
(2011) 07 UK CK 0148

In the Uttarakhand High Court

Case No : Special Appeal No. 143 of 2011

Amba Devi Paper Mills Ltd.

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(3A), 17, 17A

Citation : (2012) 3 BC 425 : (2012) 1 UC 552 : (2011) 2 UD 9

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—The writ petition has been dismissed at the threshold on the ground that the Appellant has alternative efficacious remedy of filing an appeal u/s 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act). As it appears to us, Sub-Section 3A has been inserted in Section 13 of the Act with effect from 11th November, 2004. In terms whereof, the secured creditor, if not accepting representation or objection of the borrower, is obliged to communicate within one week of receipt of representation or objection, the reasons for non-acceptance of the representation or objection of the borrower. In the instant case, it is the contention of the Appellant that within one week from the date of representation or objection of the Appellant, Respondent Bank did not communicate its decision not to accept such representation or objection with reasons in support thereof. However, even if the Respondent Bank had communicated non-acceptance of the representation or objection of the Appellant with reasons in support thereof, Appellant could not prefer an application to the Debt Recovery Tribunal u/s 17 of the Act or to the Court of the District Judge u/s 17A of the Act in respect thereof. In other words, in respect of non-acceptance of representation or objection, Appellant has no remedy either before the Debt Recovery Tribunal or before the Court of District Judge. In the circumstances, we accept the contention of the

Appellant that the writ petition of the Appellant could not be rejected at the threshold on the ground that the Appellant has an efficacious alternative remedy.

2. In the notice u/s 13(2) of the Act, Respondent Bank contended that the operation and conduct of the financial assistance/credit facilities given to the Appellant have become irregular and the debt has been classified as non-performing assets in accordance with the directives and guidelines relating to asset classifications issued by the Reserve Bank of India consequent upon the default committed by the Appellant in re-payment of principal debt and interest thereon. Two replies thereto were given. One was given by the Appellant and the other by its legal advisor. In the reply given by the Appellant, it was mentioned that due to slump in the market and a complain regarding pollution, production was paused, due to which Appellant was unable to pay the debt instalments regularly. It was added that production declined since September 2009 and electricity supply remains disconnected since October 2009. In that letter, it was accepted that the accounts of the Appellant have become non-payment accounts and it was asserted that no interest could accrue thereon. It was contended that there was re-negotiation of one time settlement when Rupees one crore fifteen lacs and the liability of the Director Anil Kumar Mittal amounting to Rupees thirty lacs were deposited. It was stated that there was a request for permitting payment, by instalments, of rest of the liability and debt. It was ultimately contended that the amount claimed in the notice u/s 13(2) of the Act is wrong. In the letter of the Advisor of the Appellant, it was stated that the outstanding amount shown in the notice includes interest calculated at the contractual rate upto 24th April, 2011. It was also stated that amount of outstanding shown is wrong and against the provisions of the Act. Although, in the said letter it was contended that the accounts of the Appellant were wrongly classified as non-performing asset and though the circular in that regard of the Respondent Bank was referred, but no attempt was made in that letter to show that in terms of the said circular the accounts of the Appellant could not be treated as non-performing asset.

3. We, accordingly, conclude the matter and refuse to entertain the appeal on the ground that there is nothing on record, wherefrom one can come to a definite conclusion that the accounts of the Appellant were not non-performing accounts as on the date of issuance of the notice u/s 13(2) of the Act.

4. The appeal fails and the same is, accordingly, dismissed.