(2019) 11 UK CK 0070

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3389 Of 2019

M/s Bhupesh Kumar Shikshan Evam Vikas Sansthan APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 07-11-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(4)

Citation : (2019) 11 UK CK 0070

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : B.C. Pandey, Shikhar Kacker, V.K. Kohli, Rajani Supyal Latwal

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. Petitioner had admittedly taken a loan from the respondent bank, which was not repaid. Consequently, the account of the petitioner was declared as "Non Performing Assets" (in short "NPA") and later the bank proceeded under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (from hereinafter referred to as the "Act") for recovery of its loan amount. By now symbolic possession has already been taken by the bank under Section 13 (4) of the Act. Aggrieved the petitioner has filed the present writ petition before this Court.

2. The liability on the petitioner of the respondent bank is Rupees Seven Crore odd. The petitioner itself has approached the Debts Recovery Tribunal, Dehradun in which following order was passed on 27.09.2019:-

"Today, case if fixed for arguments. However, Applicants filed two IAs i.e. No.123/19 dated 27.09.2019 and I.A.No.327/2019 dated 25.09.2019 respectively seeking amendment in the S.A. to challenge fresh sale notice dated 11.09.2019 published on 12.09.2019 whereby secure assets in question again put to auction for 27.07.2019 by Respondent Bank for which the last date of receipt of bid was yesterday i.e. 26.09.2019 and another I.A. No. 357/2019 has been filed by the Applicants through different Counsel seeking relief for regularization of the loan account with Respondent Bank. On deposited of upfront amount of Rs.40.00 Lac out of which already deposited a cheque.

Notice is given to the Respondent Bank inviting reply, if any.

Ld. Counsel for the Respondent Bank accepted the notice and stated that in pursuance to the latest sale notice date 11.09.2019 which was published on 12.09.2019 for which last date of receiving bid was 26.09.2019, no bid was received. Therefore, the present Sale Notice also stand lapsed and to challenge the legality of sale notice rendered infructuous with the I.A. for amendment.

Respondent Bank, further submitted that the Applicants have deposited a cheque of Rs.40.00 Lacs. But the Respondent Bank has replied that in case Applicants deposit Rs.2.50 Crore then fresh proposal will be considered by the Competent Authority.

However, after hearing the arguments of both the counsels for the parties at length, Ld. Counsel for the Applicants again reiterated their stand of regularization/re-schedulement of the loan accounts. The Applicants also waived of their right to challenge the legality and validity of the SARFAESI action initiated by the Respondent Bank.

Therefore, to secure the ends of justice, while considering the aspect of borrowers are running an Educational Institution where future of the Students are involved; I deem it appropriate to provide one another opportunity to the Applicants to approach Respondent Bank within 15 days along with concrete proposal with more upfront amount of Rs.60.00 Lacs in the shape of Demand Draft in addition to the amount already deposited through cheque for which Applicants have given an undertaking to honour the same for regularization/re-schedulement of the loan accounts.

In case Applicants approach the Respondent Bank within 15 days along-with aforesaid amount and concrete proposal, Respondent Bank shall consider the said proposal sympathetically, dispose of the same in next 15 days and communicate the outcome to the Applicants. Till than Respondent Bank shall not proceed with the current proceedings and keep the SARFAESI proceedings in abeyance.

However, in case the Applicants fail to deposit the aforesaid amount along with concrete proposal, Respondent Bank is free to proceed against the secured assets to recover its dues in accordance with law.

S.A. as well as IAs are disposed of accordingly.

Let copy of this order be supplied to all concerned parties free of cost.

After due compliance, the file be consigned to Record."

3. Admittedly the order of the Debts Recovery Tribunal, Dehradun, has not been complied with inasmuch as the amount of Rs.60,00,000/- (Rupees Sixty Lakh Only) could not be given to the respondent bank by the petitioner within a period of fifteen days as stated in the order of the Debts Recovery Tribunal, Dehradun itself. The reason for not complying the order given by the petitioner is that the Society which runs the educational institution is situated in Patna (Bihar) and because of the flood in Patna the delay has been caused. Thereafter on 22.10.2019, the amount was given by the petitioner and has been received by the bank though not encashed, states the learned Counsel for the petitioner.

4. Meanwhile, the property was to be auctioned on 05.11.2019 but it has not materialized. According to the Senior Counsel for the petitioner, the next date fixed in the matter before the Debts Recovery Tribunal, Dehradun is 19.11.2019.

5. A statement has been given by the learned Senior Counsel for the Bank - Mr. V.K. Kohli that the next date of auction of the property in any case shall not take place before 20.11.2019.

6. In view of the above statement as the matter is already pending before the Debts Recovery Tribunal, Dehradun, where the matter is fixed for 19.11.2019, no interference is being called for by this Court in the matter.

7. Consequently, the writ petition stands dismissed.

8. Let a certified copy of this order be supplied within twenty-four hours on payment of usual charges.

