(2020) 10 DRT CK 0002

In the Debts Recovery Tribunal

Case No : Original Application No. 242 Of 2016

Standard Charted Bank APPELLANT

Vs

M/s Surge Media Pvt. Ltd., And Ors RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

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

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(20)

Citation : (2020) 10 DRT CK 0002

Hon'ble Judges : G.V.K. Raju, J

Bench : Single Bench

Advocate : Gaurav Khanna

Final Decision : Allowed

Judgement

1. Standard Chartered Bank (for short, the Applicant Bank) has filed present Original Application (for brevity, the O.A.) for recovery of a sum of Rs. 9,11,71,796.51 (Rupees Nine Crore Eleven Lacs Seventy One Thousand Seven Hundred Ninety Six and Paise Fifty One Only) along with pendente-lite and future interest@ 21 % in Overdraft Account and @25.75% in respect of Business Installment Loan Account till realization from the Defendants jointly and/or severally.

2. In brief, the case of the Applicant Bank, as emerged out Form the contents of the O.A., is as under:

Defendant No. 1 approached the Applicant Bank for sanction of Business Instalment Loan for the purpose of business expansion and accordingly D-1 submitted BIL Application Form with the Applicant Bank on 27.02.2012. Keeping in view the request of the D-1, Applicant Bank sanctioned the Loan amount aggregating to Rs. 43.00 Lacs and the same was to be repayable at 36 equated monthly installments with interest @ 19% per annum and D-1 also executed a Loan Agreement dated 24.03.2012. D-1 avail the BIL Facility from the Applicant in terms of the Loan Agreement, Applicant Bank issued a cheque no. 472493 dated 28.03.2012 of Rs. 41,96,135/- (Forty One Lacs Ninety Six Thousand One Hundred Thirty Five Only) in favor of the D-1. D-1 again approached the Applicant Bank for sanction of Overdraft Facility of Rs. 2.51 Crore and also submitted their Application Form dated 31.03.2012. Acceding to the request of the D-1, Applicant Bank vide Banking Facility Letter dated 20.04.2012 sanctioned the WCL (Working Capital Limit) and the same was secured by way of hypothecation of stocks, Book Debts and also by equitable Mortgage on the residential property bearing No. MIG Flat No. 19, 1st Floor, Block and Pocket D-1, Sector-15, Rohini Delhi-110085 (in short Rohini Property). Apart from this, D-2&3 and D-4 (Late Mrs. Savita Sharma) were also executed their respective Deeds of Guarantee to secure the WCL. In order to further secure the said Loan Facility D-1 executed the following documents in favor of the Applicant Bank on 23.4.2012 i.e. Standard Charted Bank master credit terms (India) Agreement, Letter of Indemnity and Agreement of Hypothecation of stock (the current Assets). The charge on the current assets created by D-1 vide Agreement for Hypothecation dated 23.4.2012 was duly registered with the Registrar of Companies. Further, in order to secure the Loan Facility, D- 2&3 and Late Mrs. Savita Sharma (D-4) also executed the Guarantee Agreement dated 23.4.2012 thereby Guaranteeing repayment of the WCL to the Applicant in the event of default by D-1. Further, D-2 and D-4 deposited the title documents of Rohit property with the intention to create equitable mortgage of the same. On execution of the aforesaid documents, Applicant Bank accordingly provided the WCL in Overdraft Draft account No. 52505114395 which was duly utilized by the D-1 from time to time. Applicant sanction the WCL to the D-1 was enhanced and modified vide Banking Facility Letter dated 05.06.2013 wherein the WCL in the nature of overdraft Limit of Rs. 8.00 Crore with a sublimit of Rs. 6.40 Crore towards WCDL, was sanctioned to the D-1. Further, the enhanced WCL was continued to be secured by way of hypothecation of Current Assets. In addition, the enhanced Working capital Limits were inter-alia, continued to be secured by equitable mortgage on the Rohini Property. D-2,3&4 were also execute their respective Deeds of Guarantee to secure the WCL, as enhanced by the Applicant Bank. D-1 resolved to avail the enhanced WCL from the Applicant in terms of the Facility Letter dated 05.06.2013. D-1 executed security documents on 05.06.2013 i.e. SC Bank Master Credit Terms (India) Agreement, Letter