

2024:PHHC:021888-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.27153 of 2022(O&M)

Date of Decision:15.02.2024

M/s Ramit Art Press and others

.....Petitioners

Versus

Authorized Officer Bank of Baroda and others

..... Respondents

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

Present: Ms. Jyoti Sareen, Advocate
for the petitioners.

Mr. Sahil Soi, Advocate
for respondents no.1 to 3 (through video conferencing).

Mr. Rohit Bansal, Sr. DAG., Punjab.

LISA GILL, J(Oral).

1. Prayer in this writ petition is for quashing demand notice dated 04.09.2019, Annexure P-5, under Section 13 of Securitization and Reconstruction of Financial Asset Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act), possession notice dated 18.12.2019, Annexure P-7, under Section 13(4) of SARFAESI Act and sale notice dated 26.10.2022, Annexure P-15 issued by respondent no.1 and action of respondents no. 4 and 5 taken under SARFAESI Act.

2. Learned counsel for petitioners fairly states that controversy at hand is squarely covered against petitioners in terms of decision dated 18.12.2023, passed in CWP No. 21657 of 2022, titled **M/s Technico Strips and Tubes Private Limited and another Vs. Deutsche Bank AG and another**, 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.

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.”

3. Learned counsel for petitioners is unable to point out any distinguishing factor in the present writ petition which calls for interference in exercise of jurisdiction under Article 226 of the Constitution of India.

4. Writ petition is accordingly dismissed with liberty to petitioners to avail remedy (ies) available to them in accordance with law. Needless to say, parties are at liberty to enter into any mutually acceptable settlement.

5. Keeping in view the fact that interim order was granted on 30.11.2022 in this writ petition with the same enuring till date, it is directed that petitioners possession be protected for twenty (20) working days from receipt of certified copy of this order to enable them to avail remedy as may

be available to them in accordance with law. In case, petitioners file appropriate application/ petition accompanied with requisite application(s), question of continuance or otherwise of interim order in petitioners favour shall be considered 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 the petitioners shall not enure beyond 20 working days in the absence of an order by the appropriate authority. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

February 15, 2024.

s.khan

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