IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-29502-2022 (O&M)
Date of decision: 30.10.2023

M/S LOTEX INFRASTRUCTURE SERVICES AND ORS
....Petitioners

Versus

CANARA BANK AND ANR
...Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE SANJIV BERRY

Present : Mr. Sanjeev Goyal, Advocate for the petitioners.

Mr. Inderpal Singh Issar, Advocate for the respondents.

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LISA GILL. J. (ORAL)

1. Petitioners in present writ petition have challenged the proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as 'SARFAESI Act'), initiated against them by respondents. There is further prayer for direction to respondents to decide representation dated 12.12.2022 filed by petitioners for depositing default amount and for regularization of loan account.

2. It is submitted that petitioner No.1-partnership concern had availed of cash credit facility of Rs.50 lakhs in June 2016. Petitioner No.3 is guarantor and mortgaged 4 of the plots as are detailed in writ petition. In the year 2019, earlier partner namely Gurinder Singh retired and petitioner No.3 joined the firm as partner. Due to financial indiscipline on account of difficulties faced by firm, on outbreak of pandemic Covid-19, account of firm was declared Non-Performing Asset (NPA) on 28.06.2022. Notice(s) under Section 13(2) and 13(4) of SARFAESI Act were issued on 04.07.2022 and 22.11.2022 respectively. It is submitted that impugned notice(s) have been issued in violation of the statutory

provision of Security Interest (Enforcement) Rules, 2002, particularly Rule 8 (6) thereof. The petitioners are always ready and willing for regularization of loan account but respondent only wishes to sell the mortgaged property of petitioners.

3. Notice of motion in this case was issued by co-ordinate Bench on 21.12.2022, subject to petitioners depositing a sum of Rs.10 lakhs to respondent No.1. Sale of secured assets scheduled to be held on 26.12.2022, it was directed would go on, but the same be not confirmed. Amount of Rs.10 lakhs, it is submitted, was deposited by petitioners on 23.01.2023. However, sale of property was not conducted. It is submitted that petitioners are ready and willing to have the loan in question regularized.

4. Learned counsel for respondent-Bank submits that present writ petition is not maintainable in view of efficacious and alternate remedy available to petitioners in terms of Section 17 of the SARFAESI Act. Moreover, the business for which loan was taken stands closed, therefore, there is no question of regularization of loan account and there can only be a settlement. Factum of business of petitioners being closed is not denied.

5. Heard learned counsel for the parties.

6. It is a settled position that SARFAESI Act is complete Code in itself, providing for specific remedies for grievance(s), which may arise on account of proceedings taken thereunder. Petitioners did have an efficacious remedy for challenging the proceedings under SARFAESI Act initiated against them. There is no exceptional or extra-ordinary circumstance pointed out by learned counsel for petitioners which calls for interference by the High Court. Gainful reference in this regard can be made to the judgments of Hon'ble the Supreme Court in **Union Bank of India Vs. Satyawati Tandon and others**, **2010(8) SCC 110, Varimadugu Obi Reddy Vs. B. Sreenivasulu and others, 2023(1) RCR (Civil)**

34, M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023(1) RCR (Civil) 771.

7. It was held by Hon'ble The Supreme Court in **M/s South Indian Bank** *(supra)* as under:-

> "13……. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.
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> 14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.
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> 15. The object and reasons behind the Act 54 of 2002 are very clear as observed by this Court in Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311. While it facilitates a faster and smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to set aside an illegal order, and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression "any person", who could approach the Tribunal.
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> 18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India

are rather wide but are 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."

8. At this stage, learned counsel for petitioners submits that talks of settlement are ongoing with respondent-Bank and the same are likely to fructify on 01.11.2023. Be that as it may, we do not find any ground for continuance of the present proceedings.

9. Keeping in view the facts and circumstances as above, we find no ground for interference. Writ petition is dismissed with liberty to petitioners to avail remedy/remedies as available to them under the Act. It is further clarified that it is always open to petitioners to arrive at any mutually acceptable settlement/agreement and the present order is not an impediment thereto. There is no expression of opinion on merits of the matter.

(LISA GILL)
JUDGE

(SANJIV BERRY)
JUDGE

30.10.2023
S.Sharma(syr)

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/ No