2024:PHHC:046164-DB

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13649-2023
Date of Decision:- 04.04.2024

M/S GARG ENTERPRISES AND ORS. ....Petitioners

Vs.

BANK OF INDIA AND ANR. ...Respondents

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

Present:- Mr. Ashish Jhamb, Advocate for the petitioners.
Ms. Nandita Aggarwal, Advocate for respondent No.1.

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LISA GILL, J.

1. Prayer in this writ petition is for quashing notice (s) dated 01.11.2022 (Annexure P-5) issued under Section 13 (2) and 17.02.2023 (Annexure P-6) issued under Section 13 (4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') primarily on the ground that petitioners' request for restructuring in terms of guidelines dated 17.03.2016 has not been placed before Designated Committee.

2. Learned counsel for petitioners is unable to deny that controversy as raised in this writ petition wherein petitioner No.1 claims to be registered as MSME under the Micro, Small and Medium Enterprises Development Act, 2006, is squarely covered against petitioners in view of decision of Division Bench 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:-
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>> "27. From the statutory scheme and decisions noted hereinabove, 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.
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>> 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. Keeping in view the above, this writ petition is dismissed with liberty to petitioners to avail remedy(ies) available to them in accordance with law for redressal of its grievance(s).

4. However, as interim order dated 21.06.2023 passed in favour of petitioners in this petition has continued till date, it is directed that said order shall enure for a period of 15 days from the date of receipt of certified copy of this order, in order to enable petitioners to avail appropriate remedy (ies) as may be available to them in accordance with law. Question of continuance or otherwise of interim order in petitioners' favour shall necessarily be in the realm of consideration by the appropriate Forum/Tribunal in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

5. It is clarified that interim protection afforded to petitioners shall not enure beyond 15 days in the absence of appropriate order by competent authority/Tribunal in accordance with law. There is no expression of opinion on merits of the matter.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

04.04.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No