(2020) 10 DRT CK 0009

In the Debts Recovery Tribunal

Case No : Original Application No. 553 Of 2016

City Union Bank Limited — APPELLANT

Vs

M/s Precision Press Product And Ors. — RESPONDENT

Date of Decision : 14-10-2020

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2)
Limitation Act, 1963 — Section 18

Citation : (2020) 10 DRT CK 0009

Hon'ble Judges : Ganapathi K.R.K, J

Bench : Single Bench

Advocate : M/s. R.S. Varadarajan

Final Decision : Allowed

Judgement

1. This Original Application has been filed by applicant bank against defendants for recovery of a total sum of Rs.11,27,78,431.74p (Rupees Eleven Crores Twenty Seven Lakhs Seventy Eight Thousand Four Hundred and Thirty One and Seventy Four Paise only) together with interest thereon at the rate of 14.25% per annum compounded with monthly rests and penal interest at the rate of 2% p.a. with monthly rests and all applicable overdue charges from the date of filing of this O.A. till the date of realization and for costs of the application.

2. Summon to defendants are duly served. Defendants entered appearance through their counsel and filed vakalat. However, despite availing sufficient opportunities, defendants did not choose to file written statement. Defendants 1 and 2 were called absent and set ex-parte on 18.04.2017. Applicant bank filed its Proof Affidavit along with 103 documents, which are marked as Ex A-1 to A-103. O.A. was finally heard and stood over till this day for passing ex-parte final order.

3. The facts leading to filing of this O.A. are :-

a) First defendant is a Partnership firm represented by its Partners, 2nd and 3rd defendants. Second defendant started M/s Precision Press Product as a Sole Proprietorship concern and later converted into a partnership by admitting his brother Mr. K. Ramesh, as Partner and entered into a Deed of Partnership dated 01.04.2000 (Ex A-1). Mr. K. Ramesh retired from the partnership on 31.10.2012 and Mrs. J. Rajeswari, 3rd defendant was inducted as a partner of first defendant on 31.10.2012, as evidenced by the Letter of Continuity for Reconstitution of Firm in Form 7 dated 01.12.2012 (Ex A-2).

b) Overdraft facility: During the course of their business, first defendant represented by 2nd defendant, requested applicant bank to sanction Overdraft facility of Rs.4,75,00,000/- for business needs. Second defendant by consent letter dated 12.12.2011 (Ex A-3) offered his immovable property described in schedule to OA as security for due repayment of the credit facility availed by first defendant. Considering the said request, applicant bank sanctioned Overdraft facility of Rs.4,75,00,000/- to first defendant on 03.12.2012. Having availed the aforesaid facility, 1st defendant along with second defendant as coobligant executed the following documents on 03.12.2012, accepting the terms and conditions of sanction :

(i) Demand Promissory Note for a sum of Rs.4,75,00,000/- thereby undertaking jointly and severally to repay the said amount together with interest at the rate of 14.50% p.a. compounded monthly (Ex A-4);

(ii) Loan Application (Ex A-5) ;

(iii) Overdraft Rules duly signed by defendants in token of acceptance to abide by Bank's Overdraft Rules (Ex A-6);

(iv) Letter of Continuity (Ex A-7)

(v) Agreement of Loan cum Hypothecation thereby hypothecating stock of raw materials stored in first defendant's premises in favour of applicant bank (Ex A-8)

(vi) Guarantee Agreements executed by 2nd and 3rd defendants thereby guaranteeing due repayment of Rs.4,75,00,000/- availed by first defendant (Ex A-9 & A-10)

c) Second defendant mortgaged his immovable property by deposit of title deeds and executed Memorandum of deposit of Title Deeds dated 28.02.2012 registered as Doc No.1090 of 2012 before SRO, Madhavaram (Ex A-11)

d) Advance Bill Purchase/Bank Guarantee: First defendant approached applicant bank for further credit facilities. Considering the said request, applicant bank sanctioned a sum of Rs.1,25,00,000/- on 26.02.2013 towards Advance Bill Purchase / Bank Guarantee. Having availed the aforesaid facility, 1st defendant along with second defendant as coobligant executed the following documents on 26.02.2013, accepting the terms and conditions of sanction:

