2024:PHHC:034049-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4841 of 2024(O&M)
Date of Decision:11.03.2024

M/s Arjun Enterprises

......Petitioner

Versus

State of Haryana and others

...... Respondents

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

Present: Mr. Aman Joon, Advocate
for the petitioner.

Mr. Gaurav Goel, Advocate
for respondent-Bank.

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LISA GILL, J(Oral).

1. Prayer in this writ petition is for directing respondent no. 3 to show cause as to why the mandatory provision of Clause 4.2 of "Frame Work for Revival & Rehabilitation of Micro, Small & Medium Enterprises" issued by Reserve Bank of India (RBI) vide notification dated 17.03.2016, Annexure P-10, has not been complied with before passing impugned order dated 15.10.2022, Annexure P-11, whereby restructuring of account of petitioner company has been rejected in an allegedly illegal and arbitrary manner. There is further prayer for quashing impugned order dated 15.10.2022, Annexure P-11 passed by Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (FRR for MSMEs) Committee of respondent no.3. There is further prayer for setting aside notice dated 09.06.2021, Annexures P-4, under Section 13(2) of

Securitization and Reconstruction of Financial Asset Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act), notice dated 04.09.2021, Annexures P-5, under Section 13(4) of SARFAESI Act as well as all proceedings initiated under SARFAESI Act.

2. Petitioner had earlier filed CWP No. 21907 of 2022, challenging declaration of petitioner's account 'Non Performing Asset; (NPA) on the ground that its case for restructuring had not been referred to the Designated Committee in view of Circular dated 17.03.2016, issued by RBI i.e., Frame Work for Revival & Rehabilitation of Micro, Small & Medium Enterprises". Said writ petition was dismissed as withdrawn on 06.11.2023 as during the pendency of said writ petition, petitioner's case for restructuring was rejected by the Designated Committee. Liberty was afforded to petitioner to challenge such rejection in accordance with law.

3. Learned counsel for petitioner submits that in this view of the matter, present writ petition has been filed. It is submitted that there is complete violation of provisions of RBI Circular dated 17.03.2016. Specific reference is made to Clause 2.2 thereof. It is further submitted that in view of violation of said Circular, all proceedings undertaken by respondent-Bank under SARFAESI Act including notice dated 09.06.2021, under Section 13(2) of SARFAESI Act and notice dated 04.09.2021, under Section 13(4) of SARFAESI Act and order dated 19.04.2022, under Section 14 of SARFAESI Act, should be set aside.

4. We have heard learned counsel for the parties and have gone through the file with their able assistance.

5. Present writ petition has been filed basically challenging proceedings under SARFAESI Act on the ground of violation of RBI Circular dated 17.03.2016. The controversy at hand is squarely covered

against petitioner 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.
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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 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."

6. In view of the facts and circumstances as above, we do not find any ground for causing interference in this writ petition for setting aside proceedings under SARFAESI Act on the ground of violation of Circular

dated 17.03.2016. All pleas and arguments as raised before us are very well within the realm of consideration by the Appropriate Forum/ Tribunal.

7. Writ petition is accordingly dismissed with liberty to petitioner to avail statutory remedy(ies) available to it in accordance with law. There is no expression of opinion on the merits of the matter. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

March 11, 2024.

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

SANJAY KHAN
2024.03.16 14:52
I attest to the accuracy and integrity of this document