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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20010-2022 (O&M)
Date of Decision: 18.04.2024

GURVIR SINGH

..... Petitioner

Versus

STANDARD CHARTERED BANK AND OTHERS

..... Respondents

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

Present: Mr. Vikas Bali, Advocate
for the petitioner.

Mr. Aalok Jagga, Advocate and
Mr. H.S. Jagdev, Advocate
for respondent No. 1-Bank.

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LISA GILL, J. (Oral)

1. Prayer in this writ petition is for quashing impugned demand notice dated 23.10.2019 issued under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and all subsequent proceedings arising thereof. There is a further prayer for quashing action of respondent No. 1-Bank wherein loan account of petitioner has been classified as Non-Performing Asset (NPA) on 01.10.2019. Further prayer is also for staying the operation of impugned order dated 07.09.2021 during pendency of this writ petition.

2. Learned counsel for petitioner is unable to deny that issue sought to be raised in this writ petition is squarely covered against the petitioner 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**, whereby 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 here-in-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."

3. Learned counsel for petitioner is unable to point out any distinguishing factor which would persuade to take a different view.

4. Keeping in view the above, this writ petition is dismissed with liberty to petitioner to avail remedy(ies) available to him in accordance with law for redressal of his grievance(s).

5. As interim order passed in favour of petitioner on 06.09.2022 has continued till date, same shall enure for a period of fifteen (15) working days from the date of receipt of certified copy of this order, in order to enable petitioner to avail appropriate remedy as may be available in accordance with law. Question of continuance or otherwise of interim order in petitioner's favour is necessarily 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.

6. It is clarified that interim protection afforded to petitioner shall not enure beyond 15 working days in the absence of appropriate order by competent authority/Tribunal in accordance with law.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

18.04.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No