
(2019) 01 MP CK 0060
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6184 Of 2012

M/S. Mayunk Industries

APPELLANT

Vs

Union Bank Of India And Others

RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4), 17, 18(1)

Citation : (2019) 1 MPWN 29

Hon'ble Judges : Virender Singh, J;S.C. Sharma, J

Bench : Division Bench

Advocate : Dr. Harsh Pathak, Abhishek Tugnawat, Anand Singh Bahrawat

Final Decision : Dismissed

Judgement

1. The petitioner before this Court has filed this present petition being aggrieved by judgment dated 27/04/2012 passed in Appeal No.R-164/11 by the Debts Recovery Appellate Tribunal, Allahabad.

02- The petitioner's contention is that the petitioner Firm M/s. Mayunk Industries is engaged in construction business and a work order was issued by M/s. Pratibha Industries Limited, Mumbai in favour of the petitioner Firm to carry out certain work. The petitioner based upon the work order given to the petitioner requested the Union Bank of India for grant of financial assistance and it was sanctioned vide letter dated 15/12/2007. The Bank has sanctioned cash credit limit of Rs.50 Lakhs.

03- Various agreements were executed between the parties and the Bank obtained collateral security by executing equitable mortgage of two storied house i.e. House No.A-39, Chandra Nagar, A. B. Road, Indore (M.P.). The petitioner has further stated that interest was paid every quarterly. The petitioner has further stated that later on the respondent Bank classified the petitioner's account as "NPA" as the last entry in the statement of the account for the month of

December 31st, 2008, January 31st, 2009 and 28/02/2009 was in excess of the limit sanctioned by the Bank.

04- The petitioner has further stated that a notice was issued on 17/06/2009 under Section 13(2) of the The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as the "Act of 2002") directing the petitioner to pay a sum of Rs.52,30,101/- as on 31/03/2009 and the petitioner submitted a letter to the Bank on 16/08/2009 praying some more time to repay the amount on medical ground.

05- Subsequently, another notice was issued on 25/08/2009 under Section 13(4) of Act of 2002 for taking possession of the assets on 31/08/2009 and the petitioner filed reply / objection on 28/08/2009. On 31/08/2009, the Bank took symbolic possession of the property i.e. House No.A-39, Chandra Nagar, A. B. Road, Indore (M.P.) and a possession / sale notice dated 31/08/2009 was also served to the petitioner and the guarantor.

06- The possession notice was also published in "Nai Duniya" on 30/01/2010 and a notice for sale of property was also published on 15/03/2010 in "Hindustan Times" as well as in "Dainik Bhaskar". The petitioner's counsel issued a notice on 23/02/2010 for stopping the process of sale, which was scheduled for 15/03/2010 and subsequently another recovery notice was issued by the Bank on 23/02/2010 directing the petitioner to pay a sum of Rs.56,03,449.20 within seven days. The petitioner was also placed in CIBIL list.

07- The petitioner, thereafter, preferred an appeal under Section 17 of the Act of 2002 along with an application for grant of interim relief and the application was rejected by the Debt Recovery Tribunal, Jabalpur by an order dated 15/03/2010. The petitioner, thereafter, preferred an appeal under Sub Section (1) of Section 18 of the Act of 2002 before the appellate Court and the appellate Court has also dismissed the appeal of the petitioner. Thereafter, a writ petition was preferred against the order dated 15/06/2010 in Writ Petition No.7650/2010 and the same was dismissed by this Court on 05/07/2010.

08- The District Magistrate on 06/07/2010 after granting an opportunity of personal hearing to the petitioner passed an order for taking physical possession. The petitioner again approached the Debt Recovery Tribunal and in the second appeal, which was pending before the Debt Recovery Tribunal, the petitioner filed two amendment application on 29/09/2010 and 05/04/2011. The petitioner wanted impleadment of Mr. Ashok Saxena as an applicant, which was disallowed by an order dated 08/07/2011. The second appeal was finally decided on 30/09/2011 and it was dismissed.

09- The petitioner, thereafter, preferred an appeal before the appellate Tribunal under Sub Section (1) of Section 18 of the Act of 2002 and the same has also been dismissed. The present petition is against order dated 27/04/2012 passed in Appeal No.R-164/11 by the Debts Recovery Appellate Tribunal, Allahabad.

