2024:PHHC:044606-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1744-2016 (O&M)
Date of Decision: April 03, 2024

M/s Skan Cables and Wires Limited and another ..... Petitioners

Versus

The Authorised Officer, Punjab National Bank and others ..... Respondents

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

Present: Mr. Manish Jain, Advocate for the petitioners (through VC).

Mr. Arvind Rajotia, Advocate for respondent No. 1.

Mr. Kanwar Abhay Singh, Advocate for
Mr. Govind Rana, Advocate for respondent No. 3.

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LISA GILL, J.

1. Prayer in this writ petition is for setting aside order dated 03.12.2015 (Annexure P1) passed by learned Debts Recovery Appellate Tribunal.

2. Availing of financial facility from respondent No. 1 by petitioner No. 1, subsequent financial indiscipline on its part and initiation of proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') are a matter of record. SA-76-2013 filed by petitioners' impugning sale of property in auction

conducted on 07.03.2013 was dismissed by learned DRT-I vide order dated 12.03.2015. Appeal was preferred by petitioners against order dated 12.03.2015. IA-300-2015 was filed by petitioners seeking waiver of amount to be paid as pre-deposit on the ground that bank has already realized the sum through auction in excess of 25% of notice amount. Petitioners' contended that bank sold properties at Gurugram and Kundli for a sum of Rs.4.50 crores and 1.45 crores respectively, therefore, amount of nearly 40% of notice amount (Rs.15.23 crores) stood realized. Learned DRAT dismissed application vide impugned order dated 03.12.2015 while holding that appellants cannot escape the requirement of pre-deposit of atleast 25% of notice amount, which is the minimum amount to maintain appeal. Aggrieved therefrom, present writ petition has been filed.

3. Heard, learned counsel for parties.

4. Argument raised on behalf of petitioners is again that in view of amount having been received by respondent – Bank after auction of property, waiver of amount of pre-deposit should be directed. It is pertinent to note that pre-deposit of 50% of decretal amount i.e. debt due is a mandatory requirement in terms of Section 18 of SARFAESI Act for entertainment of appeal. Gainful reference in this respect can be made to judgment of Hon'ble the Supreme Court in decision dated 16.02.2021 in **Civil Appeal No. 538 of 2021** (**Kotak Mahindra Bank Pvt. Limited versus Ambuj A. Kasliwal and others).** It has been correctly held by learned DRAT that once petitioners have challenged auction sale, they cannot seek adjustment of amount deposited by auction purchaser towards their requirement of pre-deposit. It is a matter of record that one of the auction purchaser had sought permission to withdraw the amount which he had deposited. It is further to be noted that petitioners had also not

taken the option offered to them for deposit of amount in question in case, auction sale in favour of respondent No. 2 is set aside. Observation of learned DRAT in this respect reads as under:-

> " Counsel for the appellants was given option to give an undertaking to the effect that in case the auction sale in favour of respondent No. 2 is ultimately set aside, he would be prepared to deposit this amount, but the counsel has not chosen to accept this option. It would not be fair, thus, to take into consideration this amount realized from the auction sale of the property towards the pre-deposit to be made by the appellants once the sale itself is under challenge. It would have been a different matter if the appellants had come forward not to challenge the said auction but to protect their any other property. In that eventuality, this amount realized may have been open to the considered towards the pre-deposit required to be made by the appellants."

5. Hon'ble the Supreme Court in **M/s Sidha Neelkanth Paper Industries Private Limited & another versus Prudent ARC Limited & Others** (CA No. 8969 of 2022 decided on 05.01.2023) held as under:-

> "13. As per Section 2(ha) of the SARFAESI Act, "debt" shall have the same meaning assigned to it in clause (g) of Section 2 of the Act 1993. As per section 2(g) of the Act 1993, "debt" means any liability inclusive of interest which is claimed as due from any person….., by a bank or a financial institution during the course of any business activity undertaken by the bank or the financial institution, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on the date of the application. That the "debt" means any liability inclusive of interest.
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> As per Section 18 of the SARFAESI Act, any person aggrieved, by any order made by the DRT under section 17, may prefer an appeal within thirty days to an appellate Tribunal (DRAT) from the date of receipt of the order of DRT. Second proviso to section 18 provides that no appeal shall be entertained unless the "**borrower**" has deposited with the Appellate Tribunal

fifty percent of the amount of "debt due" from him, as claimed by the secured creditors or determined by the DRT, whichever is less and only and only then, an appeal under Section 18 of the SARFAESI Act is permissible against the order passed by the DRT under Section 17 of the SARFAESI Act. Under Section 17, the scope of enquiry is limited to the steps taken under Section 13(4) against the secured assets. Therefore, whatever amount is mentioned in the notice under Section 13(2) of the SARFAESI Act, in case steps taken under Section 13(2)/13(4) against the secured assets are under challenge before the DRT will be the 'debt due' within the meaning of proviso to Section 18 of the SARFAESI Act. In case of challenge to the sale of the secured assets, the amount mentioned in the sale certificate will have to be considered while determining the amount of pre-deposit under Section 18 of the SARFAESI Act. However, in a case where both are under challenge, namely, steps taken under Section 13(4) against the secured assets and also the auction sale of the secured assets, in that case, the "debt due" shall mean any liability (inclusive of interest) which is claimed as due from any person, whichever is higher.

14. As observed hereinabove and as per the second proviso to Section 18 of the SARFAESI Act, it is the "**borrower**" who has preferred an appeal before the Appellate Tribunal and the "**borrower"** who shall have to deposit 50% of the amount of "debt due" from him. If the words used in the second proviso to Section 18 of the SARFAESI Act are "**borrower has to deposit**", it is not appreciable how the amount deposited by the auction purchaser on purchase of secured assets can be adjusted and/or appropriated towards the amount of pre-deposit, to be deposited by the borrower. It is the "**borrower**" who has to deposit the 50% of the amount of "debt due" from him. At the same time, if the borrower wants to appropriate and/or adjust the amount realised from sale of the secured assets deposited by the auction purchaser, the borrower has to accept the auction sale. In other words, the borrower can take the benefit of the amount received by the creditor in an auction sale only if he unequivocally accepts the sale. In a case where the borrower also challenges the auction sale and does not accept the same and also challenges the steps taken under Section 13(2)/13(4) of the SARFAESI Act with respect to secured assets, the borrower has to deposit 50% of the amount claimed by the secured creditor along with interest as per section 2(g) of the Act 1993 and as per section 2(g), "debt" means any liability inclusive of interest which is claimed as due from any person.

xxx xxx xxx

17. xxx xxx xxx

It is observed and held that the borrower has to deposit 50% of the amount of "debt due" as claimed by the bank/financial

> institution/assignee along with interest as claimed in the notice under Section 13(2) of the SARFAESI Act and the borrower is not entitled to claim adjustment/appropriation of the amount realised by selling the secured properties and deposited by the auction purchaser when the auction sale is also under challenge."

6. Keeping in view facts and circumstances as above, learned counsel for petitioners is unable to point out any ground which calls for interference by this Court. No illegality or infirmity has been pointed out in impugned order dated 03.12.2015.

7. Writ petition is, accordingly, dismissed with no order as to costs.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 03, 2024
rts

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