**(2014) 01 P&H CK 0018**

**In the Punjab And Haryana At Chandigarh**

**Case No :** C.W.P. No. 15303 of 2008 (O&M)

T.C. Spinners Pvt. Limited — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

**Date of Decision :** 09-01-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 25
State Financial Corporations Act, 1951 — Section 29

**Citation :** (2014) 01 P&H CK 0018

**Hon'ble Judges :** Sanjay Kishan Kaul, C.J;Arun Palli, J

**Bench :** Division Bench

**Advocate :** Rahul Sharma, Advocates for the Appellant; J.S. Puri, Addl. Advocate General, Advocates for the Respondent

## Judgement

Sanjay Kishan Kaul, C.J.—M/s. Euro Cotspin Limited (for short ''ECL'') had availed of financial assistance from various banks but failed to honour its commitment. In an endeavour towards realizing its dues, Punjab National Bank (for short ''PNB'') was authorized by the other secured creditors to sell the assets of ECL under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ''SARFAESI Act''). The dues are stated to be amounting to approximately Rs. 165 crores.

2. M/s. A.V. Cotex Limited (for short ''AVC'') agreed to purchase the assets for a total consideration of Rs. 29 crores. A communication dated 13.6.2006 was thus issued by the PNB to ECL conveying its acceptance for the request for sale of assets through a private sale for a sum of Rs.29 crores to M/s. AVC on the terms and conditions set out in the said letter. One of the terms and conditions was as under:-

"M/s. AVCL will settle all other statutory liabilities and other dues of the company i.e M/s. Euro Cotspin Ltd. at their own."

3. M/s. AVCL, in turn, as per authorization with it under the letter dated 13.6.2006 nominated M/s. T.C. Spinners Private Limited (petitioner) as its nominee in terms of an agreement dated 25.9.2006. The recitals of this agreement stated that the sale of the assets was for a sum of Rs. 29 crores as per terms and conditions enumerated in the letter dated 13.6.2006 which was annexed as Annexure-A to the agreement and made part of the agreement. This agreement, however, contains clause 15 as under:-

"15) Second party will not be liable for any of the civil or criminal liabilities of the First party or ECL and there will be no liability towards the pending cases of the ECL or First party running in various courts."

4. The aforesaid arrangement was crystalized through a Tripartite Agreement dated 24.3.2007 between the petitioner, ECL/its guarantors and PNB. This Tripartite agreement, however, does not mention the aspect of the liability of the petitioner to any third party and the sale has been made on ''AS IS WHERE IS BASIS''. The relevant clause 9 is as under:-

"That the party of the Third Part will sell the secured assets of the M/s. Euro Cotspin Ltd. To the party of the First Part on "AS IS WHERE IS BASIS" and party of the First Part undertaken to settle all statutory liabilities (specified or unspecified) of M/s. Euro Cotspin Ltd. As their own. The party of the First Part also undertakes to pay settle all claims arising again the party of the Third Part arising out of liabilities of M/s. Euro Cotspin Ltd. And First part shall not claim any amount from party of third part in respect of any dues that the first part may have to pay to any third party arising out of liabilities of M/s. Euro Cotspin Ltd."

5. The title in the property was crystalized as per a sale deed executed in favour of the petitioner for Rs.19,12,96000/- being the value of the immovable assets and was duly registered. The sale deed specified that the sale of the scheduled property was subject to all encumbrances of statutory duties/statutory liabilities known or unknown of M/s. ECL on ''AS IS WHERE IS BASIS''. This immovable property consists of pieces & parcels of land, building and land measuring 113 bighas of land in Village Dehar Tehsil Dera Bassi, District Patiala, Punjab.

6. It transpires that respondents No. 4 to 6 had certain disputes with M/s. ECL and had filed complaints under the Consumer Protection Act, 1986. These complaints resulted in adverse orders against ECL and said respondents No. 4 to 6 sought enforcement of the amounts under the said orders as per Section 25 of the said Act. In those proceedings, the immovable property referred to aforesaid was attached on the basis that it was the property of ECL. This gave rise to the present writ petition under Article 226 of the Constitution of India on account of the orders being passed on such attachment.

7. We have heard learned counsel for the parties and perused the record.

8. It cannot be disputed by learned counsel for respondents No. 4 to 6 that the status of the said respondents is of unsecured creditors of ECL. What to say of

 

unsecured creditors even the dues of the secured creditors could not be satisfied to any great extent as the land and other assets including machinery of ECL was sold for Rs. 29 crores only, out of which the value of the land has been specified at over Rs. 16 crores.

9. Learned counsel for respondents No. 4 to 6 has relied upon the letter dated 13.6.2006 issued by the PNB to ECL where it mentions about the responsibility of M/s. AVCL towards "other dues". It is his submission that the petitioner was only a nominee of M/s. AVCL and even in the agreement entered between M/s. AVCL and the petitioner there is a specific mention in the recital of the letter dated 13.6.2006 which forms part of the agreement as Annexure A. He, thus, submits that Clause 15 extracted aforesaid, would not exclude the liability of respondents No. 4 to 6.

10. On the other hand, learned counsel for the petitioner submits that the reference to "other dues" was apparently a mistake contained in the letter dated 13.6.2006 since the final arrangement got crystalized only when the PNB joined the Tripartite agreement dated 24.3.2007 where the liability of the petitioner is absolved as per Clause 9. He further submits that in a better situation for the creditor, even the endeavour of the Excise Department to recover central excise by seeking attachment of the assets, did not succeed and the said step of the Department of Excise, was quashed on a petition filed by the petitioner being Civil Writ Petition No. 1385 of 2008. The transaction in question in the present case was discussed to come to a conclusion that the petitioner being a purchaser of the auctioned property albeit through a private negotiation, under the SARFAESI Act, cannot be made liable for the same. Similar view has been taken in the recent pronouncement in Rana Girders Ltd. Vs. Union of India (UOI) and Others, in respect of liability of central excise when the sale is carried out under Section 29 of the State Financial Corporation Act, 1951

11. We are in agreement with the submissions of the learned counsel for the petitioner that in view of what has been set out aforesaid, the petitioner cannot be made liable nor the immovable assets purchased by the petitioner because earlier the property of the ECL was attached for recovery of the dues of respondents No. 4 to 6. The inter se arrangement sanctified by the secured creditors as reflected in the Tripartite agreement dated 24.3.2007 does not put any such liability on the petitioner specifically in view of Clause 9 of that agreement. The title of the immovable property passed in pursuance to the sale deed refers to aforesaid which also inter alia does not put any such liability. The property has been sold free from all encumbrances.

12. The result of the aforesaid is that the endeavour of respondents No. 4 to 6 to recover the amounts due from M/s. ECL from the property purchased by the petitioner must fail though it is open to the said respondent to recover the same from any asset of ECL if it at all survives.

13. The petition is accordingly allowed leaving the parties to bear their own costs.