(2021) 09 DRT CK 0005

In the Debts Recovery Tribunal

Case No : Original Application No. 198 Of 2020

Bank Of India APPELLANT

Vs

M/s Shivam Timber And Ors. RESPONDENT

Date of Decision : 30-09-2021

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) 09 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.1,13,66,129.23 (Rupees One Crore Thirteen Lacs Sixty Six Thousand One Hundred Twenty Nine and Paisa Twenty Three Only) together with further interest@ 12.15 % per annum with monthly rests in respect of outstanding in the Cash Credit Facility from the date of filing of the application till realization along with cost and other relief as stated.

2. The brief facts of the case as placed before this Tribunal at the time of hearing in the light of pleadings are that the Defendant No.1 approached through Defendant No.2 to the Applicant Bank for availing various Credit Facilities and after considering their proposal, the Applicant Bank sanctioned said Credit Facilities vide Sanction letter dated 20.05.2011.

3. The Applicant Bank submits that in consideration of granting and availing the aforesaid Cash Credit Facilities, the Defendants have executed various Agreement/Documents time to time for valuable consideration in favour of the Applicant Bank enumerated inter-alia as under:

a) D. P. Note dated 21.05.2011

b) Hypothecation of Tangible Movable Property dated 21.05.2011

c) Form No.L-515 dated 21.05.2011

d) Borrowing and/ or other banking facility granted dated 21.05.2011

e) Declaration dated 21.05.2011

f) Proprietorship declaration dated 21.05.2011

g) Demand Loan/ Cash Credit account dated 21.05.2011

h) Omnibus Indemnity for imports dated 21.05.2011

i) Cheques, bills, hundies and other instruments with or without share Certificate or other documents dated 21.05.2011

j) Borrowing and/ or other banking facility dated 21.05.2011

4. The Applicant Bank submits that the availing said Credit Facilities, Defendants have created Hypothecation on stock & Book-debts in favour of the Applicant Bank by executing Hypothecation Agreements on 21.05.2011, which is mote particularly described in the Schedule-I.

5. The Applicant Bank submits that the during the continuity aforesaid facility, Defendants requested to enhance said facilitates and after considering their proposal, the Applicant bank enhance said credit facilities vide sanction letter dated 20.12.2013.

6. The Applicant Bank submits that in consideration of granting and availing the aforesaid Cash Credit Facilities, the Defendants have executed various Agreement/Documents time to time for valuable consideration in favour of the Applicant Bank enumerated inter-alia as under:

a) D. P. Note for Rs.85 Lakh dated 23.12.2013

b) Hypothecation cum Loan agreement dated 23.12.2013

c) Form No.L-515 dated 23.12.2013

d) Stamped undertaking dated 23.12.2013

e) Omnibus indemnity for import dated 23.12.2013

f) Vernacular letter dated 23.12.2013

g) Declaration: Hypothecation of stocks/ Book debts dated 23.12.2013

h) Declaration dated 23.12.2013

i) Deed of Guarantee dated 23.12.2013

7. The Applicant Bank submits that for availing said Credit Facilities, Defendants

have created Hypothecation on stock & Book-debts in favour of the Applicant bank by executing Hypothecation Agreements on 23.12.2013, which is more particularly described in the Schedule-I.

8. The Applicant Bank submits that further, for availing aforesaid credit facilities, Defendants have also created mortgage on their following respective properties and said Memorandum of entry has been registered in the office of the Sub-Registrar, Anjar under Registration No.10633 dated 23.12.2013 which is more particularly described in the Schedule-II. The defendants executed acknowledge of Debt/ Securities letter in favout of the Applicant on 31.08.2016 and 26.08.2019.

