

(2024) ibclaw.in 495 HC

IN THE HIGH COURT OF PUNJAB AND HARYANA

Central Bank of India

v.

Union of India and Ors.

CWP-2236 7-2021 (O&M) with CWP-11117-2022 (O&M)
Decided on 24-May-24

Coram: Mrs. Justice Lisa Gill and Ms. Justice Amarjot Bhatti

Add. Info:

For Appellant(s): Mr. C.S. Pasricha, Advocate, Ms. Munisha Gandhi, Senior Advocate with Ms. Salina Chalana, Advocate, Ms. Supriya Garg, Advocate and Mr. Rohit Suri, Advocate, Mr. Atul Sharma, Advocate

For Respondent(s): Dr. Rajansh Thukral, Advocate with Dr. Surekha Thukral, Advocate, Mr. Sidharth Thukral, Advocate, Mr. V.K. Sachdeva, Advocate, Ms. Manpreet, Advocate for Ms. Alisha Arora, Advocate, Mr. Saurav Goyal, Advocate, Mr. Harsh Garg, Advocate

Judgment:

LISA GILL, J.

1. This order shall dispose of two writ petitions i.e. CWP Nos. 22367 of 2021 and 11117 of 2022.
2. Both the above said writ petition listed at same serial number are taken up together for consideration and adjudication at request and with consent of learned counsel for parties.
3. CWP-22367-2021 has been filed by Central Bank of India for setting aside order dated 25.10.2021 (Annexure P11) and order dated 28.10.2021 (Annexure P15) passed by Recovery Officer, DRT-III, Chandigarh. It is further prayed that respondent No. 3 i.e. Recovery Officer, DRT-III be directed to proceed with auction of properties in terms of proclamation of sale notice issued in pursuance to order dated 07.09.2021 passed by Recovery Officer, DRT-III, Chandigarh.
4. CWP-11117-2022 has been filed by M/s Kaur Sain Spinners Limited (corporate debtor) seeking setting aside of notice dated 11.05.2022 issued by Tehsildar-cum-Executive Magistrate, Samrala seeking possession of property pursuant to order dated 07.12.2021 passed by Additional District Magistrate, Khanna under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short - `SARFAESI Act'). It is further prayed that respondent - Bank should be restrained from dispossessing petitioners of property in question. There is further prayer for stay of all proceedings under SARFAESI Act pursuant to various notices as mentioned in the writ petition issued under the said Act.

5. It is brought to the notice of this Court that during pendency of these writ petitions, petition under Section 7 of Insolvency and Bankruptcy Code, 2016 (for short - 'IBC 2016') was filed by Punjab National Bank (Successor of Oriental Bank of Commerce and one of the lenders to corporate debtor). Said application was admitted by learned NCLT, Chandigarh vide order dated 14.05.2024 and Interim Resolution Professional (IRP) has been appointed. In view of order dated 14.05.2024 passed by learned NCLT, both the writ petitions are rendered infructuous. However, application has been filed by respondent No. 9 seeking refund of the entire bid amount alongwith poundage fee besides interest of 12%. Respondent No. 9 was the successful bidder in the auction held on 05.11.2021. Said auction/sale has, however, been set aside by Recovery Officer on 24.04.2023 while deciding objections filed thereto.

6. Keeping in view the prayer in CM-8701-CWP-2024 seeking refund of amount deposited by then successful bidder of the auction which has since been set aside, with said order not being subject to any challenge, it is necessary to refer to some relevant facts as the IRP has raised an objection to refund claimed.

7. Admittedly, petitioner in CWP-11117-2022 (corporate debtor) had availed of financial facilities from three banks in question. Petitioner - Bank in CWP-22367-2021 alongwith other banks, forms the consortium of lenders i.e. Oriental Bank of Commerce (now Punjab National Bank), Allahabad Bank and Central Bank of India with Oriental Bank of Commerce (now Punjab National Bank) being the lead bank. On account of financial indiscipline on the part of corporate debtor, proceedings under SARFAESI Act were initiated. OA-3000/2018 was filed by Central Bank of India which was allowed and recovery certificate dated 02.03.2020 issued, holding the said bank to be entitled for recovery of Rs.49,44,65,248/-. Subsequent to passing of judgment and recovery certificate, it was registered as RC No. 325 of 2020 and forwarded to Recovery Officer, DRT-III, Chandigarh for execution.

8. Vide order dated 07.09.2021, Recovery Officer appointed Local Commissioner to serve notice for proclamation of sale via e-mail to be held on 05.11.2021. Matter was adjourned to 01.10.2021 for filing service report of proclamation of sale. It is recorded in order dated 05.10.2021 passed by Recovery Officer that service of proclamation of sale is completed through all modes. Statement of counsel for PNB and Indian Bank was recorded to the extent that it was consortium loan, interest of the said banks must be safeguarded by appropriating sale proceeds. Petitioner - Bank was, thus, directed to proceed with auction process as per terms and conditions of proclamation of sale and file auction report by 15.11.2021.

