

(2015) 03 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 11515 of 2014

Javs Engineering (India) Ltd.

APPELLANT

Vs

Bank of Baroda

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 14, 17

Citation : (2015) 5 ABR 127 : (2015) 4 BomCR 392

Hon'ble Judges : A.R. Joshi, J.;V.M. Kanade, J.

Bench : Division Bench

Advocate : Prathmesh Kamat a/w. Vivek Phadke i/b. Kaikini Phadke and Asso., for the Appellant; Anant Shinde, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Rule. Rule made returnable forthwith by consent of the parties and the matter is taken up for final adjudication.

2. Heard rival submissions on behalf of the petitioner and the respondent at length on earlier dates.

3. This is a Petition preferred under Articles 226 and 227 of the Constitution of India and in the matter of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for the sake of brevity known as SARFAESI Act.

4. The present petitioner is the original borrower. Respondent bank is the creditor bank who had granted a cash credit against hypothecation of stock, book debts to the present petitioner some time in November, 1994 and the credit facilities were enhanced from time to time and credit limit of Rs.681.91 lacs was granted to the present petitioner/borrower against the mortgage of four immovable properties. Without going into much details as to how the petitioner account

became non-performing asset (NPA, for short), it is factually admitted position that sometime in early 2000, said loan account became NPA as per the guidelines issued by the Reserve Bank of India. Consequently a legal notice was issued sometime in July, 2005 to the petitioner and also the guarantor calling upon to pay the dues to the extent of more than Rs.9 Crores. On non payment initially proceedings were taken before the DRT at Mumbai for recovery of then dues Rs.10 Crores and odd with interest. Then statutory notice was issued under Section 13(2) of the SARFAESI Act to the petitioner and the guarantor. However, no reply was given to the said notice. Thereafter in November, 2006 there was One Time Settlement compromise arrived at between the parties and an amount of Rs.4 Crores in installments was to be paid to the present respondent No. 1 by the petitioner against the outstanding dues of Rs.5.8 Crores plus unapplied interest at the stipulated rates from March, 2000. It is factually admitted position that said One Time Settlement proposal did not materialize for non payment of the amount within stipulated period. Then Securitisation Application was preferred by the petitioner when the respondent Bank initiated proceedings under Section 13(4) of the SARFAESI Act. Said application preferred under Section 17 of the SARFAESI Act by the petitioner was dismissed by the DRT on merits and it was held that the measures initiated by the bank were valid and it was held that said One Time Settlement proposal was not complied by the petitioner. No appeal was preferred by the petitioner on the said order of the DRT dated 8th May, 2009 and the said order has attained finality.

5. After the above, apparently there was another One Time Settlement proposal for Rs.3.2 Crores which was initiated by the petitioner with assurance that they will pay the said sum within a period of 60 days. According to the petitioner it was the proposal dated 11th June, 2009. This date is of much significance inasmuch as much is argued on this alleged OTS proposal, on behalf of the petitioner. Sometime in November, 2009 the respondent Bank communicated to the petitioner that said proposal cannot be accepted and further informed that the petitioner is required to pay the entire amounts then outstanding, with interest and expenses. Thereafter it so happened that the petitioner contacted SICOM for financial assistance so as to pay back the dues of the respondent Bank and there was a letter addressed by the SICOM to the present respondent asking for the details as to the outstandings to be recovered from the petitioner. This letter was responded by the respondent bank vide letter dated 25th February, 2010. Again this date is of much significance as apparently this letter was received by SICOM on 8th March, 2010. This letter of 25th February, 2010 is to the effect that the total dues to be recovered from the petitioner are to the tune of Rs.3.25 Crores and the entire amount was to be paid till 2nd March, 2010. Much emphasis was placed by the petitioner on the contents of this letter and the communication by the respondent bank to the SICOM and it is argued that it was in fact agreed by the respondent bank that total dues to be recovered from the petitioner are only Rs.3.25 Crores.

6. Counter to these arguments, learned Counsel for the respondent Bank

submitted that there was no concrete proposal, much less agreed by the parties that the total dues were only to the tune of Rs.3.25 Crores. Also it is argued that it was a letter addressed to the SICOM and not to the petitioner and the contents of the said letter cannot be taken as binding on the respondent Bank as against the petitioner. Further it was argued on behalf of the respondent that it was just an official communication and not a concrete proposal and there were no agreed terms between the petitioner and the respondent bank that the entire outstanding amount was to be brought down to only Rs.3.25 Crores.

