(2015) 05 DEL CK 0355

In the Delhi High Court

Case No : Writ Petition (C) 3804/2015 and C.M. Nos. 6805 and 6806 of 2015

Indian Bank APPELLANT

Vs

Rexima Exports Pvt. Ltd. and Others RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 17(1), 19

Citation : (2015) 221 DLT 253 : (2015) 220 DLT 703

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Sudhir Nandrajog, Senior Advocate, Gautam Awasthi and Ayush Choudhary, for the Appellant; Ananya Bhattacharya, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Ravindra Bhat, J—Heard the Counsel for the parties. The petitioner has preferred the present proceedings under Article 226 of the Constitution of India claiming to be aggrieved by the order of the Recovery Officer dated 27.3.2015, which was made in the course of the proceedings arising out of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereafter referred to as "the Recovery Act").

2. The petitioner bank''s contention is that since the property-F-23, Green Park (Main), New Delhi was proceeded against under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter referred to as "SARFAESI ACT"), the Recovery Officer had no jurisdiction to issue the directions that it did in the impugned order.

3. The brief facts are that the Bank had afforded certain credit facilities including the irrevocable letter of credit issued at the behest of respondent/borrower dated 28.2.1990. Apparently, the borrower/guarantor had provided certain collateral to

secure these advances and facilities. These include, inter alia, immovable properties and some fixed deposits. After prolonged and marathon proceedings, the Debts Recovery Tribunal ("DRT") made its final order on 28.3.2012 in the three applications initiated by the petitioner bank - OA 870-871/1996 and 895/1996. In the course of its final order, the DRT recorded, inter alia, in paragraph 59 that the Bank was bound to adjust the fixed deposit and interest accruing therefrom which too had not been credited at the stage of final recovery. The operative directions issued by the DRT were as follows:

"61. Point No. 8

OA 895/1996 is allowed as hereunder--

(1) The applicant shall be entitled to recover the sum of Rs. 16,77,76,578/- with interest @ 10% p.a. from 6.11.1996 until realization with cost from the defendants 1 to 3 and they shall be jointly and severally liable.

(2) The certificate amount can be recovered by sale of the immovable property bearing No. F-23, Green park, New Delhi.

(3) The FDRs, with interest @ 13% p.a. shall be adjusted towards the principal amount due and the bank shall be entitled to recover only balance amount after such adjustment.

(4) The Recovery Certificate shall be issued on the above terms.

(5) Defendant 2 and Defendant 3 shall appear before the Recovery Officer on 7.6.2012.

OA 871/1996

The application is allowed as hereunder:

(1) The applicant shall be entitled to recover the sum of Rs. 22,20,16,133/- with interest @ 10% p.a. from 6.11.1996 until realization with cost from the defendant 1 to 3 and they shall be jointly and severally liable.

(2) The certificate amount can be recovered by sale of the immovable property bearing No. F-23, Green Park, New Delhi.

(3) The FDRs, with interest @ 13% p.a. shall be adjusted towards the principal amount due and the bank shall be entitled to recover only balance amount after such adjustment.

(4) The Recovery Certificate shall be issued on the above terms.

(5) Defendant 2 and Defendant 3 shall appear before the Recovery Officer on 7.6.2012

OA 870/1996

The application is allowed as hereunder--

(1) The applicant bank shall be entitled to recover the sum of Rs. 16,13,14,444/- with interest @ 10% p.a. from 6.11.1996 until realization with cost from the defendants 1 to 3 and they shall be jointly and severally liable.

(2) The certificate amount can be recovered by sale of the immovable property bearing No. F-23, Green park, New Delhi.

(3) The FDRs, with interest @ 13% p.a. shall be adjusted towards the principal amount due and the bank shall be entitled to recover only balance amount after such adjustment.

(4) The Recovery Certificate shall be issued on the above terms.

(5) Defendant 2 and Defendant 3 shall appear before the Recovery Officer on 7.6.2012."

