**110+255 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-26817-2021 (O&M)
Date of Decision: 04 May, 2023

AHUJA COTSPIN PVT. LTD.

....Petitioner(s)

VERSUS

AUTHORIZED OFFICER, PUNJAB NATIONAL BANK AND ANR

....Respondent(s)

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

Present: Mr. Shikhar Sarin, Advocate
for the petitioner.

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

****

HARPREET KAUR JEEWAN, J.

1. The present Civil Writ Petition has been filed challenging the notice issued by the respondent bank under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (hereinafter referred to as *'the Act'*).

2. As per facts, the petitioner-company availed financing of Rs.28.80 crore from State Bank of India. Thereafter the petitioner further availed financing of Rs.15.50 crore and Rs.9.35 crore, respectively for its both the units. In the year 2016-17, petitioner company again availed financing of Rs.38 crore from 7 banks under consortium arrangement in which lead bank is respondent No.2 Punjab National Bank. The loan account of the petitioner was declared as NPA on 31.07.2019. The respondent bank issued a demand notice dated 05.08.2019 (Annexure P-3) under Section 13(2) of the Act raising the demand from the petitioner of its outstanding dues of Rs.48,90,08,887.90/-as on 01.07.2019. The petitioner submitted an OTS offer by it was not decided by the Respondent-Bank.

However possession notice dated 15.12.2021 (Annexure P-5) under Section 13(4) of the Act was issued.

3. The petitioner had challenged the said notice dated 15.12.2021 issued by the respondent bank under Section 13(4) of the Act by way of filing the present writ petition alleging the lack of compliance of the provisions of the Act and further sought the relief of handing over of the possession of moveable and immovable property taken under the said proceedings.

4. In the written reply filed by the respondent-PNB, it was submitted that the petitioner-company had earlier filed CWP-25029-2021, challenging the order dated 23.11.2021, passed by the Addl. Deputy Commissioner Khanna, District Ludhiana, Punjab, against the two mortgaged properties i.e. factory land and building i.e. factory land and building measuring 70 kanal 2 marla situated at Bhattian, Sub-Tehsil Machiwara, Tehsil Samrala, District Ludhiana; and factory land and building measuring 52 kanal situated at MachiwaraRaho Road, Lakhowal Kalan, Ludhiana. The said order dated 23.11.2021 was set aside by the High Court vide order dated 13.12.2021 with the liberty to the respondent-Bank to issue fresh notice under Section 13(4) of the Act. In compliance of the said order, earlier notice dated 09.12.2019 issued under Section 13(4) of the Act, against two mortgaged properties, was withdrawn and, therefore, fresh possessionnotice dated 24.12.2021(Annexure R3) has been issued under Section 13(4) of the Act regarding both the aforesaid properties. The said possession notice was served through Registered Post and was also published in two leading newspapers.Thereafter the bank filed fresh application dated 30.12.2021 under Section 14 of the Act before the Addl. District Magistrate, Khanna.

5. Learned counsel for the petitioner submitted that the act of the respondent is violative of Rule 4(1), 4(2), 4(3) and 8 of the Security Interest (Enforcement) Rules, 2002. It was further submitted that the action of the respondent is also violative of Section 13(4) of the Act, hence it is liable to be set aside.

6. On the other hand, Mr. Gaurav Goel, Advocate, appearing for the respondent-PNB, submitted that the respondent-bank had also filed an OA before DRT III, Chandigarh on 04.02.2020 for recovery of the huge outstanding on behalf of the consortium member banks. The said fact has been concealed by the petitioner. The proposal for OTS dated 10.01.2022 has already been decided on 19.01.2022 and communicated to the petitioner. The petitioner again submitted another OTS on 04.02.2022 and the same was also rejected on 08.03.2022. The petitioner obtained interim order dated 21.01.2022 by concealing the material facts from the Court and the present writ is liable to be dismissed.

