IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2024:PHHC:006485-DB

(205) **CWP-1677-2023**

Date of Decision: 18.01.2024

M/s Dhankartar Steel Tubes & others --Petitioners

Versus

Central Bank of India & others --Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL.
HON'BLE MRS. JUSTICE AMARJOT BHATTI.

Present:- Mr. Gaurav Dutta, Advocate for petitioners.

Mr. Saurabh Bhardwaj, Advocate for respondent nos.1 & 2 (through video conferencing).

Mr. Navdeep Chhabra, Sr. D.A.G., Punjab.

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<u>LISA GILL.J (Oral)</u>

Prayer in this writ petition is for setting aside Notice dated 16.01.2023 (Annexure P-9) issued by Naib Tehsildar, Mandi Gobindgarh pursuant to order dated 31.12.2021 passed by District Magistrate, Fatehgarh Sahib under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. Learned counsel for petitioners is unable to deny that matter is squarely covered against petitioner in view of decision dated 18.12.2023 in ***CWP-21657-2022 (M/s Technico Strips and Tubes Pvt. Ltd. and another vs. Deutsche Bank AG and another)*** and connected writ petitions, wherein it has been 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.

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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 herein-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 repeatedly 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."

3. Learned counsel for petitioners is unable to point out any ground in this writ petition which would persuade us to take a different view.

4. At this stage, learned counsel for petitioner submits that interim order in favour of petitioner be directed to continue till final decision by concerned Tribunal where petitioner may file/initiate appropriate proceedings.

5. Writ petition is, accordingly, dismissed with liberty to petitioners to avail remedy(ies) available to it in accordance with law. It is always open to parties to arrive at any mutually acceptable settlement.

6. Keeping in view the fact that this writ petition has remained pending before this Court with interim order being granted by Division Bench on 26.09.2019, it is directed that the same shall enure for period of twenty (20) days from the date of receipt of certified copy of order to enable petitioner to file appropriate petition/application before the concerned Tribunal/Forum alongwith requisite application(s) seeking exclusion of period of delay/for interim relief. It is made clear that this interim order shall not enure beyond the period of said twenty (20) working days in the absence of an order passed by appropriate Forum/Tribunal without being influenced in any manner by any order(s) passed in this writ petition.

7. It is clarified that there is no expression of opinion on the merits of the matter.

8. Pending application(s), if any, shall also stand disposed of.

(LISA GILL)
JUDGE

18.01.2024 **(AMARJOT BHATTI)**
lucky **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No