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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 25760 of 2023

Shri Shyam Agro Biotech Pvt. Ltd.
Vs.
State Bank of India & Ors.

Mr. Partha Sarathi Bhattacharyya,
Mr. P. Bose.
Mr. P. Deb
...for the petitioner

Mr. Om Narayan Rai,
...for the respondent-Bank

1. The petitioner challenges a cancellation of an alleged sale by private treaty to the petitioner by the respondent-Bank.
2. Learned Senior Counsel appearing for the petitioner argues that the Bank accepted the offer of the petitioner in terms of a notice for sale through private treaty, vide letter dated March 08, 2023 issued by the Bank to the petitioner.
3. Pursuant to such acceptance, the petitioner had paid the entire amount of consideration to the Bank, which was a little above the reserved price fixed by the Bank initially. Thereafter, the petitioner wrote on several occasions to the Bank requesting issuance of a sale letter, which was not given by the Bank.
4. Ultimately, by the impugned communication dated April 27, 2023, the Bank proceeded to

cancel the said sale under private treaty without affording any reasons for doing so. Such arbitrary action on the part of the Bank, it is argued, is required to be set aside.

5. Learned counsel appearing for the Bank, apart from challenging the contentions on merit, raises a question of maintainability of the writ petition primarily on two counts. First, any measure taken under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the extant Rules, particularly Rule 8(8), is amenable to a challenge before the Debts Recovery Tribunalunder Section 17 of the 2002 Act. Secondly, the limitation for such challenge is 45 days from the date of taking of the measures, which has long been exceeded by the petitioner.

6. Learned counsel for the Bank cites a Division Bench Judgment of this Court in *Akshat Commercial Pvt. Ltd. &* Anr. Vs. Kalpana Chakraborty & Ors., reported at *(2010) 3 CHN 95,* where the Division Bench proceeded on the premise that a challenge under Section 17 of the 2002 Act is of the nature of an original proceeding and no application under Section 5 of the Limitation Act lies in such cases.

7. Learned counsel also cites *Kanaiyalal Lalchand Sachdev & Ors. Vs. State of Maharashtra & Ors.,* reported at *(2011) 2 SCC 782*, where the Supreme Court observed that an action under Section 14 of the 2002 Act constitutes an action taken after the stage of Section 13(4) of the 2002 Act and, therefore, falls within the ambit of Section 17(1) of the 2002 Act. Thus, the Act itself contemplates an efficacious remedy to the borrower or any person affected by an action under Section 13(4) of the 2002 Act by providing for an appeal before the Debts Recovery Tribunal. Availability of such equally efficacious alternative remedy precludes a person from challenging the action of the Bank in writ jurisdiction, it is submitted.
8. Learned counsel for the Bank also cites *Agarwal Tracom Private Limited vs. Punjab National Bank & Ors*. reported at *(2018) 1 SCC 626* where the Supreme Court observed that the expression "any of the measures referred to in Section 13(4) taken by secured creditor or his authorised officer" in Section 17(1) would include all actions taken under the Rules which relate to the measures specified in Section 13 (4). In the present case, the challenge is to an action under Rule 8(8) of the Security Interest (Enforcement)

Rules, 2002, which thus falls within the purview of the judgment of the Supreme Court and is amenable to challenge under Section 17 of the 2002 Act.

9. On merits, it is argued by the Bank that the Bank, vide communication dated March 18, 2023, merely reiterated the contents of the notice for sale and did not accept any offer of the petitioner as such.

10. By placing particular reliance on Clause 2 of the notice for sale through private treaty as well as the communication dated May 18, 2023, it is argued that the same stipulates that the purchaser will be required to deposit 25% of the sale consideration on the next working day of the "receipt of Bank's acceptance of offer for purchase of property" and the remaining amount within 15 days thereafter.

11. In the present case, since the Bank's acceptance never came, the deposits made by the petitioner could not have concluded the sale in favour of the petitioner.

12. Learned counsel for the Bank also places reliance on Clauses 8 and 9 of the notice of sale, where it is provided that the Bank reserves the right to reject any offer or purchase without

assigning any reason and for more than one offer, the Bank will accept the highest offer.

13. In the present case, it is contended that subsequent to the offers being received from various proposed purchasers including the petitioner, the highest bid of Rs.1.46 crore was accepted and the sale was concluded in favour of the said bidder, a third party to the present writ petition, who was the successful purchaser, on May 30, 2023.

14. Thus, it is prayed by the Bank that the writ petition be dismissed.

15. Dealing with the maintainability issue first, the provisions of Section 17 read in conjunction with Section 13 of the 2002 Act, shows that Section 17 provides an avenue of challenge to any person, not restricted to borrower, only against "any of the measures referred to in sub-section (4) of Section 13" taken by the secured creditor or his authorised officer.

16. Section 13(4) of the Act contemplates several measures. Sub-clause (a) under sub-section (4) is the relevant clause in the present context, which provides that the Bank can take possession of the secured assets of the borrower including the right to transfer by way of lease,

assignment or sale for realizing the secured asset.

17. The corresponding provision, which is relevant in the present case of private treaty, is clause 8 of Rule 8 of the 2002 Rules, which provides for sale by any method other than public auction or public tender, which shall be on such terms as may be settled between the secured creditors and the proposed purchaser in writing.

18. Thus, the challenge envisaged in Section 17 contemplates assailing a measure having been taken under Section 13(4) read with Rule 8 of the 2002 Rules. However, the petitioner in the present case, instead of challenging such a measure, seeks to take advantage of the measures taken under Section 13(4) read with Rule 8 and is not aggrieved by such measures as such.

19. What the petitioner is aggrieved by is the modality which the Bank has adopted in acting allegedly *de hors* the provisions of the 2002 Act and the connected Rules, in not taking a measure under Section 13(4) of the 2002 by concluding the sale in favour of the petitioner.