10- The appellate authority while deciding the appeal has passed the following order:-

"Learned counsel appearing for the appellant has shown the statement of account filed along with the present appeal, which are contained from Pages No.73 to 76 of the paper of book. Learned counsel appearing for the appellant submitted that the account has been shown as "00" on 31.03.2009 and the submitted with reference to its previous quarter that the previous quarter ended on 31.12.2008, which comprises the months of October, November and December and within a period of 90 days from the date of ending the quarter i.e. 31.12.2008, the appellant has to deposit the interest and appellant has deposited the same in the month of February, 2009. Under these circumstances, the account could not be declared as NPA. Learned counsel for the appellant further submitted that the next quarter which comprises the month of January, February and March, 2009. The period of 90 days of this quarter would expire on 30.06.2009, therefore, he submitted that the account could not have been declared as NPA on 31.03.2009. On this basis, it is submitted that all the actions are illegal. To substantiate the same, the learned counsel for the appellant relied upon the guidelines issued by the Reserve Bank of India. In the order passed by this Tribunal on 15.06.2010, this Tribunal has also quoted the guidelines issued by the Reserve Bank of India, which defines "Non Performing Assets". For the purpose of reference, the same are reproduced as under:-

"2. Definitions

2.1 Non-performing Assets

2.1.1 An asset, including a leased asset, becomes non- performing when it ceases to generate income for the bank.

2.1.2 A non-performing asset (NPA) is loan or advance where:

- i. interest and/or installment of principal remain overdue for a period of more than 90 days in respect of a term loan,
- ii. the account remains 'out of order' as indicated at para 2.2 below, in respect of an Overdraft/Cash Credit (OD/CC),
- iii. the bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted,
- iv. the installment of principal or interest thereon remains overdue for two crop seasons for short duration crops,
- v. the installment of principal or interest thereon remains overdue for one crop season for long duration crops,
- vi. the amount of liquidity facility remains outstanding for more than 90 days, in respect of securitization transaction undertaken in terms of guidelines on securitization dated 1st February, 2006.

vii. in respect of derivative transactions, the overdue receivables representing positive mark-to-market value of a derivative contract, if these remain unpaid for a period of 90 days from the specified due date for payment.

2.1.3 Banks should, classify an account as NPA. only if the interest due and charged during any quarter is not serviced fully within 90 days from the end of the quarter.

2.2 'Out of order' status.

An account should be treated as 'out of order' if the outstanding balance remains continuously in excess of the sanctioned limit/drawing power. In case where the outstanding balance in the principal operating account is less than the sanctioned limit/drawing power, but there are no credits continuously for 90 days as on the date of Balance Sheet or credits are not enough to cover the interest debited during the same period, these accounts should be treated as 'out of order'

This is to be seen that clause 2.1.2 is relevant, which states that non performing asset is a loan or advance. Sub- clause (ii) of the said clause states that the account remains "out of order" as indicated at paragraph 2.2 below in respect of an Overdraft/Cash Credit. The word "out of order" is not used in any of the sub-clauses of the said paragraph i.e. 2.1.2, but is only referred with reference to sub-clause (ii). In the present case, overdraft/cash credit facility was availed by the appellant and there was no dispute that sub-clause (ii) would apply for the purpose of "Non Performing Assets". The word "out of order" also states as aforesaid, the account should be treated as out of order, if outstanding balance remains continuously in excess of sanctioned limit/drawing power. It further provides that in cases, where outstanding balance in the principal operating account is less than the sanctioned limit/drawing power, but there are no credits continuously for 90 days as on the date of Balance Sheet or credits are not enough to cover the interest debited during the same period, these account should be treated as "out of order".

Learned counsel for the appellant submitted that clause 2.1.3 has also to be read along with the clause 2.1.2 and clause 2.1.3 states that the Bank should classify the account as NPA only if the interest due and charged during any quarter is not serviced fully within 90 days from the end of the quarter. On the basis it is submitted that in the present case, for the previous quarter, the interest amount was deposited on 19.02.2009 and the balance amount was of Rs.49,99,861.86 and therefore, he submitted that once the amount of interest has already been deposited towards the credit limit, then there was no question of declaring the account as NPA on 31.03.2009.