7. We have considered the aforesaid submissions. As per the notice dated 15.12.2021(Annexure P-5) the petitioner had failed to pay hugeoutstanding's of Rs.184,12,33,354.53/- due towards the following banks:

1. **Punjab National Bank**, Zonal SASTRA Centre, Ludhiana, 3rd Floor, Plot No.5, Ferozepur Road, Ludhiana.
2. **State Bank of India**, Stressed Assets Management Branch, Zonal Office building, Fountain Chowk, Civil Lines, Ludhiana.
3. **Central Bank of India**, C-145, Bindra Complex, Phase V, Focal Point, Ludhiana.

4. **Punjab National Bank (e-United Bank of India)**, 202, Sai Tower, Industrial Area-I, Ludhiana and

5. **Union Bank of India**, B-23/1700, Industrial Area-A, Link Road, Near Cheema Chowk, Ludhiana.

The following interim order was passed on 21.01.2022, by the Co-ordinate Bench:-

> *"Notice in application.*
>
> *Mr. Gaurav Goel, Advocate accepts notice in the applicationon behalf of respondent-Bank and prays for time to file reply to the application.*
>
> *Heard learned counsel for both the parties.*
>
> *Since the latest OTS proposal dt. 10.01.2022 made by the petitioner to the respondent-Bank is pending consideration with the respondent No.1, list the matter on 09.02.2022.*
>
> *Till that date, no proceedings for dispossessing the petitioner from its two units i.e. i) At village Lakhowal Kalan, Machhiwara, Ludhiana and ii) At village Bhattian, Kohara Road, Machhiwara, Ludhiana shall be initiated by respondent No.1."*

8. Perusal of Annexure A-1, submitted by the respondent-Bank along with CM-8647-2022 reveals that the OTS offer dated 10.01.2022 was already rejected by the respondent-Bank on 19.01.2022 before the interim order dated 21.01.2022 was passed and this fact was not disclosed by the petitioner at the time when the interim order was passed. Similarly, the subsequent OTS proposal dated 04.02.2022(Annexure A-2) given by the petitioner was also declined by the respondent-Bank vide letter dated 08.03.2022 (Annexure A-3) attached with the said CM. On 30.12.2022 (Annexure R-5) the OTS proposal @ Rs.22 crore against outstanding of Rs.101.88 crore was rejected.

9. In view of above we are of the considered opinion that there are huge outstanding against the petitioner amounting to

Rs.184,12,33,354.53/- as per the possession notice dated 24.12.2021 (Annexure R-3). The said notice has not been challenged by the petitioner in the present writ petition. Equal and efficacious remedy is available with the petitioner to challenge the said notice under Section 13(4) of the Act by way of filing an application under Section 17 of the Act.

10. 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**,the Hon'ble Apex Court held that the powers conferred under Article 226 of the Constitution of India which are though wide but required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.

11. In view of the facts and circumstances of the case that there are huge outstanding which the banks are seeking to recover by way of invoking the provisions of the Act; the OTS proposals submitted by petitioner have been rejected thrice; and there is equal and alternate remedy available with the petitioner, as such we are of the considered opinion that there are no extra ordinary circumstances for invoking the writ jurisdiction of this court.

12. Consequently, the present writ petition stands dismissed and the petitioner is relegated to the alternate remedy who may approach the Tribunal under Section 17 of the Act. Since the interim order dated 31.01.2022 was passed during the pendency of the present writ petition by the Co-ordinate Bench, the said stay order shall continue to be in operation for two weeks, from the receipt of the certified copy of the order. It is open

to the Tribunal to put the petitioner to just terms for continuation of the stay.

13. Pending miscellaneous applications, also stand disposed of.

(G.S. SANDHAWALIA) **JUDGE**

(HARPREET KAUR JEEWAN) **JUDGE**

May 04, 2023
sangeeta

Whether Speaking Yes/No
Whether Reportable Yes/No