(i) Demand Promissory Note for a sum of Rs.1,25,00,000/- thereby undertaking jointly and severally to repay the said amount on demand.(Ex A-12);

(ii) Overdraft Rules duly signed by defendants in token of acceptance to abide by Bank's Overdraft Rules (Ex A-13)

(iv) Letter of Continuity (Ex A-14)

(v) Guarantee Agreements executed by 2nd and 3rd defendants thereby guaranteeing due repayment of Rs.1,25,00,000/- availed by first defendant (Ex A-15 & A-16)

(vi) Counter Guarantee (Ex A-17)

e) Term Loan: In addition to the above facilities, first defendant approached applicant bank for a Term Loan of Rs.75,00,000/- for Working Capital by submitting an Application cum Undertaking for Loan dated 26.09.2013 (Ex A-18). Considering the said request, applicant bank sanctioned Term Loan of Rs.75 lakhs to first defendant, repayable in 12 EMIs at Rs.6,75,169/- per month inclusive of interest. To secure the aforesaid credit facility, defendants executed the following documents on 26.09.2013 in favour of applicant bank:

(i) Demand Promissory Note for a sum of Rs.75,00,000/- thereby undertaking jointly and severally to repay the said amount together with interest at the rate of 14.50% p.a. compounded monthly (Ex A-19);

(ii) Letter of Undertaking executed by defendants undertaking to discharge the entire loan amount in 12 monthly instalments of Rs.6,75,169/- per month with interest (Ex A-20) ;

(iii) Hypothecation (Machinery) Agreement dated 26.09.2013 thereby hypothecating stock of raw materials stored in first defendant's premises in favour of applicant bank (Ex A-21)

(vi) Guarantee Agreements executed by 2nd and 3rd defendants thereby guaranteeing due repayment of Rs.75,00,000/- availed by first defendant (Ex A-22 & A-23)

f) Supply Bills Discounting: First defendant approached applicant bank for sanctioning credit facility for discounting supply bills raised by first defendant on various customers. Considering the said request, applicant bank duly sanctioned the facility subject to a limit of Rs.2 crores. For availing the overall credit facility, defendants executed following loan documents on 23.10.2013:

(i) Demand Promissory Note for a sum of Rs.2 Crores thereby undertaking jointly and severally to pay on demand repay the said amount together with interest at the rate of 14.50% p.a. compounded monthly (Ex A-24);

(ii) Agreement of Loan cum Hypothecation thereby hypothecating the goods stored in 1st defendant's premises in favour of applicant bank (Ex A-25).

g) Second defendant extended the mortgage already created, for the aforesaid facility and executed Memorandum of Extension of Equitable Mortgage by way of deposit of title deeds dated 23.10.2013, registered as Doc No.5935 of 2013 before SRO, Madhavaram (Ex A-26) confirming the extension of mortgage on his immovable property described as Item 1 of OA Schedule as security for due repayment of the credit facility. Second defendant also offered additional security of his immovable property at Kodungaiyur in addition to the property already mortgaged and deposited title deeds of the said property described as Item Nos.2 and 3 of OA schedule with intention of creating a charge thereon as security for due repayment of the credit facilities availed by first defendant in a sum of Rs.9,10,00,000/-. Second defendant executed Memorandum of deposit of title deeds dated 23.10.2013 registered as Doc No.5936 of 2013 at SRO, Madhavaram. (Ex A-27)

h) As part of the Supply Bill Purchase / Discounting facility, defendants presented the supply bills on 28.10.2013 amounting to Rs.29,89,497.43p, which are marked as Ex A-28 to Ex A-35 raised on Integral Coach Factory, Chennai to applicant bank for discounting and accordingly applicant bank discounted the same. For the said discounted purchase bills, defendants executed the following documents on 28.10.2013 in favour of applicant bank:

(i) Demand Promissory Note for a sum of Rs.29,89,497.43p thereby undertaking jointly and severally to repay the said amount together with interest at the rate of 14.50% p.a. compounded monthly (Ex A-36);

(ii) Agreement of Loan cum Hypothecation executed by defendants thereby hypothecating the goods stored in first defendant's premises in favour of applicant bank (Ex A-37)

i) On 18.11.2013, defendants presented the supply bills amounting to Rs.23,47,953.53p, which are marked as Ex A-38 to Ex A-41 raised on Integral Coach Factory, Chennai to applicant bank for discounting and accordingly applicant bank discounted the same. For the said discounted purchase bills, defendants executed the following documents on 18.11.2013 in favour of applicant bank:

