(2014) 09 JH CK 0081

In the Jharkhand High Court

Case No : W.P.(C) No. 7504 of 2013

Narayani Fuels Private Limited — APPELLANT

Vs

Punjab National Bank and Others — RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(3-A), 13(4)

Citation : (2015) 1 BC 580 : (2015) 1 JLJR 20

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : V.P. Singh, Advocates for the Appellant; R.N. Sahay, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Initially, the writ petition was filed questioning notice dated 21.11.2013 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 whereby the petitioner-M/s. Narayani Fuels Private Limited was called upon to pay Rs. 6,95,59,528.79 within 60 days from the date of notice. Subsequently, notice under Section 13(4) of SARFAESI Act, 2002 was issued on 4.2.2014 which was challenged by filing an application being I.A. No. 1693 of 2014. The amendment seeking permission to challenge notice dated 4.2.2014 was allowed vide order dated 26.3.2014. The brief facts of the case shorn of unnecessary details may be stated thus:--

"The petitioner is a private limited company registered under the Companies Act. It took a loan of Rs. 6.40 crores which included term loan of Rs. 2 crores and two cash credits amounting to Rs. 4.40 crores. The properties worth Rs. 15 crores and another Rs. 3 crores was pledged as mortgage to the respondent-Bank for availing of the aforesaid loan. For enhancement/reschedulement of the loan, the petitioner submitted letter dated 22.12.2012 and the said proposal was duly recommended and forwarded to the Chief Manager, Punjab National Bank (PNB), Credit Administration, Ranchi vide letter dated 1.2.2013. Since the proposal remained pending, the petitioner vide letters dated 22.3.2013 and 8.5.2013 requested the respondent-Bank for taking a decision on the proposal submitted on 22.12.2012 and again on 18.6.2013 a letter was written to the Chairman of the respondent-Bank in this regard. On 19.6.2013, the respondent-Bank served a notice upon the petitioner intimating irregularities in cash credit and term loan account and directed the petitioner to take immediate steps for payment of the amount due. A letter was thereafter written by the petitioner on 24.6.2012 to the Chief Manager, Punjab National Bank requesting the respondent-Bank not to declare the loan account of the petitioner as non-performing account (NPA) till the disposal of the representation made by the petitioner. A reminder dated 15.7.2013 was also sent to the Chairman, Punjab National Bank. While the matter was still pending, vide letter dated 12.9.2013 the respondent-Bank informed the petitioner that one M/s. NKD & Company has been appointed for conducting stock audit. Though vide letters dated 11.10.2013 and 15.10.2013, further request for enhancement/reschedulement of the account was made, a notice under Section 13(2) of the SARFAESI Act, 2002 was served upon the petitioner on 21.11.2013, calling upon the petitioner to deposit Rs. 6,95,59,528.79 within 60 days from the date of notice. Subsequently, notice under Section 13(4) of the SARFAESI Act, 2002 was issued on 4.2.2014."

2. A counter-affidavit has been filed by the respondent-Bank raising a preliminary objection to the maintainability of the writ petition, stating that an equally efficacious speedy statutory remedy is available to the petitioner. It is stated that the Bank is maintaining "online credit proposal tracking system" which enables applicants to track their loan proposal by entering their User ID and Password received on mobile. As soon as the proposal is entered, a SMS is sent by the system to the applicant conveying the User ID and Password for online tracking of credit proposal. The unique ID generated for the petitioner''s application was numbered 1515002013000001. In case of the petitioner the proposal was entertained in time and "Credit Risk Rating" was also done. The petitioner though vide letter dated 22.12.2012 requested for loan proposal for technological upgradation, the subsequent letter dated 22.3.2013 indicates that it needed fund for running its unit. In view of the irregularity in cash credit and TL account, action was taken by the concerned branch of the respondent-Bank. Vide letter dated 9.6.2013, the borrower was informed that its account was running highly irregular with an amount Rs. 63.86 lacs. The borrower was directed to immediately deposit the total over-dues amount for regularising its account so that its account does not turn into non-performing assets (NPA). The creditor-Bank also requested the borrower to route its sale proceeds in the account and take immediate steps for regularisation of the account however, the petitioner did not take any step in the matter and consequently its account became NPA. The account of the petitioner has been categorised as NPA in terms of guidelines issued by the RBI. Though one M/s. NKD & Company was assigned for stock audit of the petitioner-Company however, the petitioner-Company did

not furnish information desired by the audit firm in these facts, notices under Section 13(2) of the SARFAESI Act, 2002 and under Section 13(4) of the Act were issued.

3. Heard the learned counsel appearing for the parties and perused the documents on record.

4. Mr. V.P. Singh, the learned Senior Counsel appearing for the petitioner submitted that while the proposal for enhancement/restructuring of the loan account was pending consideration before the respondent-Bank, issuance of notice under Section 13(2) of the SARFAESI Act, 2002 vide letter dated 21.11.2013 is unwarranted. Referring to Section 13(2) of the SARFAESI Act, 2002, it is submitted that before a notice under Section 13(2) is issued, by a separate order the account of the borrower is required to be declared non-performing asset (NPA). Stressing on the word "then" used in Section 13(2) of the Act, the learned Senior Counsel has submitted that the legislative intent is amply clear and there may not be any doubt that prior to declaring an account "NPA", resort to Section 13(2) of the SARFAESI Act, 2002 cannot be permitted. He relies on a decision of the Hon''ble Supreme Court in Goa Shipyard Ltd. Vs. Babu Thomas, . It is further submitted that since letter dated 21.11.2013 indicates that it is a composite order declaring the account "NPA" as well as resorting to Section 13(2) of the SARFAESI Act, 2002, letter dated 21.11.2013 has been issued contrary to the mandate of law and therefore, it is liable to be interfered with. It is further submitted that before resorting to provision under Section 13(4) of the SARFAESI Act, 2002, the mandatory provision under Section 13-A of the Act was not complied with inasmuch as, objection dated 17.1.2014 (Annexure-12) was not considered by the respondent-Bank.