7. Under the above premise, a sale notice was issued by the respondent for sale of Rasyani factory of the petitioner, by putting it to auction sale with reserve price as Rs.2.62 Crores. The sale was conducted on or about 17th March, 2010 and the property was sold to the highest bidder for Rs.2.64 Crores. Thereafter on 26th March, 2010 the petitioner addressed a letter to the respondent bank asking for extension of time to pay balance amount as according to the petitioner Rs.2.66 Crores were to be paid under One Time Settlement if paid in full before 3rd March, 2010. As such according to the petitioner by adjusting the amount received from the auction sale the outstanding required to be paid to the respondent bank were only Rs.2 Lacs. According to the respondent bank it was in fact erroneous belief of the petitioner that his proposal for One Time Settlement was accepted by the respondent Bank, though a letter was given by the respondent to the SICOM dated 25th February, 2010 and received by SICOM on 8th March, 2010. Needless to mention that still if it is accepted as to writing of such letter by the respondent Bank, it was a communication between the respondent bank and the SICOM and there was no concluded contract so far as the One Time Settlement for a particular fixed amount, arrived at between the parties.

8. After the above, sometime in mid of April, 2010 the petitioner filed an application before the DRT under Section 17 of the SARFAESI Act challenging the sale of the secured assets, however, no relief was granted to him. Thereafter in October, 2010 the respondent Bank obtained an order under Section 14 of the SARFAESI Act from the Chief Metropolitan Magistrate, Mumbai with respect to three other mortgaged properties situated at Mumbai. Again the petitioner preferred Misc. Application praying for injunction in respect of said other mortgaged properties but without any success as the prayers for interim relief were rejected. The matter was taken before the DRAT by the petitioner but again without success for the petitioner and this was the state of affairs by mid of December, 2010.

9. Earlier, in January, 2011 the present petitioner filed Writ Petition (Lodging) No. 7 of 2011 and the Division Bench of this Court granted "status quo" order till final hearing of the Securitisation Application pending before the DRT on the condition of deposit of Rs.5 Lacs before the DRT. Though the status quo was earlier granted, the prayer of the petitioner for directing the respondent bank to issue "No Dues Certificate" was not granted by the Division Bench. Thereafter in

May, 2011 the petitioner approached the DRT with a prayer for appropriating amount of Rs.5 Lacs deposited by him, towards the balance of OTS amount and also prayed for issuance of "No Dues Certificate". This application was resisted by the respondent bank by filing an affidavit and then the Presiding Officer of DRT dismissed the application for adjustment of Rs.5 Lacs in full and final settlement of alleged OTS and also did not grant the prayer of issuance of "No Dues Certificate". It is observed that the said order of DRT was based on a factual position that there was no contractual understanding between the parties, much less arrival of One Time Settlement as suggested by the petitioner, for a total amount of Rs.2.66 Crores and secondly that even otherwise also the amount was not paid within 60 days. This order was challenged by the petitioner before the DRAT in Misc. Appeal No. 90 of 2013 but this appeal was also dismissed confirming the findings of the DRT. Being aggrieved by these consistent orders, present Writ Petition is filed by the petitioner mainly contending that the respondent Bank be directed to appropriate a sum of Rs.5 Lacs towards the balance amount of One Time Settlement and also for issuance of "No Dues Certificate" in favour of the petitioner and direction to the respondent to hand over the title deeds of the mortgaged properties. Alternatively it is prayed by the petitioner that the amount of Rs.2.64 Crores deposited by the auction purchaser with the respondent bank be appropriated towards the satisfaction of alleged One Time Settlement and the sale in favour of the said auction purchaser be cancelled and set aside.

10. After carefully considering rival arguments and the factual position as narrated above it must be said that

(i) The very first One Time Settlement earlier arrived at between the parties for total amount of Rs.4 Crores was not effected when the total outstandings were Rs.5.8 Crores. This settlement could not be arrived at only on account of failure of the present petitioner to honor the terms and conditions of the said settlement;

(ii) Secondly, there was no acceptance of the second alleged One Time Settlement proposal which the petitioner want to propagate inasmuch as there was no consent on behalf of the respondent bank to accept the total amount of Rs.2.64 Crores in full and final settlement of the dues. This is inspite of what happened between the respondent Bank and the SICOM as detailed above. It must be reiterated that the correspondence between the respondent bank and the SICOM is between these two institutions and it cannot be taken as acceptance of the proposal of the petitioner;

(iii) Thirdly, even if it is accepted that this was the proposal which was to be given effect to, within 60 days of the said proposal total payment was not forthcoming and as such in our view the DRT as also the DRAT had rightly dealt with the matter rejecting the prayer of the petitioner.

11. Under the above facts and circumstances of the case, there is nothing to entertain the present Writ Petition so as to quash and set aside the orders and to

grant reliefs as prayed. Hence, Writ Petition is dismissed. Rule stands discharged.