of Indemnity and Hypothecation Agreement (Supplemental) of Stock in Trade both present and future, Books Debts, Movable Fixed Assets belonging to D-1. Further to secure the said Loan Facility D-2,3&4 also executed Guarantee Agreement (Supplemental) dated 05.06.2013 and also the D-2&4 re-deposited the title documents of the Rohini Property with the intention to create equitable mortgage thereon and the same was duly recorded by the Applicant Bank vide Memorandum recording past transaction for creation of Mortgage by Delivery of Title Deeds dated 05.06.2013. Applicant Bank accordingly provided the enhanced Working Capital Limits in the nature of Overdraft Facility which was duly utilized by the D-1 from time to time. The WCL sanctioned to the D-1 were again renewed/ modified vide Banking Facility Letter dated 09.12.2013 wherein the Overdraft Limit of Rs. 8.00 Crore along with the sub Limit of Working Capital Demand Loan to the extent of Rs. 6.40 Crore was sanctioned to the D-1 and the said Loan Limit was secured by equitable mortgage on Rohini Property and Property bearing No. C-73B (Third Floor) South Extension, Part-II, New Delhi-110049 (in short, South Extension Property) and D-2,3&4 also executed their respective Deeds of Guarantee to secure the same. D-1 resolved to avail the WCL from the Applicant in terms of the Facility Letter dated 9.12.2013 and the D-1 also executed Hypothecation Agreement (Supplemental) dated 10.12.2013 hypothecation the Stocks, Book Debts and Movable Fixed Assets. D-2,3&4 also executed the Guarantee Agreement dated 10.12.2013 and D-2 also deposited the title documents of the South Ex. Property with the intention to create equitable mortgage thereon. That the WCL sanctioned to the D-1 were again renewed vide Banking Facility Letter dated 18.10.2014 wherein the overdraft Limits of Rs. 8.00 Crore with a sublimit of Rs. 6.40 Crore towards WCDL was sanctioned to the D-1. D-1 again resolved to avail the Working capital Limits from the Applicant Bank in terms of the Facility Letter dated 18.10.2014 and that the D-1 also executed Letter of Indemnity dated 18.10.2014. Applicant Bank accordingly provided the WCL in the nature of Overdraft Limits in Overdraft Draft Account No. 52505114395 which was duly utilized by the D-1 Co. from time to time. It is further the case of the Applicant Bank that after availing the above said Loan Facilities/Limits D-1 failed to repay the Loan Amount, not only the interest liability in overdraft account, the amount disbursed under business instalment Loan account and overdraft Facility was also not paid. As a result, the Loan account maintained by the D-1 classified as NPA on 29.1.2015 as per Guidelines of the RBI and the Applicant Bank recalled the entire Working Capital Limits. Consequently the Applicant Bank issued Notice under Section 13(2) of the SARFAESI Act, 2002 dated 24.03.2015, calling upon the Defendants to pay a sum of Rs. 8,61,64,223.51 along with future interest. D-1 vide its Letter dated 30.03.2015 duly acknowledge the outstanding debt as on 28.02.2015 and further proposed to partly discharge its liability by selling the Rohini Property for a total sale consideration of Rs. 95.00 Lacs. Applicant confirmed the proposal of the D-1 and agreed to sale of the Rohini Property to prospective buyer only after receipt of total sale consideration. D-1 confirmed the payment of the total amount of Rs. 95.00 Crore and further re-confirmed that the D-1 had no objection in giving the property documents of the said property to the buyer and thus authorized the Applicant for doing the same. Thus, the Rohini property stood sold by the D-1 and the sale proceeds of Rs. 95.00 Lacs was adjusted by the Bank in the Overdraft account. The Applicant Bank for taking over the possession of the South Ex property filed an Application before the Ld. Chief Metropolitan Magistrate (South) Saket District Court, New Delhi, titled as CC No. 82/1 S Standard Chartered Bank versus Surge media Private Limited. The Hon'ble CMM (South) Vide its Order dated 26.11.2015 allowed the Application of the South Extension Property. as per the statement of account maintained by the Applicant Bank in ordinary course of business activities, D-1 liable to pay sum of