(i) Demand Promissory Note for a sum of Rs.23,47,953.53p thereby undertaking jointly and severally to repay the said amount together with interest at the rate of 14.50% p.a. compounded monthly (Ex A-42);

(ii) Agreement of Loan cum Hypothecation executed by defendants thereby hypothecating the goods stored in first defendant's premises in favour of applicant bank (Ex A-43)

j) On 27.03.2014, 28.03.2014 and 29.03.2014, defendants presented the supply bills amounting to Rs.96,88,727.10p, which are marked as Ex A-44 to Ex A-65 raised on Integral Coach Factory, Chennai to applicant bank for discounting and accordingly applicant bank discounted the same. For the said discounted purchase bills, defendants executed the following documents on 27.03.2014 in favour of applicant bank:

(i) Demand Promissory Note for a sum of Rs.96,88,727.10p thereby undertaking jointly and severally to repay the said amount together with interest at the rate of 14.50% p.a. compounded monthly (Ex A-66);

(ii) Agreement of Loan cum Hypothecation executed by defendants thereby hypothecating the goods stored in first defendant's premises in favour of applicant bank (Ex A-67).

k) On 28.06.2014, defendants presented the supply bills amounting to Rs.36,26,581.56p, which are marked as Ex A-68 to Ex A-82 raised on Integral Coach Factory, Chennai to applicant bank for discounting and accordingly applicant bank discounted the same. For the said discounted purchase bills, defendants executed the following documents on 28.06.2014 in favour of applicant bank:

(i) Demand Promissory Note for a sum of Rs.36,26,000/- thereby undertaking jointly and severally to repay the said amount together with interest at the rate of 14.50% p.a. compounded monthly (Ex A-83);

(ii) Agreement of Loan cum Hypothecation executed by defendants thereby hypothecating the goods stored in first defendant's premises in favour of applicant bank (Ex A-84).

l) Advance Bills Purchase Limit: First defendant once again approached the applicant bank for loan facility to the tune of Rs.60,00,000/- and submitted Application - cum - Undertaking for loan dated 28.03.2014 (Ex A-85). Considering the said request, applicant bank sanctioned Advance Bill Purchase Limit of Rs.60 lakhs to first defendant on 28.03.2014. To secure the aforesaid credit facility, defendants executed the following documents on 28.03.2014 in favour of applicant bank:

(i) Demand Promissory Note for a sum of Rs.60,00,000/- thereby undertaking jointly and severally to repay the said amount together with interest at the rate of 14.75% p.a. compounded monthly (Ex A-86);

(ii) Letter of Undertaking executed by defendants undertaking to discharge the entire loan amount in one instalment with a holiday period of six months, with interest (Ex A-87);

(iii) Guarantee Agreements executed by 2nd and 3rd defendants thereby guaranteeing due repayment of Rs.60,00,000/- availed by first defendant (Ex A-88 & A-89).

m) Second defendant extended the mortgage in respect of Item Nos. 1 to 3 of OA schedule by executing a Memorandum of extension of equitable mortgage dated 29.03.2014 registered as Doc No.3631 of 2014 (in respect of Item No.1 - Ex A-90) and Doc No.3632 of 2014 (in respect of Item No.2 & 3 - Ex A-91) before SRO, Madhavaram in favour of applicant bank to secure due repayment of enhanced limits amounting to Rs.1,10,00,000/- availed by first defendant.

n) Short Term Overdraft: First defendant approached applicant bank for a fresh

Short Term Overdraft facility of Rs.1,08,20,000/-, which was accordingly sanctioned by applicant bank. To secure the aforesaid credit facility, defendants executed the following documents on 20.08.2014 in favour of applicant bank:

(i) Demand Promissory Note for a sum of Rs.1,08,20,000/- thereby undertaking jointly and severally to repay the said amount together with interest at the rate of 16.75% p.a. compounded monthly (Ex A-92);

(ii) Overdraft Rules in token on their acceptance to abide by bank's Overdraft Rules (Ex A-93) ;