20. Thus, on principle, the present challenge is not against any measure taken by the Bank under Section 13(4) or the ancillary Rules but in

support of such measures being taken, yet, instead of a third party, in favour of the petitioner. In view of such certain difference in approach, the provisions of Section 17 is not available to the petitioner as such, even read in the context of the judgment of *Kanaiyalal Lalchand (supra)* cited by the Bank. Hence, the limitation period in preferring an application under Section 17, which has been reiterated in *Akshat Commercial (supra)* is also not applicable to the petitioner.

21. Seen from another perspective, the challenge of the petitioner is on a wider premise than mere measures taken under Section 13(4). The State Bank of India, which is the respondent no. 1, is an instrumentality of the State and has to act on a much higher footing of reasonableness and fairness than an ordinary operator and, as such, the challenge of the present petitioner on the ground of palpable arbitrariness and unreasonableness also makes the challenge amenable to the writ jurisdiction, to which an alternative remedy is not an absolute bar.

22. Thus, the objection as to maintainability of the writ petition is turned down and the writ petition is entertained to be decided on merit.

23. The limited scope of consideration is whether at any point of time there was a concluded sale between the petitioner and the Bank in terms of the notice issued by the Bank.

24. The petitioner has relied on the communication dated March 18, 2023 as the conclusive acceptance by the Bank of the petitioner's purported offer of purchasing the property-in-question.

25. Let us now examine the documents in chronology. First comes the notice for sale through private treaty issued by the Bank on March 14, 2023. Conspicuously, Clause 2 thereof, which is reiterated as Clause 2 of the subsequent communication dated March 18, 2023, stipulates that the purchaser will be required to deposit 25% of the *sale consideration* on the next working day of receipt of *Bank's acceptance* of offer for purchase of property.

26. The important expressions need to be culled out from here. First, the deposit is 25% of the sale "consideration" and that the deposit is to be within a limited time from receipt of acceptance on the part of the *Bank*.

27. The said notice also stipulates in Clause 8 that the Bank reserves the right to reject any offer of purchase without assigning any reason and that

in case of more than one offer, the Bank will accept the highest offer.

28. The "reserved price", as opposed to "consideration", has been mentioned in the said document dated March 18, 2023 as Rs.1.42 crore for the vacant land and Rs.1.53 crore for the commercial building.

29. Next comes the application for the petitioner expressing its willingness and recording that it has deposited Rs.14.30,000 as initial deposit through Demand Draft. However, till then no occasion had arisen for such deposit, since the Bank had not expressed its acceptance at all. Notably, the date of such application for purchase was March 15, 2023, even before the date of the alleged acceptance by the Bank of March 18, 2023. Hence, nothing hinges on such application of the petitioner.

30. The communication dated March 18, 2023, if scrutinized properly, repeats and reiterates the exact clauses of notice of sale by private treaty.

31. Included therein is Clause 2, which says that 25% of the sale consideration has to be deposited on the next working day of receipt of the Bank's acceptance of the offer for purchase.

32. Conspicuously, even in the schedule of the said communication dated March 18, 2023, the Bank

does not agree to sell the property at the particular price of Rs. 1.43 crore, which was offered by the petitioner, but reiterates that the *reserved price* is Rs.1.42 crore. Hence, the Bank, till that date, did not proceed to accept the offer of the petitioner at Rs.1.43 crore but merely reiterated the clauses of its sale notice and the reserved price, which was Rs.1.42 crore. The entire communication dated March 18, 2023 does not reflect any whisper on the part of the Bank agreeing to the consideration of Rs. 1.43 crore, which was above the reserved price, as offered by the petitioner.

33. Thereafter, the petitioner unilaterally construed the communication dated March 18, 2023 as the acceptance on the part of the Bank and made certain payments. However, going back to the notice of sale of the Bank, Clause 9 clearly stipulates that the Bank will accept the highest offer if there are more than one offer. Moreover, Clause 8 reserves the right with the Bank to reject any offer of purchase without assigning any reason. Although such rejection ought not to be patently arbitrary since the Bank is an instrumentality of the State, in the present case, the Bank has justified its rejection on the ground that a higher offer of Rs.1.46 crore was

received from a third party, in whose favour the sale has been executed.

34. The very nature of private treaty contemplated under Rule 8(8) of the 2002 Rules is a substitute of a public auction by the Bank and the same norms apply, that is, the sale has to be effected to the highest bidder, although the modality is somewhat different from a public auction.

35. The said modality being an accepted mode of sale under Section 13(4) of the 2002 Act read with Rule 8(8) of the 2002 Rules, the Bank cannot be faulted at having adhered to the same at every point of time.

36. Thus, on the basis of the above observations, I find that at no point of time was there any concluded sale by acceptance of the petitioner's offer by the Bank at the consideration price of Rs.1.43 crore. Hence, no legal right to enforce such non-existent purported sale accrues in favour of the petitioner to give the petitioner a cause of action for the present writ.

37. In such view of the matter, I do not find any scope of interference with the impugned action of the Bank in cancelling the petitioner's offer for sale, although the language of the cancellation could have been happier, since the Bank says that they are cancelling the *sale* under private

treaty, whereas the appropriate approach of the Bank should have been to cancel the *offer* made by the petitioner for such sale. In any event, since there was no reason for the parties not to understand the purport of such communication, in view of sale having not been concluded at any point of time, there is no reason to interfere with such cancellation, particularly since the Bank has offered to return the total deposited amount, as mentioned therein, to the petitioner, and rightly so.

38. Hence, W.P.A. No. 25760 of 2023 is dismissed on contest. The Bank shall refund the deposits made by the petitioner at the earliest.

39. There will be no order as to costs.

40. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)