(2020) 03 DRT CK 0001

In the Debts Recovery Tribunal

Case No : Original Application No. 446 Of 2019

State Bank Of India — APPELLANT

Vs

M/s. Patna Vision And Ors. — RESPONDENT

Date of Decision : 20-03-2020

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19, 19(4), 19(22)

Citation : (2020) 03 DRT CK 0001

Hon'ble Judges : Anil Kumar Chaturvedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1- This is an Original Application u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions (now Recovery of Debts and Bankruptcy) Act, 1993 initiated by the applicant against the defendants praying for issuance of Recovery Certificate to the tune of Rs.1,76,57,128.00 as on 31.05.2019 together with future interest, cost and other usual reliefs.

2- The application has been duly registered and numbered as above.

3- The brief facts of the case of the applicant bank as stated in the application are as under-

The defendant no. 1, M/S. Patna Vision, approached the applicant Bank on 10.10.2014 for sanction of cash credit limit of Rs.125 lacs for running a retail shop of consumer electronic goods. The applicant Bank sanctioned a cash credit (Stock) limit of Rs.110 lacs and S.L.C. limit of Rs.15 lacs aggregating a total limit of Rs.125 lacs and conveyed the sanction of the loan vide letter of arrangement dated 30.09.2014 on certain terms and conditions which was accepted by the defendants. At the request of the defendant no. I, the applicant Bank enhanced the aggregate credit limit from Rs.125 lacs to Rs.250 lacs and conveyed the sanction of the loan and various terms & conditions precedent to availing of the enhanced loan vide their letter dated 17.03.2015. The defendants accepted all the terms and conditions proposed by the Bank.

3.2- To avail the loan facility, the defendants executed various loan documents on 27.03.2015. Defendant no.1, 2 & 3 created simple mortgage over their landed property. The defendant no. I availed the enhanced loan on various dates. The defendants again submitted an application on 23.03.2018 to the applicant Bank for reducing the aggregate credit limit from 250 lacs to 160 lacs. The applicant Bank accepted and conveyed the sanction alongwith detailed terms & conditions to the defendants vide letter dated 12.04.2018. The condition inter alia required for the additional third party guarantee of Smt. Deeksha Kumari in addition to the existing third party guarantee of Shri Arun Kumar sinha & Sri Nandan Kumar, which was accepted by the defendants. The defendant no.4 executed additional security documents on 26.06.2018 in favour of the applicant Bank.

3.3- After availing the loan, the conduct of the account was not satisfactory since FY 2016-1 7. The turn over of the firm dropped significantly in the FY 2016-17 & 2017-18. Due to severe competition in the market, the defendant no. I could not survive and ultimately the shop was closed. Since July, 2018 the outstanding in the account always remained beyond the sanctioned limit of Rs.160 lacs. The primary security i.e. the stocks & receivable simply vanished but the dues remained outstanding. Therefore, the defendant no. I diverted the fund somewhere else. The defendants willfully committed breach of terms of contract, hence, the account was classified as 'Non Performing Assets" on 12.10.2018. As a result, a sum of Rs.1,76,57,128.00 is due as on 31.05.2019 with further interest, cost and other usual reliefs against the defendants, which the defendants has not paid despite repeated demands and requests. Finding no other way to recover the dues of the Bank, the applicant Bank had filed this Original Application for recovery of the aforesaid amount and for issuance of Recovery Certificate against the defendants.

3.4- The interest /compound interest has been charged at such rates, and capitalized at such periodical rests as are permitted by and do not run counter to the directives of Reserve Bank of India.

4- U/s 19 (4) of the Act & Rule of the DRT [Procedure] Rules, 1993, copy of application & paper book was sent by this Tribunal to the defendant by registered/ speed post on 25.06.2019 and summon/notice issued requiring the defendant to show-cause within 30 days of the service of summon/notice as to why relief prayed for, should not be granted.

4.2- After registered summons/Notices defendants appeared by way of filling Vakalatnama in the name of Shri Mamoranjan Kumar Mishra, Advocate but did not file WS before this Tribunal to contest the case. The sufficient time has been given to the defendants to defend their case, but defendants failed to file WS, hence, right to file WS as well as counter affidavit of defendants is closed.

