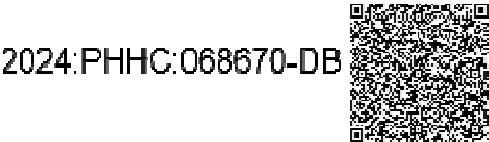


CWP-3126-2020



212-a

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CWP-3126-2020
Date of Decision: May 15, 2024

OM PRAKASH MADAAN AND ANOTHER

..... Petitioners

Versus

ALLAHABAD BANK AND ANOTHER

..... Respondents

2.

CWP-3371-2020

M/S STUTI METALS PRIVATE LIMITED AND ANR

..... Petitioners

Versus

ALLAHABAD BANK AND ANR

..... Respondents

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

Present: Mr. H.S. Jagdev, Advocate for
Mr. Aalok Jagga, Advocate for petitioners in both writ petitions.

Mr. Saurav Goyal, Advocate for respondent - Bank.

LISA GILL, J.

1. This order shall dispose of abovesaid two writ petitions i.e. CWP Nos. 3126 and 3371 of 2020 which are taken up together for consideration and decision, at request and with consent of learned counsel for parties as they pertain to the same account.
2. Challenge in both these petitions is to confirmation of sale and sale certificate dated 18.01.2020 issued in favour of respondent No. 2 and for setting aside the same being completely illegal and contrary to Rules 8 and 9 of the

CWP-3126-2020

Security Interest (Enforcement) Rules, 2002. Petitioners in CWP-3371-2020 (borrowers) also seek acceptance of their proposal for One Time Settlement.

3. CWP-3371-2020 has been filed by borrowers and CWP-3126-2020 filed by persons who claim to have submitted the highest bid. Learned counsel, who represents petitioners in both writ petitions, submits that pursuant to loan account being declared Non Performing Asset (NPA), proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) were initiated against the borrower with notice under Sections 13(2) and 13(4) of SARFAESI Act being issued on 03.03.2018 and 19.05.2018, respectively. Property was put to auction on various occasions but failed to secure a successful bidder. Vide notice dated 18.12.2019, respondent – Bank decided to sell the property through private treaty/Swiss Challenge method. Authorized Officer reserved the right to conduct inter se bidding. Physical possession of property was with the Bank.

4. Petitioners in CWP-3126-2020 submitted their bid of Rs.1.20 crores alongwith earnest money i.e. 25% of bid amount. It is submitted that respondent - bank i.e. anchor bidder without affording participants the opportunity for inter se bidding, accepted the bid of Rs.1,38,80,000/- submitted by respondent No. 2 and illegally issued sale certificate. Four bids as are detailed in para 18 of CWP-3371-2020 apart from anchor bid were received.

5. It is contended by both borrowers as well as petitioners in CWP-3126-2020 that Swiss challenge method was in fact not followed by the bank, which vitiates the entire proceedings. In case, an opportunity of inter se bidding had been provided, maximum amount for the property could have been fetched. It is, thus, prayed that these writ petitions be allowed.

CWP-3126-2020

6. Learned counsel for respondent has opposed this writ petition while raising objection qua entertainability of petition. It is submitted that entire action has been taken in accordance with law and that effort of the borrower and petitioner in CWP-3126-2020 is merely to scuttle recovery proceedings. It is, thus, prayed that both the writ petitions be dismissed.

7. Heard.

8. It is a settled position of law that any person aggrieved of action taken by the secured creditor under Section 13(4) of SARFAESI Act, is entitled to approach learned DRT in terms of Section 17 of said Act. Sale of secured asset has admittedly been carried out under said provision. Intervention by this Court in exercise of jurisdiction under Article 226 of Constitution of India is not called for. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110; Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34 and M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**. Hon'ble the Supreme Court in the case of **M/s South Indian Bank** (supra) held 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.

xxx xxx xxx

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.

xxx xxx xxx xxx

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

CWP-3126-2020

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.

xxx xxx xxx

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.”

9. Specific remedy(ies) for the grievances as raised in the writ petitions are provided for under SARFAESI Act itself.
10. Learned counsel for petitioners is unable to point out any extraordinary and exceptional circumstance, which calls for intervention by this Court at this stage. All pleas, as have been raised before us, are well within the realm of consideration by learned Tribunal as provided under the Act itself.
11. Both writ petitions are, accordingly, dismissed with liberty to petitioners to avail remedy(ies) available to them in accordance with law. It is open to petitioners to file appropriate application seeking exclusion of time spent in pursuing the present writ petitions before this Court.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

May 15, 2024
rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No