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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4657-2023

Date of Decision: 09.01.2024

SMR PLIABLE INDUSTRIES INDIA PVT. LTD.

..... Petitioner

Versus

CANARA BANK AND ORS

..... Respondents

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

Present: Mr. Vipul Babuta, Advocate
for petitioner.
Mr. Rakesh Gupta, Advocate
for respondent-Bank.

LISA GILL, J.

1. Petitioner has challenged the proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter to be referred as the SARFAESI Act) initiated against it by respondent-Bank.

2. Petitioner claims to be a MSME. Availing of financial/credit facility from respondent-Bank as detailed in the writ petition is a matter of record. It is further not in dispute that there was financial indiscipline on the part of petitioner due to which petitioner's account was classified as Non-Performing Asset (NPA) on 29.10.2022. It is submitted by learned counsel for petitioner that loan account was declared NPA in total violation of the provisions of SARFAESI Act. No notice was received and furthermore before classification of the account as NPA, there was no compliance of circular dated 17.03.2016 regarding Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs)

issued by Reserve Bank of India. In terms of said circular, case of petitioner had to be first referred to the Designated Committee and only thereafter, further steps, if required, were to be taken under the SARFAESI Act. It is thus prayed that this writ petition be allowed.

3. Learned counsel for respondent has opposed this writ petition by firstly raising preliminary objection qua entertainability of writ in view of judgments of Hon'ble Supreme Court in ***Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110, State Bank of Travancore and another Vs. Mathew K.C, 2018(2) RCR (Civil) 1***. Apart therefrom, it is submitted that cause of action does not arise to petitioner to file a writ petition before this Court. The loan facility was availed of by petitioner at Pune in the State of Maharashtra. Therefore, one of the property i.e. secured assets, being situated in Shaheed Bhagat Singh Nagar, Punjab does not entitle the petitioner to invoke jurisdiction of this Court. Moreover, the controversy as sought to be raised is covered against petitioner in terms of order dated 18.12.2023 in CWP-21657 of 2022.

4. Learned counsel for petitioner is unable to deny that the question/issue as raised in this writ petition is squarely covered against petitioner in terms of order dated 18.12.2023, whereby 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.

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.”

5. Learned counsel for petitioner is unable to point out any distinguishing factor in the present writ petition which calls for interference in exercise of jurisdiction under Article 226 of the Constitution of India.

6. This writ petition is accordingly dismissed with liberty to petitioner in the same terms as decision dated 18.12.2023 in CWP-21657-2022 above.

7. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

09.01.2024

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