

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2380-2023(O&M)

Date of Decision:- 06.02.2024

M/s Riwaj Fashion and Others

....Petitioners

Vs.

Union of India and Others

...Respondents

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

Present:- Mr. Puneet Sharma, Advocate
for petitioners.

Mr. Sunil Kumar Dahiya, Advocate for
Mr. Harsh Chopra, Advocate
for respondent No.3.

LISA GILL, J.

1. Prayer in this writ petition is for quashing notice dated 25.08.2022 (Annexure P-2) issued under Section 13(4) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act, impugned order dated 22.09.2022 (Annexure P-3) passed by District Magistrate, Sonipat and letter dated 24.01.2023 (Annexure P-5) issued by Tehsildar Gohana being illegal and arbitrary. There is further prayer for directing respondent No.3 to regularize account of petitioners and for stay of further proceedings.

2. It is submitted that petitioner Firm is registered under Micro Small and Medium Enterprises (MSME) Act, 2006 with petitioner No.2 being proprietor thereof. Availing of credit facility from respondent No.3, subsequent financial indiscipline on the part of petitioners and initiation of SARFAESI proceedings against petitioners is a matter of record. It is pleaded that there is complete violation of guidelines of RBI with glaring illegalities in loan account management by respondent No.3 i.e. Capri Global Capital Limited (for short Financial Institution). Total violation of applicable provisions of law and applicable regulations and circulars in regard to MSMEs is asserted.

3. Learned counsel for petitioners submits that respondent No.3 in an illegal and unilateral manner altered tenure of the installments from 15 years to 33 years. Petitioners' account was declared Non Performing Asset (NPA) statedly in an illegal manner with issuance of possession notice dated 25.08.2022 without even issuing a demand notice under Section 13(2), order dated 22.09.2022 was thereafter passed by District Magistrate, Sonipat under Section 14 of the Act with notice dated 24.01.2023 being issued by Tehsildar Gohana for taking over possession of the residential property. It is submitted that all the above said actions being illegal and arbitrary should be set aside and the writ petition allowed.

4. Learned counsel for respondent No.3 has contested this writ petition by raising question of entertainability of writ petition itself in view of judgment of Hon'ble the Supreme Court in ***Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir and others, 2022 (1) R.C.R. (Civil) 888***. It is further submitted that action taken by respondent-Financial Insti-

tution is in strict consonance with the provisions of law. There is no violation of any of the applicable circulars and guidelines.

5. Learned counsel for respondent No.3 further submits that at the time of issuance of notice of motion in this writ petition on 07.02.2023 it was stated that petitioner is an MSME unit. Non compliance of RBI circular dated 17.03.2016 was alleged inasmuch as petitioners case for restructuring/revival was not placed before the duly designated committee. However, there is no whisper in the writ petition regarding any objection about non reference to a designated committee and neither is there any prayer in this respect. Learned counsel for respondent No.3 further refers to the postal receipts and tracking records as well as relevant publication of notices stated to have been issued under the SARFAESI Act to petitioners, copies of which were taken on record subject to just exceptions on 11.10.2023. Dismissal of writ petition is sought.

6. Heard learned counsel for parties and have gone through the file with their able assistance.

7. No ground whatsoever is made out for interference in this writ petition. Though there are no pleadings to this effect but in any case question of non compliance of provisions of circular dated 17.03.2016 issued by RBI need not detain us as the matter is squarely covered against the petitioners in this respect in view of order dated 18.12.2023 in CWP-21657-2022 (M/s Technico Strips and Tubes Pvt. Ltd. and another vs. Deutsche Bank AG and another).

8. Furthermore, apart from the fact that SARFAESI Act is a complete code in itself and no interference by the High Court is called for in exercise of jurisdiction under Article 226 of Constitution of India except in

exceptional and extraordinary circumstances, it is to be noted that relief claimed in this writ petition is qua Capri Global Capital Limited which is admittedly a Private Non Banking Financial Institution. It has been held by Hon'ble the Supreme Court in ***Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir and others, 2022 (1) R.C.R. (Civil) 888*** has held as under:-

“12. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of ***Praga Tools Corporation v. Shri C.A. Imanuel and others, (1969) 1 SCC 585*** and ***Ramesh Ahluwalia vs. State of Punjab, (2012) 12 SCC 331*** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.”

9. Keeping in view the facts and circumstances of the matter this writ petition is dismissed with liberty to petitioners to avail the remedy(ies) as may be available to them in accordance with law. As dispossession of petitioners was stayed vide order dated 07.02.2023 and interim order has enured till date, same shall enure for a period of 10 working days from the date of receipt of certified copy of this order, to enable them to avail appropriate remedy as may be available in accordance with law. In case,

petitioners file appropriate application/petition accompanied with requisite application(s), question of continuance or otherwise of interim order in petitioners favour shall necessarily be in the realm of consideration by the appropriate Forum in accordance with law, without being influenced by any order, which may have been passed in this writ petition. There is no expression of opinion on merits of the matter.

10. It is clarified that interim protection afforded to petitioners shall not enure beyond said 10 working days in the absence of appropriate order by competent authority/Tribunal in accordance with law.

11. Writ petition is disposed of accordingly.

12. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

06.02.2024
sunil devi

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