**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

108 CM-14550-CWP-2024 IN CWP-20591-2024.
Date of Decision: 11.09.2024.

M/s Competent Engineers
....Applicant/petitioner.

VERSUS

Canara Bank
....Respondent.

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CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Abhay Karan Khanna, Advocate for the applicant/petitioner.

Mr. Iqbal Mohammed, Advocate for the respondent.

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ANUPINDER SINGH GREWAL, J. (Oral)

With the consent of learned counsel for the parties, hearing of the main case is preponed and the same is taken on Board today itself.

2. The petitioner-MSME has sought quashing of the demand notice dated 24.04.2024, sale notice dated 18.07.2024 as well as quashing of the wrongful declaration of the petitioner's account as NPA. The petitioner has also sought a writ of mandamus directing the bank to constitute the committee as per the RBI Framework for Revival and Rehabilitation of Micro, Small, Medium Enterprises dated 17.03.2016 (for short 'RBI Framework') and that the respondent-bank be prohibited from taking any coercive action against the petitioner.

3. Learned counsel for the petitioner submits that coercive measures

have been initiated under the SARFAESI Act, without any effort towards restructuring as mandated under the RBI Framework. He has relied upon the judgment of the Supreme Court in the case of **M/s Pro Knits vs. The Board of Directors of Canara Bank and others**, bearing Special Leave Petition (C) No.7898-2024, decided on 01.08.2024. He also submits that respondent is to take possession of the secured asset on 12.09.2024 and has put the property to auction vide Sale Notice dated 31.08.2024 for 25.09.2024.

4. Learned counsel for the respondent-Bank while referring to the written statement filed in Court today, which is taken on record, submits that the restructuring was undertaken on 29.12.2021 and a moratorium for a period of two years was put in place. The account of the petitioner was restructured in the following manner:-

Nature of Limit	**Existing Exposure**	**Permitted Exposure**
OCC	775.00 Lac	600.00 Lac
Fresh WCTL	--	175.00 Lac
WCTL (Existing GECL)	160.45 Lac	160.00 Lac
Term Loan	21.82 Lac	21.82 Lac
Fresh GECL 1.0 Ext	--	83.00 Lac
Total	957.27 Lac	1039.82 Lac

Thereafter, when the petitioner defaulted on repayment towards the loan, proceedings under the SARFAESI Act were initiated and the account was declared as NPA on 31.03.2024. The notice under Section 13(2) of SARFAESI Act was issued on 24.04.2024. He has also relied upon the judgments of the Supreme Court in the cases of **United Bank of India vs. Satyawati Tandon and others, (2010) 8 SCC 110; Celir LLP vs. Bafna Motors (Mumbai) Privated Limited and others, (2024) 2 SCC 1** and **South Indian Bank Limited and others vs. Naveen Mathew Philip and another,**

2023 SCC OnLine SC 435, to contend that Writ Court should not exercise jurisdiction when statutory remedy has been provided.

5. Learned counsel for the respondent also submits that after issuance of notice under Section 13(2) of SARFAESI Act, for a sum of Rs.9,65,02,048.55, no amount has been paid by the petitioner for discharging its liability.

6. Heard.

7. Learned counsel for the petitioner has placed heavy reliance on judgment in **M/s Pro Knits Vs. The Board of Directors of Canara Bank & Ors(supra)**. The relevant paragraphs are reproduced hereunder:-

> ***"14.*** *However, pertinently the whole process of enforcement of security interest as contained in Chapter III of the SARFAESI Act, could be initiated only when the borrower makes* ***any default in repayment of secured debt or any installment thereof****, and his account in respect of* ***such debt is classified by the secured creditor as non-performing asset****, in view of Section 13(2) of the said Act.*
>
> ***16.*** *The said Framework also enables the Micro, Small or Medium Enterprise to voluntarily initiate the proceedings under the said Framework, by filing an application along with the affidavit of an authorized person.* ***Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorization under the Special Mention Account category, before the loan account of MSME turns into NPA is a very crucial stage****, and therefore it would be incumbent on the part of the concerned MSME also to produce authenticated and verifiable documents/material for substantiating its claim of being MSME, before its account is classified as NPA. If that is not done, and* ***once the account is classified as NPA, the banks i.e. secured creditors would be entitled to take the recourse to***

<u>Chapter III of the SARFAESI Act for the enforcement of the security interest.”</u>

8. However, the same is distinguishable on facts as in that case the appellants who were MSME units had been declared as Non-Performing Assets (NPA), without following the procedure laid down in the Instructions for Framework for Revival and Rehabilitation of MSMEs and it was under such circumstances that Supreme Court had held that these instructions are statutory in nature and binding on all Scheduled Commercial Banks, licensed to operate in India by the Reserve Bank of India. In the instant case, petitioner was registered as MSME on 22.12.2021 and restructuring was duly carried out by Bank on 29.12.2021 while it was only in 2024 that the account of the petitioner was declared as NPA after two years of moratorium, during which the petitioner was only required to pay the interest component. Once the moratorium was lifted, the borrower was required to repay the loan in terms of the restructured schedule. Since, the borrower/petitioner failed to repay the loan amount, the consequential proceedings were initiated by the secured creditor-Bank under the SARFAESI Act.

9. The petitioner-MSME had not made any payment towards the loan amount even after the moratorium was lifted and therefore, due to the default in repayment of debt, the petitioner’s account was declared as NPA.

10. The petitioner-MSME is stated to have taken a loan from the respondent-bank and restructuring had been carried out in terms of the RBI Framework by the respondent on 29.12.2021. Moratorium for a period of two years was put in place and thereafter respondent-bank had initiated proceedings under the SARFAESI Act. The petitioner has not paid any

amount after issuance of notice under Section 13(2) of SARFAESI Act . Even after the moratorium had been lifted, the petitioner has not paid anything.

11. We are, therefore, of the considered view that the writ petition is liable to be dismissed and the same is accordingly dismissed. The petitioner would be at liberty to seek recourse to the alternative remedy in accordance with law.

Pending application(s), if any, also stands disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

11.09.2024
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No