(2020) 09 DRT CK 0010

In the Debts Recovery Tribunal

Case No : Original Application No. 01 Of 2019

HDFC Bank Ltd. APPELLANT

Vs

Nand Kishore Nangalia And Anr. RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19, 22(7)Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2)

Citation : (2020) 09 DRT CK 0010

Hon'ble Judges : D.S. Mehra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The applicant is a Scheduled Commercial Bank as per Banking Regulation Act. 1949 and incorporated under the Companies Act, 1956 having its registered office at HDFC, Bank House, Senapati Bapat Marg. Lower Parel (West), Mumbai 400013 and branches all over India, amongst other one of its office at HDFC Bank Ltd. Department for Special Operations, Jardine House, 1 Floor, 4, Clive Row, Kolkata - 700001, and HDFC Bank Limited 436/115 HP Cart Road. Siliguri - 734001

The facts in brief, giving rise to the present application as pleaded are as under

The defendant No 1, who is the Proprietor of a Proprietorship Firm, has been carrying on the business of polyvinyl chloride (PVC) pipes & plumbing system, both as wholesaler and retailer under the name and style of "Geeta Enterprise". The defendant No. 2 has stood as the guarantor and executed a Deed of Guarantee for overall limits in favour of the Applicant Bank. On 22/2/2012, the defendant No. 1 approached the Applicant Bank to avail credit facility to the tune of Rs. 40.00 Lakhs (Rupees Forty Lakhs only) as Cash Credit for meeting the working capital requirements of his proprietorship firm "Geeta Enterprise". At that relevant time the defendant No. 1 had already been enjoying a cash credit facility from the Bank of maharasntra for an amount of Rs. 15.00 Lakhs. On 21/02/2012, the defendant No 1 made an application to the Applicant Bank requesting for taking over the said then existing credit facility. Under the circumstances the defendant No.1 made the letters/applications to the Applicant Bank regarding the confirmation on the property collateralized with the Bank of Maharashtra, dated 12104/2012, outstanding balance in the Bank of Maharashtra dated 12/04/2012 change of Banker dated 12/04/2012 and takeover authonzation dated 21/04/2012.

The applicant bank granted Cash Credit facility of Rs 40.00 Lakhs (Rupees Forty Lakhs only) to the Defendant No. 1 for meeting the working capital requirements, and issued the Initial Sanction Letter dated 15/04/2012. To secure the credit facility the defendant No 1 provided 25% margins of stock <90 days and 50% margins of Book Debts <90 days as Primary Security. In addition to the above, the defendant No.1, as Collateral Security, provided a Fixed Deposit worth Rs 1.00 Lakh, and created equitable mortgage of his immovable properties. being (a) all that piece or parcel of a commercial space being Shop Room No 10 measuring 409 sq ft at the Ground Floor in Block - J in the commercial complex named as P C Mittal Memorial Bus Terminus and Commercial Complex, along with undivided proportionate share of land measuring 5.09 acre, in Plot No. 327, recorded under Khatian No. 577, situated within Mouza- Dabgram, J.L. No. 2. Sheet No. 8, Pargana - Baikunthapur, under Ward No 43 of the Siliguri Municipal Corporation, within the jurisdiction of the Post Office - Siliguri, Police Station - Bhakti Nagar, District - Jalpaiguri PIN -73400, (b) all that piece or parcel of land component measuring 2 katha and 12½ chatak, whereupon a tin shed structure is erected and being used as godown, appertaining to Plot No 171, recorded under R.S. Khatian No 82, situated within Mouza- Dabgram, J.L. No 2, Sheet No. 8, Pargana - Baikunthapur, under Ward No. 41 of the Siliguri Municipal Corporation. Post Office - Siliguri, Police Station - Bhakti Nagar, District - Jalpaiguri, PIN -734001.

The defendant No.1 deposited the original Deed of Conveyance dated 28/08/2001 being Document No. I-3022 for the year 2001 executed by M/s. Sathi Builders Private Limited in favour of Mr Nand Kishore Nangalia, the defendant No 1 and the original Deed of Conveyance dated 18/10/2011 being Document No. 1-6522 for the year 2011 executed by Mr. Padmakar Tiwari & Mr. Dharambir Chouhan in favour of Mr. Nand Kishore Nangalia the defendant No. 1 in respect of the creation of security by equitable mortgage by deposit of title deed as aforesaid.

