2024:PHHC:062108-DB

103+222 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-21564-2022 (O&M)
Date of Decision: May 06, 2024

M/S HARSHIKA MOTORS AND ANOTHER ..... Petitioners

Versus

STATE BANK OF INDIA ..... Respondents

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

Present: Mr. Karan Gaba, Advocate for
Mr. Rohit Suri, Advocate for the petitioners.

Mr. Chandeep Singh, Advocate for the respondent.

****

LISA GILL, J.

1. Learned counsel for petitioners is unable to deny that controversy as raised in this writ petition wherein petitioner No. 1 claims to be registered under Micro Enterprise under the Micro, Small and Medium Enterprises Development Act, 2006, is squarely covered against petitioners in view of decision 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.
>
> xxx xxx xxx
>
> 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."

2. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail statutory remedy(ies) available to them in accordance with law. However, keeping in view the fact that interim order in favour of petitioners was granted on 19.09.2022 to the extent

that all actions initiated by respondents pursuant to notice dated 26.04.2022 issued under Section 13(2) of SARFAESI Act would be stayed until further order, same shall continue for fifteen (15) days to enable petitioners to avail remedy as may be available to them. Question of continuance or otherwise of interim order in petitioners' favour shall necessarily be within the realm of consideration by the appropriate Forum which will be considered in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

3. It is clarified that interim protection afforded to petitioners shall automatically stand vacated in the absence of any order by the appropriate authority.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

May 06, 2024
rts

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