Rs. 8,99,94,427.09 along with further interest @21 % p.a. for Overdraft Account and Rs. 11,77,369.42 along with interest @25.75 % p.a. for Business Installment Loan Account. Hence, the present OA filed by the Applicant Bank to recover their legitimate dues.

3. In Response to the Notice issued, despite service through publication Defendants appeared casually and after 28.12.2017 no representation on behalf of the Defendants and also Defendants not filed any Written Statements. Hence, Defendant No.4 proceeded ex parte vide order dated 20.02.2017 and Defendants 1,2,3 & LRs of D-4 proceeded ex-parte vide order dated 16.7.2018.

4. In support of its case, the Applicant Bank has filed Evidence Affidavit of Mr. Arvinder Singh, Its Authorized Officer and Working as Account Manager of the Applicant Bank. Applicant Bank has also exhibited documents as Ex.AW-1/1 to Ex. AW-1/35 and also Marked A.

5. I have heard the counsel for the Applicant Bank and have gone through the oral as well as documentary evidence on record.

6. Now the question for consideration is whether the Applicant Bank is entitled for recovery of the O .A. amount from the Defendants, jointly and severally, as prayed for?

7. A perusal of evidence affidavit of Mr. Arvinder Singh Authorised Officer/Power of Attorney Holder as AW-1, read with Power of Attorney dated 21.07.2014 is exhibited as Ex.AW-1/1A which stands extended vide Power of Attorney dated 29.06.2017 is exhibited as Ex.AW-1/1, executed by the Applicant Bank in his favour. AW-1 deposed that the BIL Application Form is exhibited as Ex.AW-1/2, Loan Agreement is exhibited as Ex.AW- 1/3, Board Resolution dated 28.03.2012 is exhibited as Ex.AW-1/4, Letter is exhibited as Ex.AW-1/5, Application Form is exhibited as Ex.AW-1/6, Banking Facility Letter dated 20.04.2012 is exhibited as Ex.AW-1/7, Board Resolution dated 23.4.2012 is exhibited as Ex.AW-1/8, Security Documents are exhibited as Ex.AW-1/9 to AW-1/11, Form No. 8 along with Certificate of Registration of Charge is exhibited as Ex.AW-1/12, Letter of Guarantee is exhibited as Ex.AW-1/13, Title Deeds dated 22.5.2012 is exhibited as Ex.AW-1/14, Facility Letter dated 5.6.2013 is exhibited as Ex.AW-1/15, Board Resolution is exhibited as Ex.AW-1/16 further security documents are exhibited as Ex.AW-1/17 to AW-1/19, Certificate of Registration of Charge is exhibited as Ex.AW-1/20, Letter of Guarantee is exhibited as Ex.AW-1/21, Title Deeds are exhibited as Ex.AW-1/22, Facility Letter is exhibited as Ex.AW-1/23, Board Resolution is exhibited as Ex.AW-1/24, Hypothecation Agreement is exhibited as Ex.AW-1/25, Letter of Guarantee dated 10.12.2013 is exhibited as Ex.AW-1/26, Title Deeds dated 11.12.2013 is exhibited as Ex.AW-1/27, Facility Letter dated 18.10.14 is exhibited as Ex.AW-1/28, Board Resolution dated 18.10.2014 is exhibited as Ex.AW-1/29 and Letter of Indemnity dated 18.10.14 is exhibited as Ex.AW-1/30. AW-1 further deposed that the Notice dated 24.3.2015 along with its postal receipts are exhibited as Ex.AW-1/31, Letter dated 30.3.2015 is

exhibited as Ex.AW-1 /32, Letter dated 1.4.15 is exhibited as Ex.AW-1/33, Order dated 26.11.2015 is exhibited as Ex.AW- 1/34 and Statement of Account and Interest Calculation Sheets duly certified under Bankers Books of Evidence Act is exhibited as Ex.AW-1/35. 8. As against the above oral as well as documentary evidence led by the Applicant Bank, the only contesting Defendants had not led any oral or documentary evidence in support of the allegations made in his written statement and, thus, the evidence led by the Applicant Bank has gone unchallenged and un-rebutted.

9. Record reveals that during the proceedings dated 22.09.2020 Ld. Counsel for the Applicant Bank submits that one mortgaged property was sold under SARFAESI Act and after adjusting the sale proceeds the balance amount due comes to Rs. 14,22,95,511.72 and now the Recovery Certificate may be issued for the balance amount. In view of the above, now the abovementioned balance outstanding comes repayable along with pendent elite and future interest by the Defendants.

10. In the instant case, the applicant Financial Institution has claimed future interest@ 21.00% & 25.75% per annum in respect of Overdraft and Business Installment Loan account respectively, on the above mentioned outstanding amount. However, as per the ratio of law laid down by the Hon'ble Apex Court in the case of Central Bank of India Vs Ravindra and others, reported as AIR 2001 SC 3095 and as per the provisions of Section 19(20) of the RDDBFI Act and also in the interest of justice, future interest is allowed @ 12% per annum simply.

11. In the result:

(i) The O.A. is allowed with costs. The Applicant Bank is held entitled to recover a sum of Rs. 9,11,71,796.51 (Rupees Nine Crore Eleven Lacs Seventy One Thousand Seven Hundred Ninety Six and Paise Fifty One Only) along with interest @ 12% per annum simple from the date of filing of the O.A till realization from the Defendants. The Defendants are directed to pay the decretal amount to the Applicant Bank failing which the same shall be recovered by sale of their personal movable and immovable assets of all the Defendants (including LRs of D-4 to the extent of their inherited assets) jointly and/or severally.

(ii) The Applicant Bank is directed to file the revised statement of account along with amount realized so far, from the date of filing of the OA, before the Recovery Officer, DRT-11, Delhi.

(iii) The Recovery Certificate be issued forthwith and be sent to Recovery Officer, DRT-II, Delhi.

(iv) The Registry of this Tribunal is hereby directed to issue the free copy of this order and send to the both parties.

(v) Parties are directed to appear before the learned Recovery Officer, DRT-II, Delhi on 10th December, 2020.

(vi) I.A/s if any pending stands closed.

(vii) File be consigned to records.

(Pronounced in Open Court) Dated: 06th October, 2020.