To secure the aforesaid loan, the defendant No. 1 executed a Demand Promissory Note, dated 16/04/2012 for the sum of Rs. 40.00 Lakhs. Letter of Continuing Security, dated 16/04/2012 for the sum of Rs. 40.00 Lakhs. Master Facility Agreement, dated 23/04/2012, Letter of Hypothecation, dated 23/04/2012, Notarized Power of Attorney for Hypothecated Book-Debts. dated 23/04/2012, Memorandum Recording Past Transactions of Creation of Mortgage by Delivery of Title Deeds, dated 23/0412012, Memorandum Recording Past Transactions of Creation of Mortgage by Delivery of Title Deeds, dated 09/05/2012 Notarized Declaration-cum-indemnity dated 23/04/2012. Notarized Declaration-cum-indemnity dated 09/05/2012. Letter of Continuing Guarantee. dated 23/0412012 and Memorandum Relating to Charge over Fixed Deposits/ Cash Deposits dated 23/04/2012, in favour of the Applicant Bank. At the request of the Defendant No. 1 for renewal of the sanctioned credit facility, the Applicant Bank on 01/08/2013 renewed the credit facility provided to the defendant No 1, and issued a Renewal Sanction Letter. That as per the request of the defendant No 1, Cash Credit facility of Rs 40.00 Lakhs to the Defendant No. 1 for meeting the working capital requirements was extended. That to secure the credit facility the defendant No. 1 provided 25% margins of stock <90 days and 50% margins of Book Debts <90 days as Primary Security and continued to mortgage the immovable property as detailed in clause (v) above in addition to a FD of Rs 1 00 Lakh as Collateral Security. To secure the aforesaid loan the defendant No.1 executed one Undertaking cum Indemnity on 16/09/2013 in favour of the Applicant Bank. Again at the request of the defendant No.1 for enhancement of the sanctioned credit facility from Rs.40.00 Lakhs to Rs. 80.00 Lakhs for meeting the working capital requirements, the Applicant Bank on 06/12/2013 enhanced the credit facility provided to the defendant No.1 and issued a Renewal cum Enhancement Sanction Letter. As per the request of the defendant No.1, Cash Credit facility of Rs. 40.00 Lakhs was enhanced to Rs. 80,00 Lakhs. To secure the credit facility the Defendant No 1 provided 25% margins of stock <180 days and 50% margins of Book Debts <90 days as Primary Security, and continued to mortgage the immovable property as detailed in clause (v) above in addition to a FD of Rs. 1 Lakh as Collateral Security. To secure the enhanced Cash Credit Facility of Rs. 80.00 Lakhs, the defendant No. 1 executed Demand Promissory Note for the sum of R. 80.00 Lakhs, Letter of Continuing Security for the sum of Rs. 80.00 Lakhs, Supplementary Agreement, Supplementary Letter of Hypothecation, Notarized Power of Attorney for Hypothecated Book-Debts, Memorandum Recording Past Transactions of Creation of Mortgage by Delivery of Title Deeds, Notarized Declaration-cum-Indemnity and Supplementary Letter of Continuing Guarantee, all dated 06/12/2013 in favour of the Applicant Bank.Again on 13/01/12015 the defendant No. 1 made an application to the Applicant Bank requesting therein to enhance the sanctioned Cash Credit facility from Rs. 80.00 Lakhs to Rs. 250.00 Lakhs for meeting the working capital requirements in view of his growing business. The Applicant Bank on 29/01/2015 enhanced the credit facility provided to the defendant No.1, and issues a Renewal cum Enhancement Sanction Letter. As per the request of the defendant No. 1, Cash Credit facility of Rs. 80.00 Lakhs was enhanced to Rs. 250.00 Lakhs. To secure the credit facility the defendant No 1 provided 25% margins of stock <180 days and 50% margins of Book Debts <90 days as Primary Security, and continued to mortgage the immovable property as detailed in clause (v) above in addition to a FD of Rs 26.00 Lakhs as Collateral Security.To secure the enhanced Cash Credit Facility of Rs. 250.00 Lakhs, the defendant No. 1 further executed

Demand Promissory Note for the sum of Rs. 2.50.00.000.00, Letter of Continuing Security for the sum of Rs. 2.50.00.000.00, Supplementary Agreement, Supplementary Letter of Hypothecation, Notarized Power of Attorney for Hypothecated Book-Debts, Memorandum Recording Past Transactions of Creation of Mortgage by Delivery of Title Deeds, Notarized Declaration-cum-Indemnity, Supplementary Letter of Continuing Guarantee, Memorandum Relating to Charge Over Fixed Deposits/Cash Deposits all dated 29/01/2015 in favour of the applicant bank.

