2024:PHHC:038789-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CWP No.3761 of 2021(O&M)**
**Date of Decision:11.03.2024**

**M/s Garg Agencies**

**......Petitioner**

**Versus**

**Reserve Bank of India and another**

**...... Respondents**

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

Present: Mr. Kanwar Abhay Singh, Advocate
for the petitioner.

Mr. Maninder Singh, Advocate
for respondent no.2.

*****

**LISA GILL, J(Oral).**

**1.** Prayer in this writ petition is for setting aside notice dated 18.08.2020, under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and notice dated 17.11.2020, under Section 13(4) of SARFAESI Act. Petitioner also seeks a direction to respondent no.1 to enforce the recovery package in terms of Circulars dated 27.03.2020, Annexure P-2 and 23.05.2020, Annexure P-3 issued by Reserve Bank of India. It is further prayed that moratorium be granted/extended in view of order dated 03.09.2020, passed in Writ Petition(s) (Civil) No(s). 825 of 2020 by Hon'ble the Supreme Court. Petitioner also seeks rescheduling of the amount to be deposited by it.

2. It is pleaded that petitioner is a proprietorship firm. It availed working capital facility for a sum of Rs.45,00,000/- from ING Vysya Bank Limited in the year 2012. ING Vysya Bank Limited was amalgamated with

respondent no.2-Kotak Mahindra Bank on 01.04.2015. Capital facility was regularly renewed. Petitioner was depositing the outstanding amount regularly. However, due to outbreak of the Pandemic COVID-19, petitioner suffered severe financial set-backs, due to which there was financial indiscipline.

3. It is submitted that while flouting specific instructions issued by Reserve Bank of India, petitioner's account was declared Non Performing Asset (NPA) on 29.06.2020. Notice under Section 13(2) of SARFAESI Act was issued on 18.08.2020 in an illegal and arbitrary manner. Objections were filed by petitioner, which were statedly rejected in a totally non-judicious manner on 03.11.2020. Notice under Section 13(4) of SARFAESI Act was issued on 17.11.2020.

4. Learned counsel for petitioner submits that action taken by respondent-Bank under SARFAESI Act is absolutely uncalled for, unjustified and in-fact in complete violation of the provisions thereunder. The beneficial provisions extended by respondent no.1 were not fully extended to petitioner. Furthermore, proposal for 'One Time Settlement' (OTS) submitted by petitioner was not taken into account. It is thus prayed that this writ petition be allowed.

5. Writ petition has been opposed by respondent no. 2. Learned counsel for respondent no.2 while referring to written statement filed on its behalf raises a preliminary objection *qua* entertainability of the writ petition itself. It is submitted that action under SARFAESI Act has been taken in complete consonance with provisions thereof. Allegations of violation of statutory provisions or circulars issued by RBI are vehemently denied. It is submitted that petitioner's account was not regular even before the onset of Pandemic COVID-19 and imposition of Lockdown. It is submitted that as

per guidelines issued by RBI, liberty was given to Banks to assess the economic stress being suffered by borrower and decide about justification of grant of benefits. Petitioner, it is stated never applied for the grant of moratorium. Mid Term Review (MTR) of petitioner's account was scheduled as per sanction letter on 15.02.2020.

6. Learned counsel for respondent no.2 informs that petitioner had submitted a proposal for OTS for a sum of Rs. 45,00,000/-, whereas the said offer has been rejected on 11.01.2024 as total outstanding amount was Rs.84,08,734.56/- as on 01.01.2024. It is contended that the present writ petition is only a tactic to delay recovery proceedings. It is thus prayed that this writ petition be dismissed.

7. We have heard learned counsel for parties and have gone through the file with their able assistance, but do not find any ground to interfere in this writ petition, at this stage. Apart from the fact that disputed questions of fact arise for determination in this writ petition, petitioner has efficacious remedy(ies) available to it in accordance with law under SARFAESI Act, which is admittedly a complete Code in itself providing for remedies *qua* grievance, if any, in respect to proceedings initiated thereunder. Arguments as raised do not constitute extraordinary or exceptional circumstances, which call for interference by this Court. The same are in the realm of consideration by the appropriate Forum/Tribunal. Gainful reference can be made to judgment of Hon'ble Supreme Court in **Union Bank of India Vs. Satyawati Tandon and others, 2010(8) SCC 110,** wherein it is held as under:-

> "17. ……*Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an*

*aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*

*18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular* *legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order."*

8. Hon'ble the Supreme Court in **M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023(1) RCR (Civil) 771,** while reiterating its earlier decisions 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.

xx xx xx xx

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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.

xx xx xx xx

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 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.

xx xx xx xx

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. Learned counsel for petitioner is unable to point out any exceptional or extra ordinary circumstance which calls for interference in this case.

10. Violation of circulars issued by RBI, if at all, rendering proceedings under SARFAESI Act to be illegal or arbitrary as well as the other grounds as raised in this writ petition are also very well within the realm of consideration by the Appropriate Forum/Tribunal as provided under the SARFAESI Act.

11. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail the remedy(ies) available to it in accordance with law while taking up all available pleas. There is no expression of opinion on the merits of the matter.

12. Keeping in view the fact that interim order was granted on 25.03.2021 in this writ petition with the same enuring till date, it is directed that interim order granted in their favour shall enure for fifteen (15) working days from receipt of certified copy of this order to enable them to avail remedy as may be available to them in accordance with law. Question of continuance or otherwise of interim order in petitioner's favour is necessarily 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.

13. It is clarified that interim protection afforded to the petitioner shall not enure beyond 15 working days in the absence of an order by appropriate authority. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

**( LISA GILL )**
**JUDGE**

**(AMARJOT BHATTI)**
**JUDGE**

**March 11, 2024.**
s.khan

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