IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Neutral Citation No. 2023:PHHC:075916-DB

(112) **CWP-29882-2022 (O&M)**
Decided on: 25.05.2023

M/s Balaji Multipurpose Cold Storage ......Petitioner(s)

Versus

Union of India and others ......Respondent(s)

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

Present: Mr.Rahul Sharma, Advocate, for the petitioner (s).

Mr.C.S.Pasricha, Advocate
And Mr.S.K.Bhardwaj, Advocate, for respondent Nos.2 to 4.

Mr. Aalok Jagga, Advocate
and Mr.Harshit Anand, Advocate, for respondent No.5.

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G.S. Sandhawalia, J. (Oral)

1 Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the proceedings initiated under Section 13(2) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'Act') and the demand notice issued by the respondent-Bank under Section 13(4) of the Act.

2. During the pendency of the proceedings, notice under Section 13(4) was issued on 04.02.2022 and thereafter, the auction of the secured assets was fixed vide notice dated 10.02.2023 (Annexure P-25). Since there was a dispute inter se the partners, the following order was passed by this Court on 16.03.2023:

> "The petitioner is the partnership firm comprising of three partners namely, Mohinder Pal , Akashdeep Garg, Parveen Aggarwal having shares of 60%, 20%, 20% respectively. The loan account of the petitioner was declared as NPA. As per the sale notice the properties have been put up for sale on 24.03.2023.

There appears to be an inter se dispute among the partners because of which loan could not be restructrued.

With a view to arrive at some settlement Mr. Sharma, Advocate and Mr. Jagga, Advocate representing two of the partners agreed that the matter be referred to the Mediation and Conciliation Centre of this Court.

The third partner namely, Parveen Aggarwal, though not party to the present proceedings is present in Court. He also expresses his willingness to participate in the mediation proceedings.

Considering that the sale of the properties is scheduled for 24.03.2023, the parties may appear before the Mediation and Conciliation Centre of this Court on 17.03.2023 at 10:00 am.

The Mediator is requested to proceed with the matter if required on day to day basis to endeavor to resolve the same before the next date of hearing i.e. 23.03.2023.

The report of the Mediator be sent to this Court on or before the next date of hearing.

To come up on 23.03.2023."

3. Matter was still pending before the Mediator and due to the auction proceedings, the case was taken up on 23.03.2023 and the following order was passed:

"Though the Mediator has prayed for time in pursuance to the responsibility fixed upon her but due to the impending auction which is due to take place on 24.03.2023, i.e. tomorrow, we are of the considered opinion that the interest of the Bank is also involved. Therefore, in order to balance the equities *inter se*, we issue the following directions:-

Mr. Rahul Sharma, counsel for the petitioner (in CWP-29882-2022) is represented through Mohinder Lal, whose son Mr. Sushil Kumar is present in Court, has stated that the outstanding of M/s Balaji Multipurpose Cold Storage, have now been assessed at Rs.4,50,50,387.20/- as per the notice dated 04.02.2022 (Annexure P-21).

However, Mr. Pasricha, learned counsel for respondents No. 2 to 4 submits that the amount now is Rs.4,82,00,000/-.

It is submitted that on account of the *inter se* dispute between the partners namely, Mohinder Lal, Akashdeep Garg and Parveen Aggarwal whose shares are 60%, 20% and 20% respectively, in the Cold Storage, Mohinder Lal is willing to take on the whole outstanding and pay it to the Bank in a phased manner subject to the condition that he be thereafter, given exclusive rights to run the Cold Storage as it is pointed out by Mr. Jagga, who is representing the applicant Mr. Akashdeep Garg (one of the partner in firm), that the applicant Akashdeep Garg is not under the control of the unit subject to whatever litigation the parties initiate amongst themselves, thereafter.

Mr. Sharma accordingly submits that he will deposit Rs.30,00,000/- in the account of the Bank to show his *bona fide* by 12:00 noon tomorrow, so that the auction does not take place.

He further states that thereafter, he will pay the remaining overdue within a period of 2 months.

To come up on 29.03.2023 for payment of the 2nd installment, by way of demand draft.

If the amount of Rs.30,00,000/- is paid by 12:00 tomorrow, the bids will not be accepted by the Bank.

Keeping in view the above, the remaining property shall also not be auctioned by the Bank.

A photocopy of this order be placed on the file of the other connected case."

4. Thereafter, on 29.03.2023, the following order was passed:

"As per the earlier order dated 23.03.2023, counsel for the Bank submits that Rs.30,00,000/- has been paid and confirms the said factum. Mr. Sharma has further handed over a bankers cheque for Rs.10,00,000 /- to show *bona fides* of the petitioner. Original has been handed over to counsel for the Bank and photocopy of the same is kept on record.

Accordingly, the matter is adjourned to 25.05.2023, so that the balance payment can be deposited by the petitioner in CWP No. 29882 of 2022.

Mr. Sharma submits that the dispute has arisen only on account of the partners approaching to the bank and not permitting Mohinder Lal to operate the accounts.

Keeping in view the fact that the outstandings are now being paid by Mohinder Lal and the interim order dated 23.03.2023 has already been passed that the other partners shall not interfere as they had never come forward to deposit the amount at the first instance, we are of the considered opinion that the said petitioner-Mohinder Lal will be permitted to operate the bank accounts so that he can also clear the arrears by the next date of hearing.

Needless to say, these orders are only interim to keep the unit going and we are not commenting upon the rights of the parties *inter se* who have already been given liberty to agitate for them in accordance with law.

Photocopy of the order be placed on the files of connected cases."

5. Today, we are informed that in pursuance of the earlier orders, Mohinder Lal has deposited a sum of Rs.2.04 crores in the account and the same stands upgraded as per the communication received from the Bank on 24.05.2023 itself. A copy of the same has been placed on record by counsel for the respondent-Bank. Resultantly, we are of the considered opinion that the matter has been rendered infructuous in view of the above sequence of events.

6. Mr.Jagga however submits that the civil litigation is already pending for dissolution of the firm and he shall be given liberty to pursue the same.

7. It is made clear that we have not observed on the merits of the case, which are pending in any Civil Court. The present arrangement is

only to ensure that the unit does not suffer any loss since one of the partners is willing to take over the liability and pay all the dues. It is in such circumstances, the benefit has been granted to him to run the unit. Since we have already recorded a finding that Akashdeep Garg is not having the control of the unit, he is free to pursue his civil litigation and the Civil Court will decide the issue on merits of the case uninfluenced by the observations made herein which are only for the purpose that the industrial unit does not suffer and rather it benefits all the partners.

8. Needless to say that until there are any specific orders of the Court, the partners who are not in possession will not interfere in the same. Accordingly, the petitioner shall continue paying the instalments on regular basis. It is open to the Bank to take steps in accordance with law independently and not at the instance of the partners who are out of possession.

9. Writ petition stands disposed of with the above-said observations.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

25.05.2023
sailesh

Whether speaking/reasoned	Yes	
Whether Reportable :		No