no.1 claims to be a Micro Enterprise (MSME) partnership firm incorporated under the Partnership Act 1932 and engaged in textile business. One of the primary contentions raised in this writ petition is that loan accounts of petitioner no.1 which is MSME have been declared NPA in an illegal manner, without reference of its case for restructuring/revival to the Designated Committee constituted in terms of RBI Circular dated 17.03.2016. It is also the case of petitioners that benefit under the ECLGS Scheme was released, but was immediately adjusted towards loan dues without any disbursement to petitioners.

3. Question sought to be raised in the present writ petition is whether interference should be caused by this Court in exercise of jurisdiction under Article 226 of the Constitution of India for setting aside SARFAESI proceedings on the ground of violation of RBI circulars and specifically Circular dated 17.03.2016 providing 'Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs). Reference has also been made in the writ petition to certain other circulars issued by RBI. Learned counsel for petitioners argued that question of correctness of declaration of account as NPA should be adjudicated upon by this Court at the initial stage itself as otherwise the petitioners would be rendered remediless.

4. This writ petition has been opposed by learned counsel for respondents no.1 and 2. While contending that petitioners have an efficacious remedy for redressal of their grievance(s) under SARFAESI Act, preliminary objection regarding entertainability of this writ petition against respondent-Indiabulls Commercial Credit Limited is also raised. It is further submitted that there is huge outstanding of Rs.5,16,11,581.47/- as on 21.12.2023 from petitioners whose sole effort is to delay proceedings for recovery. Apart from the fact that no substantive proposal for OTS was submitted, it is contended that petitioners do not have a vested right to seek an OTS. Dismissal of writ petition is prayed for while referring to judgments of Hon'ble the Supreme Court in **Mardia Chemicals Limited Vs. Union of India, (2004) SCC 311, M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771** and **Kotak Mahindra Bank Limited Vs. Girnar Corrugators Private Limited, Civil Appeal No. 6662 of 2022, d/d 05.01.2023**.

5. Heard learned counsel for the parties and have perused the file with their assistance.

6. Notice of motion was issued in this writ petition by Coordinate Bench on 15.11.2022, while observing as under:-

> "Notice of motion for 23.01.2023.
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> Petitioner No.1 is an MSME and contends that its two loan accounts have been declared as NPA on 11.04.2022 and 11.05.2022 without reference to the Designated Committee constituted under the RBI circular dt.17.03.2016 prior to classification of the said accounts as NPA. Counsel for the petitioners further contends that though the respondents had released the benefit under the ESLGS Scheme, they had immediately adjusted it towards the loan dues and did not make

the said amount available to the petitioner No.1 for doing business. Other contentions are also raised.

Prima facie, we find force in the contention of the counsel for the petitioners. Therefore, there shall be stay of coercive action against the petitioners by respondents No.1&2 till the next date of hearing."

7. Present controversy is squarely covered against the petitioners in terms of decision dated 18.12.2023, passed in 'CWP No. 21657 of 2022, titled M/s Technico strips and Tubes Private Limited and another Vs. Deutsche Bank and AG and another' and other connected writ petitions, wherein it has been categorically held that provisions of SARFAESI Act prevail over MSME Act with SARFAESI Act being a complete code in itself and it is open to petitioners to avail the remedy(ies) available to them under the statute in accordance with law and agitate all their grievance(s) at appropriate stage before learned Debt Recovery Tribunal (DRT) including question of incorrect classification or otherwise of their accounts NPA and that learned DRT is well within its jurisdiction to consider this aspect.

