

(2021) 11 SHI CK 0079

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 7258 Of 2021

M/S Moonley Industries

APPELLANT

Vs

Himachal Pradesh State Co-Operative Limited And Others

RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 17A(2)

Citation : (2021) 11 SHI CK 0079

Hon'ble Judges : Mohammad Rafiq, CJ;Sabina, J

Bench : Division Bench

Advocate : Dr. Lalit Kumar Sharma, Sushantvir Singh

Judgement

Mohammad Rafiq, CJ

1. This petition has been filed by the petitioner, M/s Moonley Industries. The petitioner has challenged the public notice dated 18.10.2021 (Annexure P-7), of lease hold right in Plot No.11, in a situation when its original application (S.A. No.135 of 2013) filed before Debt Recovery Tribunal-1 (DRT-1), Chandigarh, cannot be taken up for hearing because of the non-availability of the Presiding Officer there.

2. Learned for the petitioner, during the course of arguments, submitted that originally the DRT Jaipur was authorized to take up and decide the matters pending before DRT, Chandigarh.

3. The petitioner has approached this Court faced with a peculiar situation due to the absence of the Presiding Officer in DRT-I at Chandigarh, where S.A. No.135 of 2013 is pending. Reference is made to the communication sent by Registrar, Appellate Tribunal, Delhi to the Presiding Officer, DRT Jaipur, conveying that since the posts of Presiding Officers of DRT-I, II and III, Delhi and also of DRT-I, II & III, Chandigarh are lying vacant and no additional charges of these DRTs have been entrusted/assigned by the department of Financial Services, therefore, the Presiding Officer, DRT, Jaipur is nominated to deal with the extremely urgent

cases of DRT-I, II and III, Delhi and also of DRT-I, II & III, Chandigarh, till further orders. However, subsequently, a public notice was issued by the Registrar of DRT-I, Chandigarh, on 5.10.2021 with reference to the aforementioned communication dated 4.10.2021, conveying that the Debt Recovery Appellate Tribunal has withdrawn the said communication regarding nomination of the Presiding Officer, DRT, Jaipur, to deal with the extremely urgent cases of DRT-I, Chandigarh.

4. Learned counsel for the petitioner submitted that the auction of the property in question is scheduled to take place in on line auction today till 3.00 p.m. and, therefore, interim order staying such proceedings, may be passed.

5. Learned counsel for the respondents, however, submitted that the remedy available to the petitioner is, in such a situation, to approach the Chairperson DRAT under Section 17A (2) of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and not this Court.

6. Be that as it may, this Court does not deem it appropriate to go into the merits of the case, particularly when the main case of the petitioner is still pending before the DRT. Earlier also, while dealing with the similar matters (CWP Nos.6624, 6647 6587, 7108 & 7005 of 2021), this Court disposed of the said petitions with liberty to the petitioner to approach the DRAT, New Delhi, which was required to pass appropriate orders on the application, in accordance with law.

7. In the normal course, this Court having already held that the petitioner has an alternative efficacious remedy available to it to approach the DRT and it having already approached the Tribunal by filing appropriate application, the present writ petition could not have been entertained on the same subject matter, but in the peculiar facts and circumstances of the case, the remedy said to be available to the petitioner before DRT-1 at Chandigarh, in fact, is not available in the absence of the posting of any Presiding Officer, not only in DRT-I, and other two DRTs at Chandigarh, particularly when the additional charge given to DRT Jaipur for entertaining the extremely urgent matters also stands withdrawn. Such remedy cannot be said to be efficacious in the present circumstances.

8. In view of the above, the present writ petition is disposed of with liberty to the petitioner to approach Debt Recovery Appellate Tribunal within seven day from today, which shall pass the appropriate orders on the application of the petitioner within one month from the date of filing thereof, in accordance with law. Even though, the auction may take place, but the same shall not be confirmed till any final order is passed by the DRAT on the application of the petitioner. It would be for the DRAT to pass any further order thereafter in its discretion, in accordance with law. Pending application(s), if any, shall also stand disposed of.

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