(2015) 04 DEL CK 0135

In the Delhi High Court

Case No : Writ Petition (C) 4169/2015 and C.M. No. 7553-7554 of 2015

Maple Solutions Ltd. APPELLANT

Vs

Bank of India and Others RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 17, 18(1)

Citation : (2015) 04 DEL CK 0135

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

Bench : Division Bench

Advocate : Arjun Sanjay, for the Appellant; JItendra Kumar and Alok Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.K. Gauba, J.

1. The petitioner seeks to invoke the jurisdiction of this Court under Article 226 of the Constitution of India essentially to challenge the sale of the subject property (mortgaged property) through auction held by the first respondent bank on 20.09.2012 in favour of the second respondent (auction purchaser), in the wake of proceedings earlier taken out under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"). The petitioner prays for the issuance of writ in the nature of certiorari quashing the order dated 03.09.2013 of Delhi Debts Recovery Appellate Tribunal (hereinafter referred to as "the DRAT"), and the auction sale dated 20.09.2012, mandamus to direct the first respondent to hold a fresh auction in accordance with the statute and not to alienate or create third-party interest in the subject property.

2. The petitioner had earlier brought a similar challenge on identical facts and circumstances against the order dated 03.09.2013 of DRAT before the High Court

of judicature at Allahabad. It appears that the said writ petition was initially entertained but eventually dismissed for want of territorial jurisdiction mainly for the reasons that the proceedings under SARFAESI Act leading to the impugned action were conducted by the respondent bank at New Delhi, the action was challenged before the Debts Recovery Tribunal (hereinafter referred to as "the DRT") at New Delhi and the order of DRT was also subject matter of an appeal decided by DRAT at New Delhi, these facts indicating that the cause of action for bringing the writ petition had arisen within the jurisdiction of Delhi, rather than the State of Uttar Pradesh.

3. The dispute raised in the writ petition arises out of factual matrix that is not very complicated. Briefly stated, the background facts are that the petitioner company had taken from the respondent bank by agreement dated 16.08.2007 certain financial assistance. The case involves property described in the sale notice (Annexure - P4) as industrial leasehold and building situated at B-31, Sector-5, Phase-1, Noida - 201301, U.P., land area admeasuring 576 sq.mtr. as given in notice for sale, with 3 storied building, in the name of M/s. OGIG Fabs Pvt. Ltd. (Now Name changed to M/s. Maple e Solutions Ltd.), bounded on the North by 18 mtr. wide Road, on the South by property No. B-32, on the East by property No. B-30 and on the West by 18 mtr. wide road, along with all office equipments, furniture and fixture items, computers, computer monitors, and other misc. items such as D.G. Set etc., (hereinafter referred to as "the subject property"). It was offered by the petitioner, and accepted by the respondent bank, as mortgage to secure the interest of the creditor. Concededly, on account of non- payment of the dues under the agreement, the respondent bank declared the loan account as a Non-Performing Asset (NPA) and served a notice under Section 13(2) of SARFAESI Act dated 30.11.2009 to such effect on the petitioner company (borrower/mortgagor). Further, it is an admitted case of the petitioner that the respondent bank took actual physical possession of the mortgaged property on 29.01.2011 in terms of Section 13(4) of SARFAESI Act, taking recourse to one of the permitted measures in order to recover the secured debt. The petitioner challenged the said action by way of Securitization Application (SA) under Section 17 of SARFAESI Act before the DRT. It may be added that the said challenge remained unsuccessful as the Securitization Application registered by DRT as SA No. 22/11 was dismissed by DRT.

4. The respondent bank followed up on the proceedings under Section 13 of the SARFAESI Act by publishing a sale notice dated 09.08.2012 in respect of the subject property. It is clear from the averments in the writ petition itself that this was fifth such attempt of the respondent bank for recovery of its dues by sale of the mortgaged property inasmuch as the sale notice dated 09.08.2012 was preceded by sale notices published on 25.02.2011, 07.04.2011, 30.01.2012 and 10.05.2012.

5. Be that as it may. Pursuant to the sale notice published on 09.08.2012, auction was conducted on 20.09.2012 with reserve price in respect of the

mortgaged property brought to auction fixed at Rs. 13 Crores (also indicating reserve price of Rs. 18 Lacs in respect of the movables lying in the subject property). It appears that four bids were received and were subjected to scrutiny as to ascertain their validity. In terms of the fourth condition in the public notice for sale, the intending bidders were required to deposit the earnest money in the sum of Rs. 131 Lacs (Rs. 130 Lacs for the mortgaged property and Rs. 11 Lac for the movables) - to be adjusted in the case of highest offerer/bidder. One of the said four bidders had not submitted proof of earnest money deposit and so his bid was rejected leaving three valid bids in the fray. It is undisputed that the bid submitted by the second respondent at Rs. 1333.10 Lacs was found to be the highest and, thus, declared successful.

6. It is the ninth condition of the public notice for sale respecting the auction held on 20.09.2012 which is at the core of the dispute raised by the petitioner. It read as under:-

"The highest offerer/bidder, after inter-se bidding, shall deposit 25% of the amount of purchase money, adjusting the earnest money deposit already paid immediately after acceptance of offer/bid by the Authorized Officer in respect of the sale failing which the earnest money deposit shall be forfeited. The highest offerer/bidder, after inter-se bidding, shall be declared to be the purchaser of the assets mentioned herein provided always he is legally qualified to bid."