The Applicant Bank on 31/05/2016 renewed the credit facility provided to the defendant No 1 and issued a Renewal Sanction Letter. However, basing on the business performance of the proprietorship firm of the defendant No 1 and the repayments made to the Applicant Bank, the Cash Credit Facility of Rs. 250.00 Lakhs was reduced to Rs. 220.00 Lakhs. To secure the credit facility the defendant No. 1 provided 25% margins of stock <180 days and 50% margins of Book Debts <90 days as Primary Security, and continued to mortgage the immovable property as detailed in clause (v) above in addition to a FD of Rs. 38.00 Lakhs as Collateral Security.

In view of the Master Direction issued by the RBI bearing Reference No. DBR.Dir.No.85/13.03.00/2016-16 dated 03/03/2016 on levy of interest rate on advances, the RBI clarified that all sanctioned loan and credit facilities which were due for renewal from the financial year commencing from April 01, 2016, had to be priced with reference to the Marginal Cost of Funds based Lending Rate (MCLR), and accordingly the defendant No. 1 on 23/05/2016 executed an Amendment Agreement with the Applicant Bank. The Borrower/Defendant No. 1 also executed a Demand Promissory Note in the prescribed form on 23/05/2016 for an amount of Rs. 220.00 Lakhs. Again at the request of the defendant No. 1, the Applicant Bank on 03/10/2017 renewed the credit facility and issued a Renewal Sanction Letter of the Cash Credit Facility of Rs 220.00 Lakhs. That to secure the credit facility the defendant No. 1 provided 25% margins of stock <180 days and 50% margins of Book Debts <90 days as Primary Security and continued to mortgage the immovable property as detailed in clause (v) above in addition to a FD of Rs. 21.22 Lakh as Collateral Security. To secure the aforesaid facility, the defendant No 1 executed one Amendment Agreement on 02/11/2017 in favour of the Applicant Bank and also executed a Demand Promissory Note in the prescribed form on 02/11/2017 for an amount of Rs. 220.00 Lakhs,

However, despite the Applicant Bank's repeated follow ups and reminders, the operation and conduct of the aforesaid financial assistance became highly irregular, and the defendant No. 1 defaulted in repayment of the principle debt and interest thereon. In view of such repeated defaults; the credit facility provided to the defendant No 1 was declared Non- Performing Asset (NPA) on 29/08/2018 in accordance with the guidelines and directives of the Reserve Bank of India. On 12/11/2018, the Applicant Bank issued a demand notice under Section 13(2) of the SARFAES1 Act, 2002 to the defendants, demanding therein a sum of Rs. 2.32,51,617.70p (Rupees Two Crores Thirty Two Lakhs Fifty One Thousand Six Hundred Seventeen and Seventy Paise only) being the outstanding amount as calculated upto 31/10/2018 together with further interest thereon. According to the applicant bank, after giving credit for all sum of moneys paid by and on behalf of the defendants in the said loan account there becomes due from the defendants to the Applicant Bank altogether a sum of Rs. 2,32,51,617. 70p (Rupees Two Crores Thirty Two Lakhs Fifty One Thousand Six Hundred Seventeen and Seventy Raise only) with interest calculated upto 31/1012018. The defendants appeared through their counsel and undertook to file the Vokalatnama as well as the written statement, but they failed to file the same. Hence, the defendants were ordered to be proceeded ex-parte on 24/212020.

The Applicant Bank in support of its case has filed evidence by way of affidavit as affirmed by Sri. Debojit Mukherjee, the Manager of the Applicant Bank and also relied upon the following documents:-

Sl. No.

Name of the documents

Exhibit No.

