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(2021) 10 DRT CK 0005

In the Debts Recovery Tribunal

Case No : Original Application No. 372 Of 2016

Bank Of India APPELLANT

Vs

M/s. Khodiyar Krupa Enterprise RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19, 19(20)Code Of Civil Procedure, 1976 — Section 34
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 16

Citation : (2021) 10 DRT CK 0005

Hon'ble Judges : Laxman Madnani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The present Original Application has been filed by the Applicant Bank under Section 19 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, now amended as The Recovery of Debts and Bankruptcy Act, 1993, against the defendants for recovery of Rs. 19,00,214.57 /- (Rupees Nineteen Lakhs Two Hundred Fourteen and Fifty Seven Paisa Only) together with further interest@ 13.25% per annum with monthly rests + 2% penal interest p.a for the period from 01.06.2016 till entire payment/realization by Defendant.

2. The brief facts of the case as stated in the application of Applicant Bank is that defendant a proprietorship firm through its sole proprietor approached the Applicant bank requesting for financial assistance. On the request and application of the defendant, the applicant bank sanctioned and granted a Term Loan of Rs. 24.35 Lakhs (against hypothecation of machinery) for business purpose vide sanction letter dated 08.02.2013. Defendant as principle borrower accepted the terms and conditions of the aforesaid sanction unconditionally.

In consideration of securing the above facilities, defendant had executed following documents:

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a) Copy of sanction letter for Rs. 24.35 Lakhs dated 08.02.2013.

b) Demand Promissory Note for Rs. 24.35 Lakhs dated 12.02.2013.

c) Hypothecation cum loan agreement for Rs. 24.35 Lakhs dated 12.02.2013.

d) Letter of utilization of demand/term loan for Rs. 24.35 lakhs dated 12.02.2013.

e) Letter of authority to bank dated 12.02.2013.

f) Bearer letter dated 12.02.2013.

g) Installment letter dated 12.02.2013

h) Letter of change in proposition dated 12.02.2013.

i) Letter of Authority dated 12.02.2013.

j) Term Loan Agreement for Rs. 24.35 Lakhs dated 12.02.2013.

k) Declaration to be obtained from the borrower dated 12.02.2013.

3. The Defendant executed the hypothecation agreement on 12.02.2013 and created exclusive charge over the hypothecated plant & machineries, details of the same more particularly mentioned in the schedule of the Original Application.

4. That the defendant availed the Credit facility but he failed to repay the dues of the Bank as per agreed terms, he failed to adhere to the financial discipline of the applicant bank and the account of defendant became irregular and sticky. The applicant bank requested the defendant from time to time to regularize the said account but defendant has failed and neglected to regularize the same. Ultimately, the account of the defendant has been classified as N.P.A. on 30.09.2015. The Applicant bank issued a letter/notice dated 16.08.2014 calling upon the defendant to repay the entire recoverable dues.

5. All these acts and conduct on the part of the defendant was contrary to the terms and conditions of the documents signed and executed by him. Accordingly the Applicant Bank has moved this Original Application to recover public money.

6. Soon after the registration of the case the defendant was summoned through registered post with A/D on 29.07.2016. As per record, notices sent to the defendant was not served. Thereafter, defendant was served through public notice in Divyar Bhaskar on 07.10.2017. Applicant bank had also filed purshish at Exh. A/9 enclosing therewith copy of Postal Department's statement showing registration of article, track report & paper publication respectively. None appeared on behalf of defendant despite service summons through paper publication. Thus, the case was proceeded exparte against the defendant due to his non appearance vide order dated 15.12.2017.

I have heard the learned counsel for the applicant and have also gone through the case file properly. I have also gone through law applicable to facts and

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circumstances of the present case.

7. From perusal of the records, it is evident that defendant was provided with fair opportunity to contest the claim of the bank. As the defendant opted not to contest the case, so only point of consideration before this Tribunal is whether the applicant Bank is legally entitled to the amount as claimed in Original Application on the basis of documents and pleadings submitted by it before the Tribunal.

8. In support of Original Application, Applicant has filed affidavit in support of Suit Claim at Exh.A/ 11, sworn by Mr. Anilkumar Khatri, Asst. Credit Manager of the Applicant Bank.

9. The Learned counsel for the Applicant Bank has submitted that the Bank has duly proved all the documents on file as required under "The Recovery of Debts and Bankruptcy Act, 1993". He has further submitted that the defendant is willful defaulter, as he availed the aforesaid credit facility to his benefits but failed to maintain the financial discipline of the bank. In view of the said facts, the Original Application may be allowed for the reliefs claimed.

10. I have gone through the loan documents; averments made in the Original Application and also considered the submissions made by learned counsel for the Applicant Bank. The evidence produced by the Bank remains un-rebutted. There is no reason to disbelieve the same. The loan was sanctioned on 08.02.2013 and the last payment was received by the applicant bank on 11.04.2015. Present O.A. has been filed by the applicant bank on 01.06.2016 and hence it is well within limitation period prescribed.

11. In view of the aforesaid discussion, I deem it just and proper to allow the claim of the applicant Bank for an amount of Rs. 19,00,214.57/- (Rupees Nineteen Lakhs Two Hundred Fourteen and Fifty Seven Paisa Only).

12. As per the provision of Section 19(20) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 which is analogous to Section 34 of Civil Procedure of Code 1908, on filing of the suit/ claim, the contract between the parties comes to an end and the Court/Tribunal has a discretion to award the same depending upon the circumstances of each case. Same principle has been laid down by the Hon'ble Apex Court in the case of Central Bank of India Vs. Ravindra & Others. Taking stock of all the circumstances and keeping in view the facts of the case, I am of the opinion that justice will be served if the interest at the rate of 11 % is awarded.

13. The claim for penal interest of 2% is hereby declined.

14. In view of the above, the Original Application is allowed.

ORDER

1) I hereby allow this O.A. of the Applicant Bank and direct the defendant to pay absolutely to the applicant bank within 60 days from today, a sum of

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Rs.19,00,214.57/- (Rupees Nineteen Lakhs Two Hundred Fourteen and Fifty Seven Paisa Only) together with further interest@ 11 % per annum simple and cost & expenses from the date of filing of this O.A. till the date of realisation.

2) In case of failure to deposit the above amount within the stipulated period, the same shall be recovered from the hypothecated assets of the Defendant as described in Schedule annexed to the Original Application.

3) If there is any shortfall, the same shall be recovered from the sale of other personal movable and immovable properties of the defendants.

4) Recovery Certificate be issued forthwith and be sent to Recovery Officer, Debts Recovery Tribunal-I, Ahmedabad.

5) The registry of this Tribunal is hereby directed to issue the free copy of the order and be sent to the both parties in compliance of Rule 16 of the Debt Recovery Tribunal Procedure Rule 1993.

6) File be consigned to records.

Pronounced in Open Court on this 1st day of October, 2021 at Ahmedabad.

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