(emphasis supplied)

7. It is alleged by the petitioner that the second respondent deposited the amount equivalent to 25% of the bid amount (of course, after adjusting the earnest money deposited earlier) only on 24.09.2012. It is his contention that such deposit was in violation of the ninth condition of the public notice for sale quoted above as also in breach of the command of Rule 9(3) of the Security Interest (Enforcement) Rules, 2002 which govern the action of the secured creditor under Section 13 of the SARFAESI Act.

8. Rule 9(3) may be quoted as under:-

"On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent of the amount of the sale price, to the authorized officer conducting the sale and in default of such deposit, the property shall forthwith be sold again."

(emphasis supplied)

9. The petitioner challenged the auction sale in favour of second respondent by way of Interim Application No. 734/12 on 24.09.2012 in the course of proceedings arising out SA No. 22/2011. His contention before the DRT was that in terms of the public notice of sale, and Rule 9(3) of the Security Interest (Enforcement) Rules, 2002, the second respondent was obliged to deposit 25% of the bid amount "immediately after acceptance of offer/bid" and, therefore, the deposit of the 25% amount on 24.09.2012 could not have been accepted as

"immediate" compliance. Thus, it argued that the confirmation of sale in favour of the second respondent is invalid. It is argued by the petitioner that the procedure prescribed in the SARFAESI Act and the Rules framed thereunder for recovery of dues through the permitted measures by the secured creditor is mandatory and any breach thereof would vitiate the action taken.

10. The DRT appears to have made a detailed inquiry into the facts. While rejecting the objection raised by the petitioner with reference to Rule 9(3) through IA No. 734/12, the DRT by order dated 03.10.2012, took note of the facts, inter alia, that the auction proceedings resulting in the second respondent being declared as the highest bidder were concluded on 20.09.2012 at about 06:30 P.M. by which time, the banking hours were already over. The authorized officer of the respondent bank, thus, had allowed second respondent to deposit 25% of the bid amount by 01:00 P.M. on the next day i.e. 21.09.2012. The amount was deposited by the second respondent in the form of a banking instrument on 21.09.2012.

11. It may be mentioned here that through statement of account issued by the second respondent (Exh.AW/50), the petitioner seeks to show that the amount deposited (25%) by the second respondent was Rs. 183,27,500/- for which credit was given against the account of the petitioner company on 24.09.2012. The dispute raised is only about the date of deposit.

12. The DRT rejected the objection observing that the expression "immediately" appearing in the contentions to the public notice of sale, and in Rule 9(3), has to be understood in the context of the matter as imposing a duty upon the party concerned to act with a sense of urgency without undue loss of time. It rejected the contention of the petitioner that the condition of immediate deposit should have entailed deposit "then and there, on the same day".

13. The petitioner challenged the order dated 03.10.2012 of the DRT before the DRAT by appeal registered as inward No. 439/2012. The DRAT by order dated 24.07.2013 called upon the petitioner to deposit 50% of the amount in dispute as per the demand notice dated 30.11.2009. This was a pre-condition to the appeal being entertained in terms of the second proviso to Section 18(1) of the SARFAESI Act. The petitioner did not comply with the said direction. The appeal against the order dated 03.10.2012 of DRT (along with other appeal against an earlier order of DRT) was consequently dismissed by the DRAT through order dated 03.09.2013 which is impugned through the writ petition at hand.

14. The first respondent which appeared through counsel on advance notice pointed out at the hearing that the petitioner had not made any counter-offer to deposit the disputed amount or the bid amount even while moving the IA No. 734/12 on 24.09.2012 raising the dispute with reference to Rule 9(3) of the Security Interest (Enforcement) Rules, 2002.

15. The counsel for the petitioner did not have any explanation to offer with reference to non-compliance with the direction of DRAT in the order dated

24.07.2013 requiring the petitioner (appellant before the DRAT) to make the pre-deposit. The counsel fairly conceded that the order dated 24.07.2013 was never challenged nor any prayer made before the DRAT for the amount of pre-deposit to be reduced in terms of the third proviso of Section 18(1) of SARFAESI Act.

16. Since the direction of the DRAT in the order dated 24.07.2013 was in the exercise of its discretion under the law, the same cannot be assailed or faulted. In this view, the non-compliance was bound to result in dismissal of the appeal and so correctly dealt with by DRAT through the impugned order dated 03.09.2013.

17. Even otherwise, we do not find any substance in the challenge to the auction sale with reference to the conditions of the public notice or Rule 9(3) of the Security Interest (Enforcement) Rules, 2002.

18. In the case at hand, we need not even go into the question as to whether stipulation of the deposit of 25% "immediately" after the auction sale is to be construed as mandatory or directory. As mentioned earlier, it has been found during inquiry on facts by the forums below that the auction proceedings could conclude on 20.09.2012 only by 06:30 P.M. By such time, the banking hours were already over. Thus, the officer authorized by the bank, which was conducting the auction proceedings, had no option but to call upon the second respondent to deposit the 25% of the bid amount by next day i.e. 21.09.2012. The amount was accordingly deposited on 21.09.2012. It is inconsequential that the credit was reflected to such effect in the account of the petitioner company on 24.09.2012. For purposes of the second respondent, the compliance had been duly made on 21.09.2012. In the given facts and circumstances, such deposit has to be treated as deposit made immediately after the bid of second respondent had been declared successful.

19. Thus, the petition assails the orders of the forums below is found devoid of substance. It is dismissed.