4. The Bank had, in the meanwhile, on 4.4.2006 initiated proceedings under the SARFAESI Act by issuing notice under Section 13(2). The respondent/borrower had sought recourse to an appeal under Section 17(1) of the SARFAESI Act. The matter had traveled to this Court on an earlier occasion in W.P.(C) 6616/2010. As on date, no appeal under Section 17(1) of the SARFAESI Act initiated or lodged by the respondent is pending before the DRT. The Bank sought to proceed against one of the secured assets, i.e., F-23, Green Park (Main), New Delhi under SARFAESI Act. At that stage, in the light of the final order of the DRT and the Recovery Act proceedings, the borrower/guarantor contended that such action was impermissible. It is in this context that the impugned order was made on 27.3.2015. The Bank --which had in the meanwhile proceeded to auction the property and realize the sale proceeds, was directed not to appropriate the sale proceeds during the pendency of the proceedings before the Recovery Officer. It is contended that the Recovery Officer had no jurisdiction once the proceedings under the SARFAESI Act were initiated, given that an appeal against those proceedings had not been pressed or pursued further. It is submitted that even though the DRT''s final order adjudicates the rights of the parties substantively with respect to all the liabilities of the borrower/guarantor, that is not with respect to the mortgaged property but it concerns itself with all liabilities arising out of the various credit facilities given and the entitlement of the Bank to realize all properties.

5. Counsel for the respondent/borrower, on the other hand, urged that the petitioner ought to have sought recourse to appeal proceedings and cannot, in the given circumstances of the case, in view of the liability determined at his behest, including liability vis-?-vis mortgaged of the secured asset in question, press the further proceedings under SARFAESI Act.

6. It is evident from the above discussion that during the pendency of the application under Section 19 of the Recovery Act, SARFAESI action was initiated. The notice under Section 13(2) quantified the amounts due as Rs. 183 crores 70 lakh & 46 thousand, Rs. 133 crores 16 lakh & 25 thousand, and Rs. 138 crores

52 lakh & 27 thousand. The bank has in support of its writ petition relied upon the advertisement issued which discloses the quantified amount (said to have been arrived at after the final orders of the DRT dated 28.3.2012). This indicates the total amount due on the said three accounts as Rs. 46,61,96,127, Rs. 32,63,87,849.38 and Rs. 34,66,81,749.15.

7. The final order of the DRT was issued after the initiation of action under Section 13(2). Whilst, the Bank may have been during the pendency of the proceedings under Section 17 of the Recovery Act, justified in proceeding to auction the properties on its understanding as to what the dues were as on that date and its "determination in terms of Section 13(2)"- the position altered after 28.3.2012, in that, the DRT''s final order made upon the Bank''s application directed adjustment of the respondent''s liability given that it had pledged certain fixed deposit amounts with the Bank. The adjustment directed was not merely with respect to the principal amounts but also with regard to the interest on which credits were not given by the Bank during the pendency of the proceedings. In these circumstances, the respondent/borrower, in our opinion, to a certain extent is justified in contending that the Recovery Officer has to independently decide the final quantified amount recoverable from the borrower in the light of the final decision of the DRT. As is evident from the impugned order, that has not been done. In the meanwhile, the Bank has proceeded to auction the property in view of its independent powers under the SARFAESI Act. That cannot be held to be per se illegal. At the same time, the adjustment indicated in the advertisement dated 12.2.2015 cannot be considered final since the determination of liability has to proceed in the light of the adjudicated liabilities of the respondent by the DRT.

8. In these circumstances, the Recovery Officer is directed to decide and pronounce upon the final liabilities of the respondent having regard to the final order of the DRT dated 28.3.2012, taking note of and considering the amounts, if any, deposited during the pendency of the credits due to the respondent in the light of the direction of the DRT. This decision shall be made by the Recovery Officer at his earliest convenience, and in any event, within eight weeks from today. The Bank''s rights to proceed and confirm the bid are left undisturbed. However, the final apportionment of the liabilities shall be dependent upon and subject to the decision of the Recovery Officer. The writ petition stands disposed of.