(2020) 09 DRT CK 0019

In the Debts Recovery Tribunal

Case No : Original Application No. 121 Of 2020

Bank Of Baroda APPELLANT

Vs

M/s Span Traders And Anr. RESPONDENT

Date of Decision : 16-09-2020

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 2(g), 17(1), 19(1), 19(5)(i), 19(20), 19(22), 25, 26, 27, 28Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 5, 12(i)
Bankers Books Evidence Act, 1891 — Section 4
Code Of Civil Procedure, 1976 — Section 34

Citation : (2020) 09 DRT CK 0019

Hon'ble Judges : Shammi Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Applicant Bank has filed this Original Application on 17.03.2020 under section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993 (as amended from time to time) against the Defendants for recovery of Rs.37,12,660.40Ps. (Rupees - Thirty-Seven Lacs Twelve Thousand Six Hundred Sixty and Paisa Forty only) alongwith pendente-lite and future interest @13.35% per annum with monthly rests plus penal interest @2.00% per annum till the date of realization and costs.

2. The brief facts of case are that the Defendant No.1 is a Proprietorship Firm. The Defendant No.2 is Proprietor of the Defendant No.1 Borrower Firm. The Defendant No.1 through its proprietor approached Applicant Bank for grant of financial assistance in the shape of Cash Credit Limit of Rs.20,00,000/- for business requirement. Applicant Bank after considering the request on 16.09.2013 sanctioned a Cash Credit Limit of Rs.20,00,000/- for business requirement to the Defendant No.1 under CGTMSE Guarantee Cover against primary security of hypothecation of entire stocks, Book Debts, Plant & Machinery and equitable mortgage of immovable property owned by the Defendant No.2 in favour of Applicant Bank. The Defendants executed and signed

various loan and security documents on 16.09.2013 in favour of Applicant Bank. The rate of interest was agreed between the parties @1.25% above Base Rate, applicable at that time @11.50% per annum with monthly rests plus penal interest @2.00% per annum subject to change from time to time as per RBI Guidelines.

3. Further, Defendant No.1 through its proprietor again approached Applicant Bank for grant of more financial assistance in the shape of enhancement of existing Cash Credit Limit. Applicant Bank after considering the request on 27.09.2014 enhanced existing Cash Credit Limit to Rs.30,00,000/- for business requirement to the Defendant No.1 under CGTMSE Guarantee Cover against primary security of hypothecation of entire stocks, Book Debts, Plant & Machinery and by way of extension of charge of already created equitable mortgage of immovable property owned by the Defendant No.2 in favour of Applicant Bank. The Defendants again executed and signed various loan and security documents on 27.09.2014 in favour of Applicant Bank. The rate of interest was agreed between the parties @1.25% above Base Rate, applicable at that time @11.50% per annum with monthly rests plus penal interest @2.00% per annum subject to change from time to time as per RBI Guidelines.

4. However, after availing the aforesaid Loan/Credit Facility, the Defendant No.1 & 2 failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular. Despite repeated reminders and persuasion, the Defendant No.1 & 2 failed to regularize the loan account. Consequently, the said account of the Defendant No.1 & 2 was classified as NPA on 31.03.2019 and recalled by Applicant Bank. Thereafter, Applicant Bank served Demand Notice to the Defendants to repay the outstanding dues but the Defendants failed to make the payment of outstanding dues. Applicant Bank has also initiated action under the S.A.R.F.A.E.S.I. Act, 2002 against the secured assets/mortgaged property but no secured asset has been sold till date. Hence, the present Original Application has been filed by Applicant Bank against Defendants for recovery of Rs.37,12,660.40Ps. (Rupees Thirty-Seven Lacs Twelve Thousand Six Hundred Sixty and Paisa Forty only) alongwith pendente-lite, future interest, costs and for issuance of Recovery Certificate for the said amount.

5. The averments of Applicant Bank are set out in detail in its Original Application and therefore, these are not being stated here afresh to avoid a repetition of facts.

