

(2021) 10 DRT CK 0003
In the Debts Recovery Tribunal
Case No : Original Application No. 566 Of 2019

State Bank Of India

APPELLANT

Vs

M/s Pooja Electronics And Anr.

RESPONDENT

Date of Decision : 11-10-2021

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19,
19(20)Code Of Civil Procedure, 1976 — Section 34
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 16

Citation : (2021) 10 DRT CK 0003

Hon'ble Judges : Laxman Madnani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The present Original Application has been filed by the Applicant Bank under Section 19 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, now amended as The Recovery of Debts and Bankruptcy Act, 1993, against the defendants for recovery of Rs. 44,66,624 [: (Rupees Forty Four Lakhs Sixty Six Thousand Six Hundred Twenty Four Only) together with future interest@ 15.65% per annum with monthly along with 2% penal interest from 02.05.2019.

2. The brief facts of the case as placed before this Tribunal at the time of hearing in the light of pleadings are that Defendant No. 1, proprietary firm through its proprietor had approached the Applicant Bank for financial assistance. The Applicant Bank, at the request and application of the Defendants sanctioned the Cash Credit limit of Rs. 19.50 Lakhs on 24.06.2013.

3. The Applicant Bank submits that the Defendant No. 1 in the capacity of borrower and Defendant NO. 2 as guarantor and mortgagor accepted all the terms and conditions of the sanction unconditionally and executed the following documents:

- a. Letter of arrangement executed by Defendant NO. 1 dated 15.07.2013.
- b. Agreement of Loan-cum-hypothecation executed on 15.07.2013.
- c. Guarantee Agreement executed by Defendant dated 15.07.2013.
- d. Memorandum Relating to Deposit of Title Deed for creation of charge dated 15.07.2013.

4. In consideration of the same, the Defendants hypothecated their moveable assets i.e. stock, receivable and entire current assets of the unit, details more particularly mentioned in Schedule II of the Original Application. Further, Defendant No.2 mortgaged her immovable property in favour of the Applicant bank by depositing the original title deeds on 15.07.2013.

5. Further, bank enhanced the Cash Credit limit from Rs. 19,50,000/- to 34,00,000/- vide sanction letter dated 30.10.2015 and the Defendants executed the following security documents in favour of the bank.

1. Letter of Arrangement dated 30.10.2015.
2. Supplemental Agreement of Loan-cum-hypothecation dated 30.10.2015.
3. Guarantee Agreement executed by Defendant No. 2 dated 30.10.2015.
4. E.M. for extension of charge of enhancement dated 03.12.2015.

6. Further, on 13.03.2017, the Defendant approached the Applicant bank for enhancement of Cash Credit limit and the Applicant bank considering the request enhanced the limit from Rs. 35 Lakhs to Rs. 40 Lakhs vide sanction letter dated 29.03.2017 and signed and executed the following security documents in favour of the bank.

1. Letter of Arrangement dated 29.03.2017.
2. Supplemental Agreement of Loan-Cum-Hypothecation dated 29.03.2017 by Defendant No. 1.
3. Guarantee Agreement executed by Defendant No.2 dated 20.03.2017.

7. That the defendants availed the Credit facility but they failed to repay the dues of the Bank as per agreed terms, they failed to adhere to the financial discipline of the applicant bank and the account of defendants became irregular and sticky. The applicant bank requested the defendants from time to time to regularize the said account but defendants have failed and neglected to regularize the same. Ultimately, the account of the defendants have been classified as N.P.A. on 31.03.2019.

8. All these acts and conduct on the part of the defendants were contrary to the terms and conditions of the documents signed and executed by them. Accordingly the Applicant Bank has moved this Original Application to recover public money.