1

Application dated 21/02/2012

1/A

2

Application Form for Credit Facilities to MSEs dated 22/02/2012

1/B

3

Letter to the Applicant Bank regarding confirmation on the property collateralized with the Bank of Maharashtra, dated 12/0412012

1/C

4

Letter to the Applicant Bank regarding outstanding balance in the Bank of Maharashtra, dated 12104/2012

1/D

5

Application to the Applicant Bank regarding change of Banker dated 12/04/2012

1/E

6

Takeover authorization letter to the Applicant Bank, dated 21/04/2012

1/F

7

Sanction Letter dated 15/04/2012

2

8

Deed of Conveyance dated 26/08/2001 being Document No. 1-3022 for the year 2001

3/A

9

Deed of Conveyance dated 18/10/2011 being Document No. 1-6522 for the year 2011

3/B

10

Detailed Report on Title being Ref. No. amar/adv/Slg/Jan-150/14- 15

3/C

11

Detailed Report on Title being Ref. No. amar/adv/Slg/Jan-150/14- 15

3/D

12

Demand Promissory Note dated 16/04412012

4/A

13

Letter of Continuing Security, dated 16/04/2012

4/B

14

Master Facility Agreement dated 23/04/2012

4/C

15

Letter of Hypothecation, dated 23/04/2012

4/D

16

Notarized Power of Attorney for Hypothecated Book-Debts dated 23/04/2012

4/E

17

Memorandum Recording Past Transactions of Creation of Mortgage by Delivery of Title Deeds, dated 23/04/2012

4/F

18

Memorandum Recording Past Transactions of Creation of Mortgage by Delivery of Title Deeds, dated 09/05/2012

4/G

19

Notarized Declaration-cum-Indemnity dated 23/04/2012

4/H

20

Notarized Declaration-cum-Indemnity dated 09/05/2012

4/I

21

Letter of Continuing Guarantee, dated 23/04/2012

4/J

22

Memorandum Relating to Charge over Fixed Deposits/Cash/Deposits, dated 23/04/2012

4/K

23

Renewal Sanction Letter issued by the Applicant Bank on 01/08/2013

5/A

24

Undertaking cum Indemnity, dated 16/09/2013

5/B

25

Renewal cum Enhancement Sanction Letter issued by the Applicant Bank on 06/12/2013

6

26

Demand Promissory Note dated 06/12/2013

7/A

27

Letter of Continuing Security, dated 06/12/2013

7/B

28

Supplementary Agreement, dated 06/12/2013

7/C

29

Supplementary Letter of Hypothecation, dated 06/12/2013

7/D

30

Notarized Power of Attorney for Hypothecated Book-Debts dated 06/1212013

7/E

31

Memorandum Recording Past Transactions of Creation of Mortgage by Delivery of Title Deeds, dated 06/12/2013

7/F

32

Notarized Declaration-cum-Indemnity dated 06/12/2013

7/G

33

Supplementary Letter of Continuing Guarantee, dated 06/12/2013

7/H

34

Application dated 13/01/2015 of the Defendant No. 1 requesting to enhance the sanctioned credit facility

8/A

35

Renewal cum Enhancement Sanction Letter, issued by the Applicant Bank on 29/01/2015

8/B

36

Demand Promissory Note, dated 29/01/2015

9/A

37

Letter of Continuing Security, dated t-29/01/2015

9/B

38

Supplementary Agreement dated 29/01/2015

9/C

39

Supplementary Letter of Hypothecation, dated 29/01/2015

9/D

40

Notarized Power of Attorney for Hypothecated Book-Debts, dated 29/01/ 2015

9/E

41

Memorandum Recording Past Transactions of Creation of Mortgage by Deliverer of Title Deeds. dated 29/01/2015

9/F

42

Notarized Declaration-cum-Indemnity dated 29/01/2015

9/G

43

Supplementary Letter of Continuing Guarantee dated 29/01/2015

9/H

44

Memorandum Relating to Charge Over Fixed Deposits/Cash Deposits, dated 29/01/2015

9/I

45

Renewal Sanction Letter, dated 31105/2016

10/A

46

Amendment Agreement, dated 23/05/2016

10/B

47

Demand Promissory Note, dated 23/05/2016

10/C

48

Renewal Sanction Letter, dated 03/10/2017

11/A

49

Amendment Agreement, dated 02/11/2017

11/B

50

Demand Promissory Note, dated 02/11/2017

11/C

51

Demand Notice under Section 13(2) of the SARFAESI Act dated 12/11/2018 together with copies of Postal Receipts

12

52

Statement of account

13

53

Valuation Report

14

I have heard the learned counsel for applicant bank and perused the documents and Evidence filed by applicant bank. By the said evidence on affidavit, the Applicant Bank has proved its claim. It is settled law that an averment which is not denied by the opposite party i.e. defendants in the present matter, by way of filing written statement or by producing evidence must be taken by the Tribunal/ Court to have admitted by the defendants. In the present matter the defendants have neither filed the written statement nor produced any evidence in his support to challenge the claim of applicant bank.