8. In decision dated 18.12.2023, passed in CWP No. 21657 of 2022 and connected writ petitions, it was held as under:-

> "28. Relationship between the respondent-Bank/Financial Institutions and petitioners is clearly governed by privity of contract between parties. Whether there has been any violation of contractual stipulation between the parties or of the RBI regulations as has been urged before us, is necessarily a mixed question of fact and law. We do not find any merit in the argument that learned DRT does not have power or jurisdiction at the appropriate time, hence this argument is also repelled. First Division Bench of this High Court in **M/s Ranbir Textiles and another Vs. Reserve Bank of India and**

others (supra), while observing that assuming the Scheme and Guidelines of RBI to be mandatory and required to be implemented while adjudicating upon Debt Restructuring Scheme dated 12.09.2011 as well as Guidelines dated 01.11.2012 issued by RBI for rehabilitation of Sick Micro and Small Enterprises, held as under:-

> "12. Assuming that the scheme and the guidelines are mandatory and to be implemented by the banks, the only question would be whether the bank concerned has assessed the proposal for reliefs/concessions/restructuring in a reasonable manner and after taking into consideration the relevant facts. If it is found that the decision of the bank has been taken after considering the relevant facts, it is not open to the Court to interfere and to substitute its view or assessment for that of the banks. These are commercial decisions which require the assessment by financial experts taking into consideration a variety of facts and factors relating to financial feasibility, the nature and quality of the unit and the equipment, the staffing pattern and the viability of the projections made. These are commercial decisions best left to the parties equipped to deal with the same. The Courts especially while exercising their extra ordinary writ jurisdiction under Article 226 of the Constitution of India ought not to substitute their judgment on such matters for that of the experts in the field. Even if we were to be so presumptuous as to assume having knowledge of the expertise to assess and judge such matters, it would not be permissible to substitute our decisions with those of the experts in the field and those concerned with the decision

making process in this regard." Learned counsel for the petitioners is unable to point out any exceptional or extraordinary circumstance, which calls for interference by this Court. Further argument raised by learned counsel for the petitioners that with issuance of notice of motion, respondents are estopped from raising the question of maintainability/entertainability of this writ petition or that this Court is precluded from examining the same, is devoid of any merit, hence rejected. Merely due to issuance of notice of motion in writ petition without there being any specific adjudication on the issue, it cannot be presumed that hurdles of entertainability/ maintainability has been finally crossed by the litigant."

29. Division Bench of High Court of Himachal Pradesh while considering a similar controversy as the one at hand in case of **Neelkanth Yarn Vs. Punjab National Bank (supra)** held that judicial scrutiny of declaration of account of the petitioners therein as NPA (petitioners therein also claimed to be MSME) was not called for and it is open to learned DRT to go into all these aspects at the relevant time. In case of **Neelkanth Yarn Vs. Punjab National Bank (supra)**, it was held as under:-

"27. From the statutory scheme and decisions noted here-in-above, it is clear that this Court, in exercise of its jurisdiction, cannot go into the decision of respondent-bank in classifying the petitioner's account as NPA. If the respondent-bank proceeds further and reaches Section 13(4) of the SARFAESI Act stage, the petitioner-firm can file application under Section 17 of the SARFAESI Act. The DRT can go into the aspect of classifying the account as NPA and also whether RBI guidelines have been violated on any aspect leading to declaring the account as NPA and taking recourse under the SARFAESI Act.

28. It has also been repatedly held that the aspect of classifying an account as NPA is not justiciable in exercise of power of judicial review under Article 226 of the Constitution."

30. We are in agreement with the above view taken by High Court of Himachal Pradesh in abovesaid case. It is well within jurisdiction of learned DRT to adjudicate upon matters relating to validity or otherwise of proceedings undertaken by Banks/Financial Institutions under SARFAESI Act and examine whether necessary parameters have been observed and adhered to and applicable Rules and Regulations, including RBI circulars have been complied with. Any intervention by Courts at this stage would be against the avowed letter and spirit of SARFAESI Act. Issue as raked up in these writ petitions is necessarily within the realm of consideration by learned DRT, at the appropriate juncture. There cannot be a pre-emptory intervention. It was strenuously argued before us that non-intervention by this Court would lead to extremely harsh consequences for petitioners. However, the same cannot be a ground for interference as there is no escape from the provisions of law even if, harsh - '*Dura lex, sed lex*' i.e. the law is harsh but it is the law.

