courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 16/09/2026

(2014) 09 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 19666 of 2014

MSD Industrial Enterprises Ltd. — APPELLANT

Vs

Debts Recovery Appellate Tribunal and Others — RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13(2), 13(4), 13(9)

Citation : (2015) 4 BC 89 : (2015) 177 PLR 697

Hon'ble Judges : Kuldip Singh, J;Hemant Gupta, J

Bench : Division Bench

Advocate : B.B. Bagga, Advocates for the Appellant

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to an order passed by the Debts Recovery Appellate Tribunal (for short ''the Appellate Tribunal'') on 02.07.2014 (Annexure P-20) as well as sale notice dated 22.01.2013 said to be in contravention of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short ''SICA Act''). The petitioner availed financial assistance from respondent No. 2 i.e. Punjab State Industrial Development Corporation (for short ''the Corporation'') as well as from State Bank of India and Small Industrial Development Bank of India (for short ''SIDBI''). The loan share of the Corporation was 12.78%; share of State Bank of India was 76.13% and that of SIDBI was 11.09%. The petitioner was declare a sick Company on 04.02.2002 and State Bank of India was appointed as an Operating Agency. The draft Rehabilitation Scheme was circulated for revival of the Company on 02.06.2009. At that time, the total amount due to respondent No. 2 from the petitioner was Rs. 4.5 crores. The petitioner was required to pay a sum of Rs. 1 crore against the principle outstanding towards respondent No. 2 i.e. Rs. 44.30 lacs as part of the Rehabilitation Scheme framed by the Operating Agency. The Rehabilitation Scheme was sanctioned by the Board for Industrial and Financial Reconstruction under the provisions of SICA Act on 02.12.2009 (Annexure P-6).

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/msd-industrial-enterprises-ltd-...

2. During the pendency of an appeal against the said order, the respondent No. 2 initiated action under Section 13(2) of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short the SARFAESI Act''). The Debts Recovery Tribunal (for short ''the Tribunal'') dismissed the appeal filed by the petitioner on 21.02.2012 (Annexure P-16). The appeal against the said order was dismissed by the learned Appellate Tribunal on 02.07.2014 (Annexure P-20). It is the said order which is subject matter of challenge in the present writ petition.

3. At this stage, it may be noticed that an appeal filed by respondent No. 2 under the SICA Act was dismissed as abated by Appellate Authority for Industrial & Financial Reconstruction (for short ''AAIFR'') on 31.08.2012 (Annexure P-17) in view of the provisions of the SARFAESI Act. Consequently, an order declaring the company as sick and the Rehabilitation Scheme came to be set aside. The said orders have not been set aside. It is also the stand of the petitioner that it entered into one time settlement with SIDBI when it agreed to settle the loan account on payment of a sum of Rs. 40.47 lacs along with interest. A certificate by SIDBI of no due was issued on 01.09.2006 (Annexure P-3). The petitioner also settled the dues of the lead creditor i.e. State Bank of India and liquidated the loan account on 29.08.2011 (Annexure P-15). Thus, the petitioner is said to have settled more than 87% of its secured creditors.

4. The sole argument raised by learned counsel for the petitioner is that the respondent-Corporation has only 12.78% shares in the total loan accounts, therefore, in terms of Section 13(9) of the SARFAESI Act, a creditor who has less than ''three-fourth'' (now ''sixty per cent'') of the shares of the secured creditors cannot be permitted to take recourse of the provisions of the Act.

5. We find such contention to be wholly untenable. Firstly, it is the pleaded case of the petitioner itself that the loan account of other two creditors stand settled. The respondent No. 2 is now the sole secured creditor, thus it is a creditor to the extent of 100%, though at one stage, it had only 12.78% shares.

6. Still further, a Division Bench of Delhi High Court in Chemstar Organics India Limited Vs. Bank of Baroda and Others, examined the provisions of Section 13(9) of the SARFAES1 Act. It has been held that it is a beneficial provision for the secured creditor and not for the debtor. Therefore, the borrower cannot take benefit of such lack of consent. The Court held to the following effect:-

"24. We have set out the salient facts in view of the multiplicity of proceedings which had been initiated. To our mind, the crucial question is the very object of introduction of the SARFAESI Act and as to how Section 13(9) of the said Act has to be read in that context. The purpose of enactment of SARFAESI Act was to enable the banks and financial institutions to realize long term assets, manage problems of liquidity, asset liability mis-match and improve recovery by exercising powers to take possession of the securities and realize proceeds through sale. This was to assist in reduction of nonperforming assets by adopting

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/msd-industrial-enterprises-ltd-…

measures for recovery or reconstruction. Chapter III deals with enforcement of security interest and Section 13 forms a part of this Chapter. Any security interest in favour of secured creditors has, thus, been made enforceable without intervention of court or tribunal in accordance with the provisions of SARFAESI Act. If Section 13(9) is read in that context, it is obvious that this is a beneficial provision for the secured creditors and not the debtor. The reason for the same is that there may be more than one secured creditor or joint financiers and one secured creditor should not be able to appropriate the proceeds of the secured assets or take a decision in that behalf without concurrence of the other secured creditors. The benchmark provided herein is of three-fourth value of the secured creditors. Thus, if this benchmark is met, a secured creditor exercises all rights conferred on him in pursuance to Section 13(4) of the said Act. This protects the interests of the other secured creditors as also gives weightage to their opinion. The only infirmity qua the action of BOB relied upon by the petitioner-company in the present case is the absence of consent beforehand from other secured creditor viz. GIIC so as to meet the benchmark of three-fourth in value of the secured creditors. It is, however, not in dispute that consent was accorded by GIIC. The provisions of Section 13(9) of the SARFAESI Act are not meant to be an instrument of defence by a borrower to avoid payment where ultimately three-fourth of the value of the secured creditors are at idem on the action proposed or taken. We have to also keep in mind that with regard to the initial notice of BOB qua the residential property of the promoters of the petitioner company, GIIC had no interest. Qua the other assets, there was a pari passu charge of GIIC and BOB as is admitted by GIIC. It is obvious that the petitioner-company is using the absence of earlier consent of GIIC as a ruse to deny payment of liability to both the creditors."

7. The said view was approved by a Division Bench of this Court in CWP No. 13920 of 2014 titled M/s Veetee Fine Foods Ltds. v. Punjab National Bank and others, decided on 18.09.2014.

8. Learned counsel for the petitioner referred to two judgments of Delhi High Court in W.P. (C) No. 9557 of 2007 titled Asset Reconstruction Co. India P. Ltd. v. Shamken Spinners Ltd. & others, decided on 22.11.2010 and W.P.(C) No. 8644 of 2009 titled Oman International Bank S.A.O.G. v. Appellate Authority for Industrial and Financial Reconstruction, decided on 05.05.2010. However, both the judgments pertain to the sale of assets by the secured creditor in terms of the provisions of SICA Act. The provisions of SARFAESI Act have been interpreted by Division Bench of Delhi High Court in Chemstar Organics India Ltd.''s case (supra) which has been followed by Division (Bench judgment of this Court in M/s Veetee Fine Foods Ltd.''s case (supra). In view thereof, we do not find any merit in the argument raised.

Consequently, the present writ petition is dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/msd-industrial-enterprises-ltd-…