However, applicant as well defendants are hereby given time to file their written notes of arguments. In the light of order dated 29.01.2020 of OA, Applicant Bank submitted written arguments wherein the applicant Bank has submitted that OA No.446/2019 has been filed for recovery of debt lent and advanced and enforcement of hypothecated assets and for issuance of recovery certificate and orders and for other reliefs valued at Rs.1,76,57,128.00 as on 31.05.2019 plus pendentelite and future interest@ 14.15 % p.a. at monthly rest in favour of the applicant Bank against defendants. In support of its claim, the applicant Bank produced 21 exhibits as evidence on affidavit and complied with all requirements incidental to filing the original application. The defendants neither filed WS nor produced any evidence rebutting the claim of the applicant Bank. The applicant Bank has proved its claim through various evidences produced on affidavit which includes statement of accounts. The defendants have neither denied the utilization of funds nor have pointed out any specific error and discrepancy in the statement of accounts as such the claim of the applicant Bank stands proved against all the defendants. The applicant Bank submitted that the reliefs sough for by the applicant Bank vide para 6 & 7 of the OA be granted in favour of the applicant Bank.

5- I have heard the learned Counsels for both the parties and have perused the relevant documents.

6- The defendants had not contested the case of the applicant Bank. Thus, the point for determination in this case is (i) Whether the claim of the applicant Bank is within time ? (ii) Whether the defendants had utilized the loan facilities granted by the Bank ? (iii) Whether the defendants are liable to the amount due to the applicant Bank or not?

7- The applicant Bank by oral and documentary evidence has established its case. The documentary evidence comprises from Annexure/Exhibit - 1 to 21, which are available in paper book filed by the applicant Bank.

8- From the perusal of the documents referred above and the certified copy of the statement of account, it is established that the defendants had availed the financial facilities from the applicant Bank and had withdrawn the amount through the account.

9- To prove its case, the applicant Bank has referred various documents including evidence on affidavit on 18.06.2019 by way of affidavit of Smt.Meenakshi, Chief Manager of the applicant Bank. The averments in the application and the facts stated by the witness of the applicant Bank in his affidavit is unrebutted.

10- The applicant bank has sought for recovery of a sum of Rs.1,76,57,128.00 as on 31.05.2019 together with future interest at the contractual rate from 01.06.2019, cost and other usual reliefs, till realization.

11- In view of the above discussion and after considering the entire evidence-on-affidavit of the applicant Bank and the documents filed by the applicant Bank, I have no hesitation to hold that the applicant Bank is entitled to recover a sum of

Rs.1,76,57,128.00 (Rs. One Crore seventy six lacs fifty seven thousand one hundred and twenty eight only) from the defendants who are liable for the same. The applicant Bank shall also be entitled to pendentelite and future interest at the rate of 13 % p.a. simple from 01.06.2019 till the date of realization.

O-R-D-E-R

(1) O.A.No.446 of 2019 filed by the applicant Bank is allowed and debt is determined with cost against the defendants. It is, hereby, ordered that the applicant Bank is entitled to recover from the defendants, total amount to the tune of Rs.1,76,57,128.00 (Rs. One Crore seventy six lacs fifty seven thousand one hundred and twenty eight only) as on 31.05.2019 together with future interest at the rate of 13 % p.a. simple from O 1.06.2019, cost and other usual reliefs, till realization of the claim amount.

(2) Amount, if any, paid by the defendants in the loan accounts or amount, if any, recovered by the applicant Bank after filing of the O.A., may be taken into the account while arriving at the exact amount of dues/debt payable by the defendants. Accordingly, pendentelite and future interest shall be calculated on the reduced amount.

(3) Defendants are debarred from disposing, alienating or dealing with any of the properties belongings to them till the aforesaid decretal debt is recovered from the defendants.

(4) Thirty days time from date of Judgment/Final order is being given to the defendants for repaying of the above mentioned dues, failing which, Applicant Bank is entitled to recover its dues by sale of secured assets, personal movable or immovable properties of the defendants to recover the dues in accordance with law.

(5) Let a Certificate of Recovery be drawn up by Ld. Registrar forthwith in terms of Judgment for issuance of the same against defendants in favour of the Applicant Bank under Section 19(22) of the Recovery of Debts and Bankruptcy Act, 1993 and put up the same for issuance of the Certificate.

(6) Ld. Recovery Officer shall realize the amount as per the Recovery Certificate from the defendants in accordance of law.

(7) Ld. Registrar of this Tribunal is directed to deliver Recovery Certificate in terms of the final Judgment/order for recovery of the sum against the defendants in favour of the Applicant Bank under section 19(22) of the Recovery of Debts due to the Banks and Financial Institutions Act, 1993 now known as Recovery of Debts and Bankruptcy Act, 1993.

Copy of the Judgment/Final Order be upload m the Tribunal's website.

File is consigned to the Record Room.

Judgment dictated to PS, transcribed by her, corrected, signed, sealed, and pronounced by me in the open court on this 20th Day of March, 2020.