

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16378-2022
Date of Decision:- 24.01.2024

M/S GARG ELECTRONICS AND OTHER Petitioners

Vs.

RESERVE BANK OF INDIA AND ORS ...Respondents

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

Present:- Mr. Satinder Pal Singh, Advocate for the petitioners.

 Mr. Harsh Chopra, Advocate for respondent Nos.2 and 3.
 (Through V.C.)

LISA GILL, J.

1. Prayer in this writ petition is for directing respondent Nos.2 and 3 – Capri Global Capital Limited to upgrade the loan account of petitioners to standard loan account in terms of Clause 4.2.5 of the Master Circular Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances. It is further prayed that said respondents be restrained from initiating any coercive action against petitioners under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), as account of petitioners was declared Non Performing

Asset (NPA) in December, 2021. There is further prayer for quashing notice (s) dated 18.01.2022 and 27.05.2022 issued under Sections 13 (2) and 13 (4) of SARFAESI Act respectively. It is claimed that petitioners have deposited excess amount but the account of petitioners is not being reconciled in a proper fashion in complete violation of provisions of SARFAESI Act.

2. It is noticed that relief claimed in this writ petition is against a private non-banking financial company, therefore, present writ petition is not entertainable. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in ***Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888***, wherein it has been 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. Imanual 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.”*

3. Furthermore, petitioners have efficacious remedy (ies) available to them in respect to any grievance qua proceedings under SARFAESI Act undertaken against them. Keeping in view facts and circumstances as referred above, no ground is made out for interference by this Court at this stage. All the pleas as raised in this writ petition are very well within the realm of consideration by the appropriate Forum/Tribunal.

4. The writ petition is accordingly dismissed with liberty to petitioners to avail remedy (ies) available to them in accordance with law.

5. As interim order passed in favour of petitioners on 03.08.2022 has continued till date, same shall enure for a period of twenty (20) days from the date of receipt of certified copy of this order, in 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.

6. It is clarified that interim protection afforded to petitioners shall not enure beyond 20 working days in the absence of appropriate order by competent authority/Tribunal in accordance with law.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

24.01.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No