9. Soon after the registration of the case the defendants were summoned through registered post with A/D on 08.08.2019. As per record, notices were not duly served upon Defendants Thereafter, the Defendants were served through paper publication in 'Sandesh' on 07.09.2019. The Applicant bank also filed affidavit in service at Exh. A/7 enclosing therewith Original Postal Receipt & track report & paper publication. Despite service of summons none appeared on behalf of defendants. Thus, the case was proceeded ex parte against the defendants due to their non appearance vide order dated 22.11.2019.

I have heard the learned counsel for the applicant and have also gone through the case file properly. I have also gone through the law applicable to the facts and circumstances of the present case.

10. From the perusal of the records, it is evident that defendants were provided with fair opportunity to contest the claim of the bank.

As the defendants opted not to contest the case, so only point of consideration before this Tribunal is whether the applicant Bank is legally entitled to the amount as claimed in Original Application on the basis of documents and pleadings submitted by it before the Tribunal.

11. In support of Original Application, Applicant has filed affidavit in support of Suit Claim at Exh. A/ 8, sworn by Mr. Gaurang B Anand, Chief Manager of Applicant Bank. The bank produced original documents.

12. The Learned counsel for the Applicant Bank has submitted that the Bank has duly proved all the documents on file as required under "The Recovery of Debts and Bankruptcy Act, 1993". He has further submitted that the defendants are willful defaulters, as they availed the aforesaid credit facilities to their benefits but failed to maintain the financial discipline of the bank with a prayer that the Original Application may be allowed for the reliefs claimed.

13. I have gone through the loan documents, averments made in the Original Application and also considered the submissions made by learned counsel for the Applicant Bank. The documents produced by the Bank remains un-rebutted. There is no reason to disbelieve the same. The loan was sanctioned on 24.06.2013 and renewed from time to time, the last by enhanced on 21.02.2017. Present O. A. has been filed by the applicant bank on 06.05.2019 and hence it is within limitation period prescribed.

14. In view of the aforesaid discussion, I deem it just and proper to allow the claim of the applicant Bank of the principal amount of Rs. 44,66,624 /- (Rupees Forty Four Lakhs Sixty Six Thousand Six Hundred Twenty Four Only).

15. So far as rate of interest charged by applicant bank is concerned, applicant bank has charged rate of interest as per Terms and conditions of loan documents executed by the defendants. However, as per the provision of Section 19(20) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993, now amended as The Recovery of Debts and Bankruptcy Act, 1993 which is analogous

to Section 34 of Civil Procedure of Code 1908, on filing of the suit/ claim, the contract between the parties comes to an end and the Court/Tribunal has a discretion to award the same depending upon the facts and circumstances of each case. Same principle has been laid down by the Hon'ble Apex Court in the case of Central Bank of India Vs. Ravindra & Others. Looking to the facts and circumstances of the case, I am of the opinion that it would be just and proper in the interest of justice to award the simple interest @ 11 % per annum.

16. The Original Application is allowed in view of above.

ORDER

1) I hereby allow this O.A. of the Applicant Bank and direct the defendants to pay jointly and severally to the applicant bank within 60 days from today, a sum of Rs. 44,66,624/- (Rupees Forty Four Lakhs Sixty Six Thousand Six Hundred Twenty Four Only) alongwith simple interest @ 11 % per annum and cost & expenses from the date of filing of this O.A. till the date of realization.

2) In case of failure to deposit the above amount within the stipulated period, the same shall be recovered from the hypothecated assets and mortgaged property of defendants as described in Schedule I & II Annexed to the Original Application.

3) If there is any shortfall, the same shall be recovered from the sale of other personal movable and immovable properties of the defendants.

4) Recovery Certificate be issued forthwith and be sent to Recovery Officer, Debts Recovery Tribunal-I, Ahmedabad.

5) The registry of this Tribunal is hereby directed to issue the free copy of the order and be sent to the both parties in compliance of Rule 16 of the Debt Recovery Tribunal Procedure Rule 1993.

6) File be consigned to records

Pronounced in Open Court on this 11th day of October, 2021 at Ahmedabad.