(2012) 09 DEL CK 0424

In the Delhi High Court

Case No : Writ Petition (C) 6197 of 2012

M/s. Timpack Pvt. Ltd. APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4), 17, 18, 18(1)

Citation : (2012) 09 DEL CK 0424

Hon'ble Judges : Rajiv Sahai Endlaw, J;D. Murugesan, J

Bench : Division Bench

Advocate : Jose Chiramal, for the Appellant;

Final Decision : Dismissed

Judgement

1. The petition, besides impugning the order dated 29th August, 2012 of the Debt Recovery Tribunal (DRT) - I, New Delhi in S.A. No. 127/2012 preferred by the petitioner, also seeks a declaration that the requirement in the second and third proviso to Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) Act, 2002 of deposit, for the appeal to be entertained by the Debt Recovery Appellate Tribunal (DRAT) is ultra vires Article 14 of the Constitution of India. The aforesaid S.A. No. 127/2012 before the DRT-I, New Delhi has been preferred by the petitioner u/s 17 of the SARFAESI Act impugning the measures taken by the respondent Bank/its authorized officers u/s 13(4) of the SARFAESI Act; the petitioner during pendency of the said proceeding before the DRT, also sought interim stay of the measures initiated by the respondent Bank u/s 13(4) of the Act. DRT, vide impugned order dated 29th August, 2012 on the said application of the petitioner for interim relief, has restrained the respondent Bank from proceedings further under the SARFAESI Act subject to the petitioner depositing a sum of Rs. 2.5 crores within one month and a sum of Rs. 50 lacs per month till further orders with the respondent Bank. The proceedings have been adjourned

by the DRT to 1st October, 2012 for completion of pleadings etc.

2. The petitioner is aggrieved from the conditions aforesaid imposed by the DRT of deposit of Rs. 2.5 crores and further amount of Rs. 50 lacs per month with the respondent Bank, for grant of interim relief.

3. The case set-up by the petitioner is that though the remedy of appeal to the DRAT is available to the petitioner against the order dated 29th August, 2012 supra of DRT but the petitioner is prevented from invoking the said right of appeal owing to the onerous condition of pre-deposit of 50% of the amount of debt due as claimed by the secured creditors or determined by the DRT, whichever is less, reduce able by the DRT in the exercise of its discretion to 25%, contained in the second and third proviso aforesaid of Section 18 of the Act. The argument of the counsel for petitioner is that the Supreme Court in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., struck down provision for pre-deposit of 75% earlier contained in Section 17 of the Act; that the legislature has however introduced a similar condition in Section 18 of the Act and which is liable to be struck down for the same reasons which prevailed with the Supreme Court in striking down the provision for pre-deposit in Section 17 of the Act.

4. We have extensively heard the counsel for the petitioner.

5. We may notice that the DRT in its order dated 29th August, 2012, imposed the conditions aforesaid for grant of interim relief, recording the submission of the counsel for the petitioner before the DRT that the legally recoverable amount was Rs. 5,50,15,854.04 and not Rs. 23,36,48,368/- as on 31st March, 2011 as demanded by the respondent Bank and the contention of the petitioner that its OTS proposal for about Rs. 7 crores had been rejected without logic and reason. The DRT further noted the contention of the counsel for the respondent Bank that the petitioner having admitted liability in the sum of Rs. 5,50,15,854.04, is not entitled to any interim relief without depositing the said amount; the respondent Bank had also drawn attention to the balance sheet of the petitioner Company as on 31st March, 2009 showing Rs. 13 crores due to the respondent Bank. It was in these circumstances that the DRT, noticing that the petitioner had not disputed the liability and had disputed the quantum only, has granted a chance to the petitioner to prove its bona fide by making payment of Rs. 2.5 cores within one month and of Rs. 50 lacs per month.

6. Upon being confronted with the aforesaid, the counsel for the petitioner contends that the DRT has wrongly recorded that the petitioner had admitted liability in the sum of Rs. 5,50,15,854.04.

7. We are however of the view that if the petitioner has any grievance as to such findings of DRT, the same have to be considered by the DRAT and this Court would not be justified in exercise of the writ jurisdiction to go into that question at this stage. Moreover the aforesaid is only an interim arrangement and the payment directed of Rs. 50 lacs per month is also not for a indefinite amount and

is only until further orders, thereby making it clear that DRT can entertain further plea from the petitioner to modify the said condition. As the matter is still pending before the DRT, it cannot be said that the petitioner has no fora for such modification. The Supreme Court in Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, , Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, and in recent decision in City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwala and Others, has held that the High Court will not be justified in entertaining a petition under Article 226 as such orders will have adverse impact on the rights of the Banks and other financial institutions to recover their dues.

8. As far as the challenge by the petitioner to the second and third provisos of Section 18 of the SARFAESI Act is concerned, we are of the opinion that the challenge thereto by the petitioner is on mere apprehension i.e. that in the event of the petitioner preferring any appeal it would be required to make a deposit. A challenge to the provision of an Act cannot be entertained on mere assumption. The petitioner till now has not approached the DRAT and the cause of action if any to the petitioner will accrue only after the petitioner approaches the DRAT and any order as apprehended by the petitioner requiring the petitioner to make a deposit is made. In view of the above, we are not inclined to entertain the writ petition. Accordingly, this writ petition is dismissed. We make it clear that the order in this writ petition will not come in the way of the writ petitioner to either approach the DRT for modification of the second condition of the order or to challenge the same by way of appeal before the DRAT. The challenge to the vires of Section 18 is left open for the present.

No costs.