6. The summons were issued to the Defendants. Despite service as well as due intimation qua hearing of the matter through virtual mode of V.C., neither the Defendants appeared nor filed written statement/objections/counter- claim, if any within 30- 45 days in terms of section 19(5)(i) of the ROB Act, 1993 read with Rule 12(i) & 5 of Debts Recovery Tribunal (Procedure) Rule, 1993. Hence, right to file written statement/objections or Counter claim, if any of the Defendants was closed. Further, the Defendants were ordered to be heard ex-

parte vide order dated 31.08.2020.

7. Applicant Bank filed its evidence by way of affidavit of Sh. "Tusher Dhawan, Senior Manager of Applicant Bank as AW- 1/1 who proved the various loan and security documents which are marked as Exhibit- AW-1/1 to Exhibit- AW-1/36.

8. I have heard the ex-parte arguments of Ld. Counsel for Applicant Bank and perused the material on record.

9. The point for consideration is whether Applicant Bank is entitled to recover the claim as prayed for?

10. Section 17(1) of the RDB Act of 1993 vests a Tribunal constituted under the Act with the jurisdiction, powers and authority to entertain and decide applications from the Banks and Financial Institutions for recovery of debts due to such Banks and Financial Institutions. 'Debt' is defined in Section 2(g) of the RDB Act, 1993. The RDB Act, 1993 creates a complete code for the adjudication of matters referred to in Section 17 and provides for the procedure in respect thereof. The jurisdiction of the Civil Courts to try cases in respect of recovery of debts of Rs.20.00 Lac and above due to Banks and Financial Institutions stands ousted by the Act. Hence, Original Application filed U/s 19(1) of the Recovery of Debts and Bankruptcy Act, 1993 is within the jurisdiction and legally maintainable before this Tribunal.

11. Further, Applicant Bank has fully corroborated the averments made in the O.A. against the Defendants through evidence of witness Sh. Tushar Dhawan, Senior Manager of Applicant Bank as AW-1/1. The Applicant Bank has also established its case through documentary evidence being Exhibit- AW-1/1 to Exhibit- AW-1/36. On a careful scrutiny of the evidence on affidavit and exhibits marked as Exhibit- AW-1/1 to Exhibit AW-1/36, it is proved that Defendant No.1 through its Proprietor had availed the Cash Credit Limit facility from the Applicant Bank under CGTMSE Guarantee Cover against primary security of hypothecation of entire stocks, Book Debts, Plant & Machinery and equitable mortgage of immovable property owned by Defendant No.2 by executing various loan & security documents detailed as above in favour of the Applicant Bank. A perusal of Original Application, evidence and documents relied upon clearly show that Defendant No. l & 2 had utilized the above loan facility as granted to them.

12. However, after availing the aforesaid Cash Credit Limit facility, Defendant No.1 & 2 failed to maintain financial discipline as per terms and conditions of the loan agreement. Consequently, the said account was rightly classified as NPA on 31.03.2019 and recalled by Applicant Bank. Thereafter, Applicant Bank served Demand Notice dated 29.04.2019 Exhibit- AW-1/34 to the Defendants to repay the outstanding dues but the Defendants failed to make the payment of outstanding dues. The whole case of the Applicant Bank is based on documentary evidence and the witness has duly proved all these documents. In my view there is no question of disbelieving the evidence lead by the Applicant Bank and Applicant Bank has proved its case beyond reasonable doubts.

13. Further, on perusal of Exhibits AW-1/36 show that Applicant Bank has maintained the Books of account in the ordinary course of banking business showing disbursal of the loan amounts as per provisions of Bankers Books Evidence Act, 1891 and Guidelines of RBI under Banking Regulation Act, 1949. It further shows that Applicant Bank had regularly credited the amount if any, paid by the defendants in the books of account. Applicant Bank had also charged interest from time to time and the entries are relevant U/s 4 of the Bankers Books Evidence Act, 1891 as reflected from A/c Statements attached with O.A. Exhibits AW-1/36.