9. That the defendants availed the Credit facility but they failed to repay the dues of the Bank as per agreed terms, they failed to adhere to the financial discipline of the applicant bank and the account of defendants became irregular and sticky. The applicant bank requested the defendants from time to time to regularize the said account but defendants have failed and neglected to regularize the same. Ultimately, the accounts of the defendants have been classified as N.P.A. on 31.12.2017. The Applicant bank had initiated action under SARFAESI Act for recovery of dues and accordingly issued notice dated 27.05.2015 inter-alia calling upon the defendants to repay the entire recoverable dues within the stipulated time of 60 days.

10. All these acts and conduct on the part of the defendants were contrary to the terms and conditions of the documents signed and executed by them. Accordingly the Applicant Bank has moved this Original Application to recover public money.

11. Soon after the registration of the case the defendants were summoned through registered post with A/D on 13.03.2020. As per record notices sent to defendants were un-served. Thereafter, defendants were served through public notice in Gujarat Samachar, Bhuj edition on 25.05.2021. Applicant bank had also filed Purshish at Exh. A/7 enclosing therewith copy of Postal Department's statement showing registration of article, track report & paper publication respectively. None appeared on behalf of defendants despite service summons through paper publication. Thus, the case was proceeded exparte against the defendants due to their non appearance vide order dated 25.06.2021.

12. 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 circumstances of the present case.

13. From the perusal of the records, it is evident that defendants were provided with fair opportunity to contest the claim of the bank.

As the defendants 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 O.A. on the basis of documents and pleadings submitted by it before the Tribunal.

14. In support of Original Application, Applicant has filed affidavit in support of Suit Claim at Exh. A/8, which is sworn by Mr. Suraj Sharma, Sr. Manager of Applicant Bank.

15. The Learned counsel for the Applicant Bank has submitted that the Bank has duly filed copies of all the documents on file as required under "The Recovery of Debts and Bankruptcy Act, 1993". He has further submitted that the defendants are willful defaulters, as they availed the aforesaid credit facilities to their benefits but failed to maintain the financial discipline of the bank with a prayer that the Original Application may be allowed for the reliefs claimed.

16. 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 copies of documents filed by the Bank remains un-rebutted. There is no reason to disbelieve the same. The loan was sanctioned on 20.05.2011 & 20.12.2013 and the Defendants executed Acknowledge of Debt/ Securities letter in favour of the Applicant on 31.08.2016 & 26.08.2019. Present O. A. has been filed by the applicant bank on 19.02.2020 and hence it is within limitation period prescribed.

17. The applicant has also included certain amount on account of penal interest@ 2% simple. I do not find any merit to grant penal interest. The claim for penal interest of 2% is hereby declined. The applicant is only entitled to the outstanding amount and interest due in the credit facility loan account i.e. Rs.1,10,50,972/- [Rs.87,24,317.23 (Outstanding Amt.) + Rs.23,26,654.77 (interest) as per page 16 of Original Application.].

18. In view of the aforesaid discussion, I deem it just and proper to allow the claim of the applicant Bank of the principal amount of Rs.1,10,50,972/- (Rupees One Crore Ten Lacs Fifty Thousand Nine Hundred Seventy Two Only).

19. So far as rate of interest charged by applicant bank is concerned, applicant bank has charged rate of interest as per Terms and conditions of loan documents executed by the defendants. However, as per the provision of Section 19(20) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993, now amended as The Recovery of Debts and Bankruptcy 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 facts and 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. Looking to the facts and circumstances of the case, I am of the opinion that it would be just and proper in the interest of justice to award the simple interest@ 11 % per annum.

20. The Original Application is allowed in view of above.

ORDER

1) I hereby allow this O.A. of the Applicant Bank and direct the defendants to pay jointly and severally to the applicant bank within 60 days from today, a sum of Rs.1,10,50,972/- (Rupees One Crore Ten Lacs Fifty Thousand Nine Hundred Seventy Two Only) alongwith simple interest @ 11 % p.a. 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 Defendants as described in Schedule-I 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-II, 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 30th day of September, 2021 at Ahmedabad.