31. It is a settled position that provisions of SARFAESI Act prevail over MSME Act with SARFAESI Act being a complete code in itself. There is no scope for interference in the present matters at this stage. It is open to petitioners to avail the remedy(ies) available to them under the statute in accordance with law and agitate all grievances before learned DRT including the question of incorrect classification or otherwise of their accounts NPA. DRT is well within its jurisdiction to consider this aspect."

9. Abovesaid writ petitions (CWP-21657-2022 and others) were thus dismissed being not entertainable as under:-

> "33. Keeping in view the facts and circumstances as above, it is held that present writ petitions challenging proceedings initiated against them, under SARFAESI Act, alleged incorrect declaration of their accounts NPA on the ground of violation of circular dated 17.03.2016 issued by RBI, alleged incorrect rejection of petitioners' case for restructuring/revival in terms of said circular are not entertainable. Petitioners are at liberty to avail the remedy(ies) available to them in accordance with law alongwith requisite applications for exclusion of period of delay and for interim relief as may be, which would be considered in accordance with law by learned DRT without being influenced by any interim order(s) passed in present writ petitions. Needless to say parties are always at liberty to arrive at any mutually acceptable settlement as well. It is clarified that there is no expression of opinion on merits of the matter which the parties are at liberty to agitate before Appropriate Forum/Tribunal in accordance with law.
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> 34. Keeping in view the fact that interim orders were granted in some of the writ petitions at the time of issuance of notice of motion or at a slightly later stage and said interim orders have continued since then, it is directed that said interim orders as granted in such respective petitions would continue for a period of twenty (20) working days from date of receipt of certified copy of this order. Continuation or otherwise of the interim order thereafter, shall be within the realm of consideration and adjudication by learned DRT in accordance with law. It is clarified that interim order shall not enure after the period of aforesaid 20 days in the absence of a specific order by learned DRT.
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> 35. Keeping in view the facts and circumstances as above, all the writ petitions are dismissed with liberty as aforementioned. Pending application(s), if any, stand(s) disposed of."

10. It is relevant to note at this stage that Hon'ble Supreme Court in the case of **Punjab and Sind Bank Vs. Frontline Corporation Limited, Civil Appeal No. 2924 of 2023 (Arising out of SLP (C) No. 16557 f 2017), d/d 18.04.2023** has held as under:-

> "13. It could thus be seen that this Court has held that the jurisdiction of the civil court is barred in respect of matters which a DRT or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". The Court has held that the prohibition covers even matters which may be taken cognizance of by the DRT though no measure in that direction has so far been taken under subsection (4) of Section 13 of the SARFAESI Act. It has been held that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. It has categorically been held that any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The Court held that the bar of civil court thus applies to all such matters which may be taken cognizance of by the DRT, apart from those matters in which measures have already been taken under sub-section (4) of Section 13 of the SARFAESI Act."

Therefore, there is no merit in the argument that interference should be caused at this stage as learned DRT has no jurisdiction to interfere at this stage.

11. Similarly, petitioners are not entitled to seek a direction to respondent-Financial Institution to positively enter in a OTS with the petitioner, in the absence of any such vested right with petitioner. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme

Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others Vs. Meenal Agarwal and others, 2022 AIR (SC) 56.**

12. Furthermore, relief claimed in the instant writ petition is qua a Private Non Banking Financial Institution, therefore writ petition is not entertainable in any manner. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888,** wherein it has been held as under:-

> "Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of **Praga Tools Corporation v. Shri C.A. Imanual, (1969) 1 SCC 585** and **Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

13. Present writ petition is accordingly dismissed with liberty to petitioners to avail the remedy(ies) available to them in accordance with law. It is clarified that there is no expression of opinion on the merits of the matter. Pending application/s, if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 21, 2023.
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.