14. Moreover, Applicant Bank has been able to prove that the Defendant No.1 availed the Cash Credit Limit Facility and failed to repay the same in terms of loan documents. Since, the transactions are of commercial nature between the parties, the Defendants are bound to repay the loan amount with interest as agreed upon and Applicant Bank is entitled to recover suit amount with interest as claimed by it. The Original Application has been presented on 17.03.2020 i.e. within three years from the date of execution of Acknowledgment of Debt & Balance Confirmation Letter made on 29.01.2018 as Exhibits AW-1/32 as well as last deposit which was made on 22.11.2019 admitting debt liability for the purpose of limitation as reflected from Account Statement Exhibit AW-1/36. Thus, it is proved that the Defendants are jointly and severally liable to pay the claim made in the O.A. to the Applicant Bank.

15. Applicant Bank has claimed interest @13.35% per annum with monthly rests plus with penal interest @2.00% Penal interest till tie date of realization and costs. The contract between Applicant Bank and the Defendants comes to an end and after filing of the O.A. as per the provisions of Section 19(20) of the Recovery of Debts and Bankruptcy Act, 1993 (as amended from time to time) which is analogous to Section 34 of the CPC, the Tribunal/Court has discretion in awarding pendente-lite and future interest. I am also supported in my view by the Hon'ble Supreme Court in a case titled Central Bank of India Vs. Ravindra and others reported in AIR 2001 SC page 3095. On the basis of the foregoing discussion, interest of justice will be served if pendente-lite and future interest is granted @12.00% simple interest yearly from the date of filing of the O.A. till the date of realization with costs.

16. In the light of above discussion, the Original Application deserves to be allowed against the Defendants with costs, The hypothecated assets & mortgage property are liable to be sold for recovery of amount due alongwith the personal movable & immovable properties/assets of the Defendants.

ORDER

(i) The Original Application is allowed declaring that the Defendants are liable to pay a total sum of Rs.37,12,660.40ps. (Rupees Thirty-Seven Lacs Twelve Thousand Six Hundred Sixty and Paisa Forty only) alongwith cost, expenses and future interest @12.00% simple interest yearly from the 17.03.2020 i.e. date of filing of the OA till the date of realization in full, jointly or severally.

(ii) In case of failure to repay the aforementioned adjudicated amount within 30 days, same shall be recovered from the sale of the hypothecated assets & mortgaged property of the Defendants in execution proceedings. The amount, if any, already recovered by sale of any hypothecated assets & mortgage property or otherwise shall be adjusted towards the debt and only the balance amount shall be recoverable. If the dues of Applicant Bank still remain unsatisfied, the same shall be recovered by attachment and sale of the personal movable and immovable assets of the Defendants jointly or severally. The cost of litigation be also borne by the Defendants.

(iii) The Defendants are hereby restrained by means of injunction from depleting, transferring, encumbering, alienating, selling or otherwise dealing with hypothecated assets, mortgage properties or their other immovable/movable properties/estates without first paying the above claim of Applicant Bank.

(iv) In case, any of the Defendants expire, the legal representatives shall be liable to pay in proportion to the inheritance.

(v) Applicant Bank is directed to file revised statement of accounts from the date of filing of O.A. along-with interest as granted by this Tribunal before the Recovery Officer of this Tribunal.

(vi) Any other application pending stands disposed of.

(vii) Recovery Certificate be issued forthwith in above terms U/s 19(22) of the Recovery of Debts and Bankruptcy Act, 1993 (as amended from time to time) and be sent to the Recovery Officer-II, DRT, Dehradun for execution.

(viii) The Recovery Officer shall realize the amount as per the Recovery Certificate in the manner and mode prescribed under section 25 to 28 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (as amended from time to time) from the above-named Defendants. Parties are directed to appear before the Recovery Officer-II, DRT, Dehradun on 27.10.2020.

(ix) Copy of this Judgment and Recovery Certificate be given Dasti to Applicant Bank and be sent to the Defendants free of cost by Registered Post and scanned copy through e-mail in terms of section 19(21) (i) of the RDB Act, 1993 (as amended from time to time) and Rules as well as to the Recovery Officer and after due compliance file be consigned to record room.

17. Applicant Bank is directed to file a Memo of Cost forthwith, if not filed earlier, for preparing Recovery Certificate U/s 19(22) of the Recovery of Debts and Bankruptcy Act, 1993 (as amended from time to time).

Judgment pronounced in the open court through V.C. and signed on this 15th day of September, 2020.