The clam of the Applicant bank is within the limitation and within the jurisdiction of this Tribunal. The applicant has sufficient cause of action for filing the instant application due to disbursement/availment of loan to/by the defendants and on default in repayment of the loan by the defendants, in spite of demands made as per exhibited documents filed by the applicant bank.

In the above circumstances. it is ordered.

ORDER

O.A. No. 01/2019 filed by the Applicant Bank is allowed against the defendants No 1 & 2 jointly and severally and it is hereby ordered that the Applicant Bank is entitled to recover from the above said defendants the total debt amount for Rs. 2,32,51,617.70p (Rupees Two Crores Thirty Two Lakhs Fifty One Thousand Six Hundred Seventeen and Seventy Raise only) only with further interest @11.00% per annum with quarterly rests from the date of filing of the application till realization of the entire balance Amount, if any, paid by the defendants in the loan accounts or amount recovered by the applicant bank, if any, made towards the loan accounts after filing of the O.A be taken into account while arriving at the exact amount of outstanding payable by the defendants.

The mortgaged properties being (i) all that piece or parcel of a commercial space being Shop Room No. 10 measuring 409 sq. ft. at the Ground Floor in Block - J in the commercial complex named as P.C. Mittal Memorial Bus Terminus and Commercial Complex, along with undivided proportionate share of land measuring 5.09 acre, in Plot No. 327, recorded under Khatian No. 577, situated within Mouza - Dabgram. J.L. No. 2, Sheet No. 8, Pargana-Baikunthapur, under Ward No. 43 of the Siliguri Municipal Corporation, within the jurisdiction of the Post Office - Siliguri, Police Station - Bhakti Nagar, District Jalpaiguri, PIN -734001, which is butted and bounded by North- Statutory open space, South- 5 ft. wide common passage& complex road. East- Shop No 9 of Block - J, West- Shop No. 11 of Block - J [Deed of Conveyance, dated 28/08/2001 being

Document No l-3022 for the year 2001] as mentioned in me Schedule Property-A of the application, (ii) all that piece or parcel of land component measuring 2 katha and 12 ½ chatak, whereupon a tin shed structure is erected and being used as godown, appertaining to Plot No. 171, recorded under R.S. Khatian No. 82, situated within Mouza Dabgram, J.L. No. 2, Sheet No. 8. Pargana - Baikunthapui, under Ward No. 41 of the Siliguri Municipal Corporation, within the jurisdiction of the Post Office - Siliguri, Police Station Bhakti Nagar, District Jalpaiguri, PIN - 734001, which is butted and bounded by North- Land & house of Suresh Roy, South- 16 ft, wide road, East- 14 ft, wide road, West- Land of Sushi! Chandra Das [Deed of Conveyance dated 18/10/2011 being Document No 1-6522 for the year 2011] as mentioned in the Schedule Property-B of the application, shall remain charged to the Applicant Bank and the Applicant Bank shall have paramount charge thereon.

The defendants are debarred from transferring; alienating, encumbering or disposing of the hypothecated/mortgaged properties or any other property and assets belonging to the defendants till the aforesaid adjudicated debt amount is recovered from the defendants.

The defendants are given a time of thirty days from the date of this judgment/ final order for repayment of the above mentioned dues, so initiated to them. In case of failure of said defendants to pay the dues within the time as aforesaid, the Applicant Bank is entitled to recover its dues by sale of the hypothecated/ mortgaged property as aforesaid and is also entitled to proceed against the said defendants personally and/or personal properties to recover the dues accordance with law.

Let the certificate of Recovery be drawn up by Learned Registrar forthwith in terms of judgment for issuance of the same against the defendants in favour of Applicant Bank under Sub-Section 7 and 22 of Section-19 of The Recovery of Debts and Bankruptcy Act 1993 and put up the same for signature for issuance.

This judgment is signed and pronounced in the open Tribunal on this day the 1st day of September, 2020.

Copy of the judgment/final order be given/sent to the parties,