(iii) Letter of Continuity (Ex A-94)

o) Bank Guarantees for Rs.32,300/- due on 21.11.2014 and Rs.1,12,200/- due on 29.11.2014 were invoked by customers of first defendant and applicant bank was compelled to honour the same by settling the amounts. Defendants 2 and 3 acknowledged liabilities for the same and executed Demand Promissory Note for Rs.1,05,771/- on 11.11.2014, undertaking jointly and severally to pay on demand the said amount together with interest at the rate of 14.75% p.a. compounded monthly (Ex A-95). Defendants also executed Letters of Revival dated 25.06.2015 (Ex A-96 to Ex A-99) acknowledging liability under Section 18 of Limitation Act.

p) The Integral Coach Factory on whom the supply bills were raised by first defendant settled several of the bills, but failed and neglected to settle over 41 bills. Therefore, the liability fell on the defendants to pay the same. On being called upon to repay the amounts due to the applicant, consequent to the failure of their customers to make payment, all the defendants acknowledged their liability for the debt executing Acknowledgment of Debt dated 17.03.2016 (Ex A-100) for a sum of Rs.1,57,46,488/- as on 16.03.2016 together with interest @ 18% p.a.

q) Subsequent to availing of aforesaid loans, defendants committed default in repayment of loan to applicant bank. Consequent to the defaults committed by the borrower in respect of repayments, account was classified as NPA on 11.07.2014. Applicant bank invoked provisions of SARFAESI Act and issued Demand Notice under Section 13(2) of the Act on 15.04.2015 (Ex A-101) calling upon the defendants to discharge the entire liability to the tune of Rs.8,93,77,670/- together with applicable interest within a period of 60 days. As defendants did not come forward to clear the outstanding dues, applicant bank proceeded further and took possession of the secured assets by issuing Possession Notice dated 28.09.2015 (Ex A-102). Applicant bank issued Sale Notice dated 06.02.2017 in respect of Item Nos. 2 and 3 of OA schedule and a sum of Rs.2,11,07,000/- has been realised by way of auction sale. In another Sale Notice dated 25.04.2017, Item No.1 of the OA schedule property was sold for Rs.1,81,00,000/-. Thus, a sum of Rs.3,92,07,000/- was received by auction sale of schedule properties and auctioned properties were handed over to the auction purchasers.

r) The above O.A. has been filed for recovery of a total sum of Rs.11,27,78,431.74p (Rupees Eleven Crores Twenty Seven Lakhs Seventy Eight Thousand Four Hundred and Thirty One and Seventy Four Paise only) together with further interest thereon, as evidenced by Statement of Accounts (Ex A-103) filed along with O.A. After deducting the amount of Rs.3,92,07,000/- realised by way of sale under SARFAESI proceedings, the total amount now due is Rs.7,35,71,431.74p inclusive of contractual interest and penal interest @ 2% p.a. over and above the contractual interest as per the statement of account and memorandum of interest.

4. The points that arise for consideration in this case are as follows:-

(a) Whether the claim of the applicant bank is established against the defendants?

(b) If so, to what relief?

Point 4(a):

5. On perusal of records, it was found that the accounts had become NPA on 11.07.2014 subsequent to which a Short Term Overdraft in a sum of Rs.1,08,20,000/- was sanctioned on 20.08.2014 and applicant bank was asked to clarify the same. Applicant bank had filed a memo dated 18.09.2020 submitting therein that the defendant enjoyed an Advance Bill Purchase / Bank Guarantee facility for Rs.1,25,00,000/- sanctioned on 26.02.2013. This being a non-funded exposure, liability would arise only on the bank guarantee being invoked and upon such invocation and in the event of the defendant failing to pay the amount. In the instant case, two bank guarantees were invoked for Rs.30,00,000/- and Rs.70,00,000/-, totalling Rs.1,00,00,000/- on 20.08.2014 by the customer of first defendant and applicant was compelled to honour the same by settling the amount. Ex A-139 at page No.638 of typed set of documents contains statement of accounts for the ABP/BG account. It can be seen that on 20.08.2014, there are two debits, one for Rs.30 lakhs and another for Rs.70 lakhs. As per standard accounting practice, if the advance bill purchase / bank guarantee account is not settled immediately by the defendants, the invoked amount is debited to the defendant's overdraft account. Accordingly, on the same day it can be seen that they are two credit entries in ABP / BG account for Rs.70 lakhs and Rs.30 lakhs which was correspondingly debited to the defendant's Overdraft account at Page 619 of typed set of papers. Since by this debit, the sanction limit of overdraft account limit of Rs.4,75,00,000/- would be exceeded, the debits were treated as Short Term Overdraft for Rs.1,08,30,000/-inclusive of interest and defendants executed necessary demand promissory note and other documents marked as Ex A-92 and Ex A-93, acknowledging the liability. Therefore, it is the case of applicant bank that no fresh loan sanction was made after the date of NPA i.e., 11.07.2014 and that the STOD is only an accounting entry to authorise debits over and above the overdraft limit of Rs.4,75,00,000/-. The non-funded liability was sanctioned much before the NPA but crystalised only

