

CWP-27006-2021

2024:PHHC:068355-DB



211-b **IN THE HIGH COURT OF PUNJAB AND HARYANA**
 AT CHANDIGARH

1. **CWP-27006-2021**
Date of Decision: May 15, 2024

PUNLAND TINT INDUSTRIES PVT. LTD. Petitioner

Versus

PUNJAB NATIONAL BANK Respondent

2. CWP-15516-2023

PUNLAND TINT INDUSTRIES PVT. LTD. Petitioner

Versus

PUNJAB NATIONAL BANK Respondent

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

Present: Mr. Sandeep Wadhawan, Advocate for the petitioner.

Mr. Pranjal Chawla, Advocate and
Mr. Harsh Garg, Advocate for the respondent.

LISA GILL, J.

1. This order shall dispose of two writ petitions i.e. CWP-27006-2021 and CWP-15516-2023, which are taken up together for consideration and

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decision at request and with consent of learned counsel for petitioner. Both petitions are also listed together at the same serial number.

2. Petitioner claims to be the successful bidder of secured asset by way of private treaty duly sanctioned by respondent – Bank. Proceedings for sale of the property were conducted under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’). CWP-27006-2021 was filed by petitioner seeking direction to respondent – Bank to extend the time limit for deposit of entire debt amount beyond 31.12.2021 as it is stated that petitioner was not afforded loan facility, therefore, unable to deposit the amount with respondent – Bank. It is further prayed that in the interregnum, respondent – bank be directed not to re-sell/re-auction the property or forfeit the earnest money deposited by petitioner. Learned counsel for petitioner submits that notice for auction of immovable property of the borrower M/s Universal Woollen Mills was issued by the respondent – bank. Said auction had failed. Petitioner – Company on 31.03.2021 offered a bid for a sum of Rs. 4.54 crores under private treaty for purchase of said property and two demand drafts of Rs.1.02 crores and Rs. 11.50 lakhs that is total of Rs.1,13,50,000/- was submitted alongwith. In response thereto, respondent – Bank vide letter dated 05.04.2021 conveyed that the proposal was under consideration and decision would be conveyed after approval from the competent authority.

3. It is submitted that due to outbreak of second wave of COVID-19, a grave situation had arisen. Nothing was heard from the respondent – bank till 22.09.2021 when authorized signatory of petitioner received a call from authorized officer of respondent - bank seeking revalidation of the drafts

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enclosed alongwith letter dated 31.03.2021. Drafts were revalidated and vide communication dated 07.10.2021, the sale was confirmed and petitioner directed to deposit the balance amount within 15 days from the date of confirmation of sale. Learned counsel for petitioner submits that on the same day i.e. 11.10.2021 petitioner submitted before the bank that sufficient time should be afforded to petitioner to deposit 75% of the amount due which would be paid from the loan for which petitioner would be applying before the bank itself. Period of deposit of the balance amount was extended upto 31.12.2021. Loan for the purpose was applied for by the petitioner but was not granted by the respondent- bank upon which petitioner sought for further extension. It is in this situation that CWP-27006-2021 was filed.

4. During pendency of said writ petition, earnest money was forfeited and notice for auction of the property was issued on 11.07.2023.

5. CM-5604-CWP-2023 was filed in CWP-27006-2021 seeking amendment in the writ petition for incorporating the prayer for setting aside decision of bank dated 20.03.2023 to forfeit 25% of the debt amount deposited by petitioner. CWP-15516-2023 was filed for setting aside e-auction notice dated 11.07.2023. Learned counsel for petitioner submits that it is the fault of the Bank that amount could not be deposited within stipulated time as loan was not sanctioned by the Bank in favour of petitioner. It is, thus, prayed that this writ petition be allowed.

6. Learned counsel for respondents has raised objection qua entertainability of petition apart from submitting that once petitioner did not deposit entire debt amount, it is open to the respondent – bank to recover the amount in question and conduct auction of property. Respondent – Bank, it is

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submitted, was under no mandate to positively grant facility of loan to petitioner and neither had any such assurance been given. Loan has to be sanctioned in accordance with applicable norms and regulations. Dismissal of writ petition is sought.

7. Heard learned counsel for parties.

8. It is relevant to note at this stage that it has been held by Hon'ble the Supreme Court in **Agarwal Tracom Pvt. Ltd. Versus Punjab National Bank and others (2018) 1 SCC 626** that it is open to an auction purchaser also to approach the learned DRT for redressal of grievances, if any, in respect to auction proceedings conducted by secured creditors under SARFAESI Act, which is also a measure taken under Section 13(4) of SARFAESI Act. The auction purchaser/purchaser of the secured asset in proceedings under SARFAESI Act has a right to approach learned DRT for challenging proceedings which have been undertaken under SARFAESI Act. Gainful reference in respect to minimal interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India in matters like the present 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 or 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.”

9. In the given factual matrix, we do not deem it appropriate to delve on the merits of the matter i.e. whether petitioner had a right to loan being afforded by respondent – bank for deposit of 75% of the amount in question and whether respondent – bank was at fault in not sanctioning the loan within the stipulated period or if respondent – bank has correctly forfeited the amount in question. It is a settled position that specific remedies for redressal of grievances, if any, which any person may have in respect to proceedings undertaken under SARFAESI Act are clearly provided thereunder. Present writ petition is not entertainable.

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10. Keeping in view the facts and circumstances as above, these writ petitions are disposed of with liberty to petitioner to avail remed(ies) as may be available to it in accordance with law.
11. There is no expression of opinion on the merits of matter.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

May 15, 2024
rts

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