

110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16874-2023 (O&M)
Date of Decision: February 08, 2024

M/S JAIN UDHYOG AND ANOTHER Petitioners

Versus

PUNJAB NATIONAL BANK AND OTHERS Respondents

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

Present: Mr. Rakesh Gupta, Advocate for the petitioners.

Mr. V.K. Dewan, Advocate for the respondent – Bank.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside letter dated 17.07.2023 (Annexure P17) whereby petitioners' request for restructuring of loan in terms of guidelines dated 17.03.2016 issued by Reserve Bank of India in respect to 'Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises', has been declined.

2. Learned counsel for petitioners submits that SA-147-2021 filed by petitioners was disposed of by learned DRT-I, Chandigarh with a direction to respondent – Bank to consider representation submitted by the petitioners and placed before Designated Committee but the same has been rejected by respondent – bank on 17.07.2023 by passing a non-speaking order dated

17.07.2023. Learned counsel for petitioners submits that MA No. 61 of 2023

was filed by petitioners before learned DRT-I, Chandigarh for initiating contempt proceedings against Managing Director, Punjab National Bank and others raising specific plea that constitution of Designated Committee is not proper and in accordance with applicable circular, therefore, order of rejection of petitioners' case for restructuring/revival by the said illegal constituted Committee should be set aside, being null and void. This application was dismissed by learned DRT-I, Chandigarh vide order dated 13.10.2023. Learned counsel for petitioners vehemently argues that this order is absolutely illegal and arbitrary. It is submitted that in this factual scenario any proceedings undertaken by respondent – bank under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') would be illegal and arbitrary. It is, thus, prayed that this petition be allowed.

3. Learned counsel for respondent-Bank submits that that action taken by respondent-Bank is in complete consonance with applicable provisions of law. It is, thus, prayed that this writ petition be dismissed.

4. Heard learned counsel for parties and have perused the file.

5. Petitioners challenged proceedings under SARFAESI Act initiated against them on the premise that Designated Committee, which considered their case for restructuring/revival (borrower being MSME), was not constituted in terms of applicable RBI circular, therefore, any decision taken by such Committee is null and void. It is further argued that procedure, as prescribed by the applicable Regulation, was not followed by the said Designated Committee, no opportunity of hearing was provided to petitioners and petitioners' case for revival/restructuring was rejected in a casual and routine manner without any

reasons thereof. Having carefully scrutinized the matter, we do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. Learned counsel for petitioners is unable to point out any such exceptional or extraordinary circumstance, which calls for our interference, at this stage.

6. Admittedly, SARFAESI Act is a complete code in itself providing for specific remedies for any grievances which may arise in respect to proceedings taken thereunder. Interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India in such like matters has to be minimal and actuated only in extra-ordinary and exceptional circumstances. Reference in this regard can be made to judgments of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110; Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34 and M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.** Hon'ble the Supreme Court in the case of **M/s South Indian Bank** (supra) held as under:-

“13. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.

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14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations.

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15. The object and reasons behind the Act 54 of 2002 are very clear as observed by this Court in **Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311.** While it facilitates a faster and

smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to set aside an illegal order and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression “any person”, who could approach the Tribunal.

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18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

7. Arguments as raised before us, in our considered opinion, do not entitle petitioners for any relief in the present proceedings under Article 226 of Constitution of India. Petitioners are at liberty to raise all available pleas before the appropriate Forum.

8. Writ petition is, accordingly, dismissed with liberty as aforementioned.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

February 08, 2024
Rts

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