5. Mr. R.N. Sahay, the learned counsel appearing for the respondent-Bank reiterated the stand taken in the counter-affidavit and submitted that the account of the petitioner was declared NPA on 22.8.2013. In the letter issued under Section. 13(2) of the SARFAESI Act, 2002 it is only stated that the account of the petitioner has become NPA. It is further submitted that since the security deposit by the borrower is worth more than Rs. 15-16 crores and the amount due is lesser, the proposal of the petitioner could not have been accepted. Referring to letter dated 17.1.2014, whereby the petitioner objected to notice under Section 13(2) dated 21.11.2013, it is submitted that the only objection raised by the petitioner was that till 21.11.2013, the account of M/s. Narayani Fuels Private Limited was not declared NPA and no notice was issued to the petitioner and that such notice was issued without application of mind.

6. In reply, the learned Senior Counsel for the petitioner has submitted that though in paragraph 1 of the counter-affidavit filed by the respondent-Bank it has been clearly stated that the account of the petitioner-Company was declared NPA on 22.1.1.2013, in the supplementary affidavit the respondent-Bank has made a false statement on oath stating that the account of the petitioner-Company became NPA on 22.8.2014 and in these circumstances, the petitioner

has filed an application for initiating a proceeding against the respondent-Bank for making a false statement in the present writ proceeding. He refers to the judgment of the Hon''ble Supreme Court in U.P. Resi. Emp. Co-op. House B. Society and Others Vs. New Okhla Indus. Deve. Authority and Another, .

7. I have carefully considered the submission of the learned counsel appearing for the parties and perused the documents on record.

8. From an analysis of provisions under Section 13(2) of the SARFAESI Act, 2002 it is apparent that the secured creditor is empowered to issue notice in writing requiring the borrower to discharge its liability if the borrower has defaulted in repayment of secured debt or its account has been classified as NPA. The learned Senior Counsel for the petitioner has submitted that unless the liability is determined, the stage of liquidation of the loan liability does not arise and since, in the present case there is no separate determination of liability and the letter dated 21.11.2013 is a composite letter declaring the account of the petitioner NPA as well as under Section 13(2) of the SARFAESI Act, the action taken by the respondent-Bank is liable to be quashed. This contention is liable to be rejected. I do not find any time limit fixed in Section 13(2) of the SARFAESI Act, 2002 for resorting to Section 13(2), after the account of the borrower has been declared NPA. The word "then" in Section 13(2) only indicates that there should be a determination of the liability prior to resorting to Section 13(2). It is not in dispute that the borrower has defaulted in repayment of loan and before its account became NPA it was cautioned and directed to regularise the loan account. I do not find any bar in Section 13(2) of the Act against issuing a composite order both declaring the account of the borrower NPA and requiring the borrower to discharge its liability simultaneously. In the present case though the respondent-Bank has filed an affidavit stating that the account of the borrower became NPA on 22.8.2013, even if it is assumed that vide letter dated 21.11.2013 such a decision was taken, I am of the considered opinion that it is inconsequential. The petitioner has not been able to demonstrate that letter dated 21.11.2013 has caused serious prejudice on account of the alleged irregularity. In so far as, the contention with respect to pendency of the proposal dated 22.12.2012 before issuance of notice under Section 13(2) of the SARFAESI Act, 2002 is concerned, I find that it has sufficiently been explained by the respondent-Bank in its counter-affidavit. Mere submission of a representation cannot create a bar against taking action in accordance with law by the secured creditor.

9. As noticed above, the learned counsel for the respondent-Bank has rightly pointed out that the objection dated 17.1.2014 filed under Section 13-A of the SARFAESI Act, 2002, was not with respect to any calculation error or disputing the liability of the borrower rather, it was confined to questioning the decision declaring the account of the borrower NPA vide letter dated 21.11.2013. In the present case, the petitioner has not disputed the outstanding liability mentioned in notice dated 21.11.2013. It is also not the case of the petitioner that the

account of the borrower could not have been declared NPA. I do not find any substance in the contention that the respondent-Bank has made a false statement on oath. The filing of the present writ petition is intended at delaying the proceeding initiated by the secured creditor under the SARFAESI Act, 2002 and it needs to be deprecated.

10. In United Bank of India Vs. Satyawati Tondon and Others, , after tracing the historical background for enacting the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, the Hon''ble Supreme Court has observed that it is evident that, "the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective". The Hon''ble Supreme Court has observed thus:--

43. "Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226, of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code onto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

11. In the present case immediately after the notice under Section 13(2) of the SARFAESI Act, 2002 was issued, the petitioner rushed to this Court. The scheme of the SARFAESI Act, 2002 indicates that a borrower has been provided an opportunity to submit its objection under Section 13(3-A). Even before submitting its objection under Section 13(3-A), the petitioner approached this Court on 13.12.2013. Though the writ petition was liable to be thrown at the threshold, since exhaustive arguments were advanced by the learned counsel appearing for the parties, I refrained from dismissing the writ petition on the ground of alternative statutory remedy. In the result, the writ petition is dismissed and the interim order dated 6.3.2014 is vacated. The learned counsel for the respondent-Bank has submitted that as on today the amount has increased and the total liability has become Rs. 7.91 crores. The secured creditor is directed to proceed in the matter, in accordance with law.