IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-20970 of 2021(O& M)
Date of decision: 11.09.2025

M/S AGRO EQUIPMENT (INDIA) PARTNERSHIP FIRM

….Petitioner

V/S

CANARA BANK AND OTHERS

… Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY, JUDGE

Present:- Mr. Sardavinder Goyal, Advocate (Arguing counsel) and
Mr. Nishant Sindhu, Advocate, for the petitioner.

Mr. Rakesh Gupta, Advocate for respondent nos. 1 & 2.

Mr. Aman Bansal, Advocate (Arguing Counsel) and
Mr. Lakshay Jindal, Advocate
for respondent no. 5 (auction purchaser)

Mr. Satya Pal Jain, Addl. Solicitor General of India, with
Mr. Dheeraj Jain, Senior Panel Counsel, for respondent-UOI.
Mr. Deepak Balyan, Addl. Advocate General, Haryana.

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<u>SHEEL NAGU, CHIEF JUSTICE (Oral)</u>

1. This petition has been filed by petitioner-guarantor, assailing the auction notice dated 03.09.2021 (Annexure P-5) issued by the respondent-Bank, whereby the secured asset was put to an auction on 30.09.2021.

2. The ground raised to assail the aforesaid auction notice (Annexure P-5) is that the mandatory provisions of Rules 8 and 9 of the Security Interests (Enforcement) Rules, 2002 (for short 'the Rules of 2002) were not followed, to the extent of providing less than 30 days for the petitioner-guarantor to clear the dues. The relevant statutory provisions of Rules 8(5)&(6) and 9(1) of the Rules of 2002, are reproduced hereunder for ready reference and convenience;-

Section 8 of Sale of immovable secured assets.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) *Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-*

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

[(c) by holding public auction including through e-auction mode; or]

(d) by private treaty.

[Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.]

(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

[Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.]

(7) xxx xxx xxx

(8) xxx xxx xxx

Section 9 Time of sale, Issue of sale certificate and delivery of possession, etc.

(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.]

3. This Court while taking cognizance of this matter on 12.10.2021, issued notice and thereafter on 09.12.2021, upon finding that the sale certificate has been issued in favour of respondent no. 5, observed that the same shall remain subject to further orders in this writ petition.

4. The aforesaid interim order has continued to subsist till date when this case came up today and is being finally disposed of.

5. The object behind Rules 8(5) and 9(1) of the Rules of 2002 is to afford last opportunity to the petitioner/guarantor to clear the outstanding dues in the loan account before the secured assets can be liquidated and the sale proceeds, adjusted against the outstanding dues.

6. A bare reading of the order passed by this Court on 12.10.2021, while taking cognizance of the matter reveals that at the relevant point of time, the jurisdictional Bench of DRT, Chandigarh was non-functional and in all probability this petition was entertained for that reason.

7. Subsequently, during pendency of this petition, another ground was raised by the petitioner that an application u/s 19(6) of the Insolvency and Bankruptcy Code, 2016 was filed on 09.07.2022, and as such, it is contended that the interim moratorium stood triggered.

7.1 The filing of an application u/s 19(6) was an event, which took place subsequent to the cause of action raised in this petition i.e. the auction as well as the Sale Certificate. Therefore, it cannot cast an adverse shadow upon the said cause and therefore the said submission, which was though not brought on record by way of an amendment in this petition, but was merely placed by way of an additional pleadings, stands rejected.

8. The NPAs are a huge burden on the public exchequer and Banks/Financial Institutions are duty bound to recover the same and lessen the burden on the financial system. Petitions such as the present one, which are an attempt to scuttle the genuine attempts of the Banks/Financial Institutions to recover the outstanding dues, ought to be discouraged.

9. Moreso, the DRT, Chandigarh became functional since 25.02.2022 and, therefore, in all fairness, the petitioner ought to have disclosed this fact to this Court. Not having done so, the petitioner, in this equity jurisdiction, is not entitled to any relief.

10. The sole intention and object of Rules 8(5) and 9(1) of the Rules of 2002 is to afford an opportunity to a bona fide/guarantor to clear the dues. If the petitioner/guarantor had any bona fide intention of clearing the dues, he ought to have shown his bona fide by bringing on record the attempts made by the petitioner/guarantor to clear the outstanding dues by furnishing substantial amount of the outstanding dues of Rs.17 Crores as mentioned in the auction notice. However, it is an admitted fact that against the said outstanding dues, the petitioner/guarantor had paid only Rs.6,80,00,000/- before the loan account was declared as NPA.

11. This equity jurisdiction under Article 226 of the Constitution of India cannot be exercised in favour of the petitioner/guarantor, who has not come with clean hands and has failed to show his bona fides.

12. Accordingly, this Court declines interference in this petition and leaves it to the petitioner to avail the statutory remedy, if so advised.

13. In view of the above, the present petition stands disposed of.

14. All pending civil Miscellaneous application(s), if any, also stand disposed of.

(SHEEL NAGU)
CHIEF JUSTICE

(SANJIV BERRY)
JUDGE

11.09.2025
Kamal Gandhi

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