after the date of NPA. Being an irrevocable BG, it was not open to applicant bank to dishonour the bank guarantee on the basis that account was already NPA and therefore invoked amount had to be honoured and the defendants account was debited for the amount so invoked and remitted on behalf of defendant.

6. A careful examination of the pleadings in the Proof Affidavit and documents viz. Exhibits A-1 to A-103 evidence that the borrowal of credit facilities and execution of loan and security documents are true, in terms of averments made in Original Application as well as Proof Affidavit filed by applicant bank establishing its claim. Applicant bank filed Statement of Accounts duly certified under Bankers' Book Evidence Act, evidencing amount claimed against defendants. Defendants were set ex-parte on 18.04.2017, but till this day did not take any action to set aside the exparte order and did not choose to contest the claim. Further, a careful scrutiny of records makes it clear that present application is filed well within limitation and this Tribunal possess necessary and proper jurisdiction to entertain and adjudicate the claim. No oral or documentary evidence on the side of defendants is produced or filed to dispute the claim of applicant bank. Defendants neither confronted nor rebutted the documents produced and relied upon by applicant bank. Hence, it can be concluded that applicant bank has proved its claim against defendants. Point (a) is answered accordingly.

Point 4(b):

7. In view of what has been discussed above, it is observed that applicant bank has proved its O.A. claim against defendants 1 to 3 and applicant is entitled to Recovery Certificate in O.A. in terms of the direction given below. Point (b) is answered accordingly.

8. In the result :-

(a) Applicant is entitled for a Recovery Certificate as against defendants 1 to 3, jointly and severally for a sum of Rs.11,27,78,431.74p (Rupees Eleven Crores Twenty Seven Lakhs Seventy Eight Thousand Four Hundred and Thirty One and Seventy Four Paise only) together with further interest thereon at the rate of 10% per annum (simple), on the amount as determined above and remained unpaid from the date of this O.A. till the date of its realization with costs.

(b) It is further ordered that any amount remitted by defendants or realised by the applicant bank during pendency of this O.A., shall be given due credit to the respective loan account of defendants other than the amounts for which part satisfaction memo is filed and since recorded.

A sum of Rs.3,92,07,000/- realised by way of SARAFESI Sale of mortgaged property detailed as items 1 to 3 of OA schedule.

(c) It is ordered that in case of default by the defendants to pay the amount adjudged, applicant bank is entitled to sell the hypotheca to answer the claim of Recovery Certificate and appropriate the sale proceeds towards amount due.

(d) If sale proceeds are not found sufficient, after defraying expenses of such sale for the payment of all such amounts, defendants 2 and 3 are personally liable for the deficiency of adjudged amount with interest and costs until realisation.

(e) Schedule mentioned in this OA shall form part of Recovery Certificate.

9. It is further ordered that 15 days time is granted to applicant bank to file Costs Memo from the date of receipt of this order, to enable Registry to prepare Recovery Certificate as directed above. If in case, Costs Memo is not filed within the above mentioned time, Recovery Certificate shall be prepared based on available records and forwarded to the Recovery Officer for execution in accordance with law.

10. Recovery Certificate be prepared as per directions given above of this final order and issued accordingly. A copy of the order be communicated to the parties concerned as per the extant guidelines.

(Dictated to PS, transcribed by her, corrected, signed and pronounced by me in the Virtual Court, through Video Conference on this the 14th day of October, 2020)