(2020) 05 DRT CK 0006

In the Debts Recovery Tribunal

Case No : Original Application No. 1273 Of 2018

Saraswat Co-Operative Bank Ltd. APPELLANT

Vs

M/s Stelco Strips Limited And Ors. RESPONDENT

Date of Decision : 14-05-2020

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2)

Citation : (2020) 05 DRT CK 0006

Hon'ble Judges : Dharminder Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This original application has been filed by the applicant bank on 22.09.2018, under Section 19 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 against the defendants for recovery of Rs.43,50,14,374.88 (Rupees Forty Three Crore Fifty Lacs Fourteen Thousand Three Hundred Seventy Four and paisa Eighty Eight only) alongwith interest at the rate of 15.40% p.a. with 2% penal interest with monthly rests from 01.09.2018 till the date of entire payment.

2. The brief facts of the case as culled out from the present OA are that the defendant No.1, a limited company, is the principal borrower and defendant No.2 and 3 are its directors/guarantors. Defendant No.4 is the original Lead Consortium Bank which has subsequently assigned its debts in favour of defendant No.5 and hence defendant No.4 and 5 are the proforma defendants and no relief is being claimed against both these defendants.

3. The defendant No.1 through its directors approached the applicant bank for sanction of Working Capital Term Loan (WCTL) facility of Rs.15.00 crores. The applicant bank considered the request of defendants and acceded to the same and sanctioned WCTL of Rs.15.00 crores on 18.06.2009.

4. In consideration of sanction of the aforesaid credit limit, the defendant No.1 through its directors executed various loaning and security documents in favour of applicant bank on 19.01.2010 by virtue of resolution dated 14.01.2010 issued by defendant No.1 which includes Demand Promissory Note, letter of installments, Agreements of hypothecation and book debits, letter of lien and set off, irrevocable power of attorney and mortgage deed dated 19.01.2010 etc. the said loan facility was further secured by the personal guarantees of defendants No.2 and 3 dated 19.01.2010.

5. It has also been submitted that in order to further secure the aforesaid credit limit, the defendant No.1 through its directors created pari passu charge in favour of applicant bank in respect of its mortgaged immovable property and plant and machineries as mentioned in para No.3A of the OA. It has also been submitted that the said property has already been sold by the defendants No.4 and 5 and the applicant bank has already received its share of Rs.1,17,98,105.30 on different dates.

6. The aforesaid credit facility was duly availed by the defendant No.1 from time to time. However, after availing the said loan facility, the defendant No.1 failed to maintain the financial discipline of the applicant bank. Despite repeated requests and follow-ups, the defendants failed to make the payment and the accounts became highly irregular and were declared NPA on 31.10.2010. Notice u/s 13(2) of the SARFAESI Act was also issued on 19.06.2013. Since the defendants have failed to clear the outstanding dues of applicant bank despite repeated requests, hence the applicant bank was left with no alternative but to file the present OA before this Tribunal.

7. Notice of this OA was issued to the defendants. Despite service, defendants failed to appear before this Tribunal and were proceeded ex parte vide order dated 20.02.2020.

8. The applicant Bank has led its evidence by filing the affidavit of Mr. Sudhir Khera, Chief Manager of the Bank who has proved various documents as Exb.AW1/1 to Exb.AW.1/24. Board Resolution of applicant bank dated 28.02.2020 as Exb.AW-1/1, letter of authority in favour of Mr. S.P. Biswas, the then Chief Manager who has filed the OA is Exb.AW-1/2, OA filed by the applicant bank is Exb.AW-1/3, Sanction letter is Exb.AW-1/4, Board Resolution of defendant No.1 is Exb.AW-1/5, Demand Promissory Note is Exb.AW-1/6, Letter of installments is Exb.AW-1/7, Agreement of hypothecation of movable property is Exb.AW-1/8, Letter of declaration regarding hypothecation of stocks is Exb.AW-1/9, Agreement of hypothecation of book debts is Exb.AW-1/10, letter of lien and set off is Exb.AW-1/12, irrevocable power of attorney is Exb.AW-1/13, Mortgage deed is Exb.AW-1/16, Personal guarantees of defendants No.2 and 3 is Exb.AW-1/17, copy of Legal demand notice is Exb.AW1/20, Demand notice issued by defendant No.4 is Exb.AW-1/21 and possession notice is Exb.AW-1/22 and Statement of Accounts duly certified under Banker's Books of Evidence Act as Ex-AW1/23 and certificate under Section 2A of the Bankers Books of Evidence

Act is Exb.AW-1/24.

9. The witness of the applicant bank has fully corroborated the averments made in this OA. The evidence led by the applicant bank which consists of mainly written / typed documents has gone unchallenged and there is no question of disbelieving the same based upon the documents. The applicant bank has proved its case beyond reasonable doubts. Accordingly, the applicant bank is held entitled to recover the entire amount from the defendants No.1 to 3 jointly and severally along with pendentelite and future interest @15.40% p.a., as agreed between the parties. The prayer for grant of penal interest is hereby declined. No relief is claimed against defendants No.4 and 5 and hence OA against them is hereby dismissed as they are only the proforma defendants.

10. In the given facts and circumstances of the case as discussed above, the OA of applicant bank is allowed with interest from 01.09.2018 till its entire realization.

ORDER

(i) I allow this OA and direct the defendants No.1 to 3 to pay jointly and severally to the applicant bank within a period of 30 days, a sum of Rs.43,50,14,374.88 (Rupees Forty Three Crore Fifty Lacs Fourteen Thousand Three Hundred Seventy Four and paisa Eighty Eight only) (minus the sum already recovered during the pendency of present proceedings, if any) alongwith interest at the rate of 15.40% p.a. from 01.09.2018 till its entire realisation, failing which the aforesaid amount shall be recovered from the sale of personal movable and immovable assets of defendants No.1 to 3.

(ii) The cost of litigation be also borne by these defendants. The Applicant bank is also directed to file the revised statement of account before the Ld. Recovery Officer of this Tribunal.

(iii) The recovery certificate be issued forthwith and be sent to the Recovery Officer-I, DRT-I Delhi.

(iv) Parties are directed to appear before the Recovery Officer-I, DRT-I Delhi on 25.06.2020.

(v) Copy of this Judgment and recovery certificate be sent to the parties free of cost by registered post.

(vi) File be consigned to record room.

(Pronounced in open court)