Learned counsel appearing for the Bank submitted that the reading of Clause 2.1.3 is not correct. He submitted that in the present case, sub-clause (ii) of Clause 2.1.2 would be applicable, wherein it is stated that the account remains out of order as indicated in Clause 2.2 below in respect of overdraft/cash credit. Clause No.2.2 defines that the word "out of order" and according to the same,

the account has to be treated as "out of order", if the outstanding balance remains continuously in excess of sanctioned limit/drawing power. At page No.75 which is the statement of account, from the month of December, 2008 to February, 2009, the outstanding amount in the account was in excess to the limit. Thus, for the previous quarter, there was an outstanding amount in excess to the limit and according to the word "out of order" as applied in sub clause (ii) of clause 2.1.2 as aforesaid, shall apply.

On the basis of the aforesaid, I am of the view that the Bank was within its right to justify the classification of the account as NPA on 31.03.2009, as there was continuously outstanding amount for one quarter in excess to the limit. Thus, there was no flaw in declaring the account as NPA.

In view of the aforesaid, the present appeal is dismissed as it has no merit and the present appeal stands dismissed subject to cost of Rs.1 lac."

11- The appellate authority has held that Bank was justified in classifying the account as "NPA" on 31/03/2009. The details referred in the order establishes that there was outstanding balance continuously in excess of the sanctioned limit / drawing power from the month of December, 2008 to February, 2009 and in those circumstances, this Court is of the opinion that the account of the petitioner has rightly been classified as "NPA". The auction of the property has taken place in the matter and possession of the property has been handed over to the successful auction purchaser. 12- The another important aspect of the case is that the property was sold for Rs.82,21,551/-. The petitioner thereafter, has preferred a writ petition for refund of excess amount. The petition was allowed and the petitioner has received a sum of Rs.29,80,150/- along with interest. The petitioner even after receiving excess amount, which was recovered after adjusting the dues, is agitating the matter.

13- This Court has carefully gone through the process of auction and there is no illegality committed by the respondent Bank while recovering the dues from the property, which was mortgaged with the Bank. The account was rightly classified as "NPA" and therefore, once the account was rightly classified as "NPA", this Court is of the opinion that the Bank was justified in conducting auction and recovering the dues.

14- The apex Court in the case of Central Bank of India Vs. C.L. Vimla and Others reported in 2016(1) MPLJ 101 in paragraphs No.18 and 19 has held as under:-

"18. We cannot brush aside the fact that Respondent Nos. 4, 6 & 7 filed a claim petition before the Recovery Officer on 4th January, 2007 claiming their share of balance of sale proceedings after adjustment of the dues of the Central Bank which shows that the parties to the dispute have accepted the award passed by the Lok Adalat. It appears to us that the High Court did not consider the said facts and further it has escaped from the mind of the High Court that the auction purchaser has purchased the auctioned property for sale consideration of Rs.

3.27 crores and 25% of the sale consideration was duly paid on 5th October, 2006 and furthermore on 19th October, 2006, the balance amount of sale consideration was duly paid by the auction purchaser. We have further noted that the sale was confirmed on 15th November, 2006. The sale certificate was also issued in favour of the auction purchaser after paying the requisite stamp duty and registration fees which, as pointed out to us on behalf of the auction purchaser, to the tune of Rs. 30,73,800/-. It is also not in dispute that auction purchaser was put in possession of the property and is still in possession of the property since the sale certificate was issued and registration was made in his favour. It is submitted on behalf of the auction purchaser that he has purchased the property by availing private borrowing for the said property and he is paying nearly Rs. 5 lakhs per month as interest. Therefore, in our opinion, the equity and good conscience also has to play a role in the matter in question on the given facts and after considering the conduct of the Respondents (C.L. Vimla and Others) in the matter. In these circumstances, we feel that it would not be proper for us at this stage to set aside the sale, as has been done by the High Court without taking into consideration all these facts. Further, the High Court has failed to appreciate these facts and wrongly held that the auction purchaser is a party to the negligence of the Recovery Officer and, accordingly, the sale was set aside. In our opinion, the auction purchaser had nothing to do in holding the auction. Rather he deposited the money after bonafidely participating in the auction and, in fact, suffered for long time to pay a price by participating in auction proceedings.

19. In these circumstances, we further noticed that the principal debtors were not prepared to pay back the amount to the Bank and did not choose to defend themselves properly. The conduct of the principal debtors also cannot be overlooked by us."

15- In light of the aforesaid judgment, this Court does not find any reason to interfere with the process of auction conducted by the Bank. No case for interference is made out in the matter. The writ petition is accordingly dismissed.

Certified copy as per rules.