9. However, Recovery Officer vide order dated 25.10.2021, directed auction proceedings to be put on hold till further orders and petitioner - Bank was directed to obtain fresh valuation from a new empanelled valuer so that proclamation of sale can be issued accordingly. Bank was also asked to file its reply to the objections raised by the objectors. Vide order dated 28.10.2021, proclamation of sale and related orders dated 07.09.2021 were cancelled and withdrawn by the Recovery Officer and petitioner - Bank was directed to inform the prospective buyer as and when fresh auction notice is issued.

10. Order dated 25.10.2021 and 28.10.2021 were challenged by Central Bank of India vide CWP-22361-2021. Notice of motion was issued in this writ petition on 03.11.2021 and it was directed that auction proceedings shall go on though final order shall not be passed (sale not to be confirmed). Auction of property was held on 05.11.2021 and respondent No. 9 - M/s Nahar Spinning

Mills Limited was declared highest bidder for property lot No. 2 and 4 comprising of land and machinery at Samrala unit for a sum of Rs.37.60 crores. Respondent No. 9 deposited 15% of amount i.e. Rs.5.65 crores on 05.11.2021 alongwith poundage fee of Rs.37.60 lakhs before learned DRT-III/Recovery Officer. Remaining 75% of auction amount was deposited in its entirety by respondent No. 9 on 16.11.2021. Application was filed by respondent No. 9 before Recovery Officer for securing land in question with security guards on 08.11.2021, which was, however, dismissed. This Court vide order dated 07.12.2021 observed that as it was imperative to protect the property lying over/in the mortgaged property, the petitioner - Bank, pending further orders was directed to appoint security guard(s) for security of machines and movable items at both the property sites, prepare list of inventory lying at the spot by conducting videography of machine. Commissioner of Police and Senior Superintendent of Police, Jagraon were directed to provide police help for carrying out these actions, to be completed by 13.12.2021.

11. Certain objections were filed by persons claiming to be shareholders as legal representatives of deceased Director/Guarantor namely Rajinder Kumar Mittal and Sushil Kumar Mittal. Other objections were also pending before Recovery Officer. Co-ordinate Bench on 19.01.2023 while taking note of pending objections passed the following order:-

“ During the course of hearing today and at the very

outset, the Bench was informed that two kinds of objections are pending before the Recovery Officer. One set of objections is against the proclamation notice, pertaining to the mortgaged property, issued on 07.09.2021. The second set of objections is after the sale which took place on 05.11.2021.

A suggestion has come forth from the counsel that during the pendency of the instant writ petition itself, such objections ought to be decided as the same would have a material bearing on the issue at hand.

Learned senior counsel for the petitioner-Bank does not object to such course of action being followed.

List for further consideration on 02.05.2023.

In the meanwhile, it is directed that the Recovery Officer, in the first instance, would consider and deal with the objections that have been filed against the proclamation notice dated 07.09.2021 and thereafter would deal with the objections that have been filed after the sale was effected on 05.11.2021. Such exercise be completed expeditiously and in any case within a period of 90 days from today.

It is however, clarified that such directions may not be construed to be an expression of opinion of this Court, as regards maintainability of the objections.”

12. Pursuant to order dated 19.01.2023, Recovery Officer heard the parties in February/March, 2023 and reserved the order. Presiding Officer, DRT-III vide order dated 17.03.2023 restrained Recovery Officer from passing any order and issued notice for 17.04.2023 in MA filed by one Pankaj Garg. Respondent No. 9 filed three separate applications before learned DRT i.e. for preponement, intervention, modification and recalling of order dated 17.03.2023. Preponement application was

dismissed on 31.03.2023 and other two applications were disposed of with directions to Recovery Officer to hear all parties and comply with order dated 19.01.2023 passed by this High Court in CWP-22367-2021 in letter and in spirit.

13. Recovery Officer passed orders dated 19.04.2023 and 24.04.2023 which are attached as Annexures A16 and A18 in CM-8696-CWP-2023 filed by respondent No. 9. Vide order dated 24.04.2023, it was concluded that Proclamation of sale dated 07.09.2019 was illegal and was, accordingly, set aside. Auction in which respondent No. 9 was the successful auction purchaser, was also set aside resultantly. Operative part of order dated 24.04.2023 reads as under:-

“In order to deal with and decide the objection filed by CD No.1 and the independent third party objectors, which was filed after the action/sale conducted on 05.11.2021 and therefore, it necessary for this forum to decide the validity of the POS/auction held on 05.11.2021.

After perusing the records and considering the facts of case, this forum is constrain to note that while service of demand notice, CH Bank was came to know about the death of the CD No. 2 & 6 and CH Bank did not made any effort to implead the LRs of Deceased CD No.2 and 6 but CH Bank has also ignored the direction of this forum dated 06.01.2021 and thus, POS Order dated 07.09.2019 is bad in the eye of law and accordingly, the POS dated 07.09.2021 is set-aside on the following ground:-

1. The Rule-2/Demand Notice has been issued in name of deceased CD No. 2, 3 and 6 and service of demand notice has been effected through a deceased person (who was already expired before issuance of Rule-2/Demand Notice).
2. The POS has been issued in the name of Deceased CDs without impleading the LRs of the Deceased CD No. 2 & 6 and CH Bank has submitted this forum on 05.10.2021 service of the POS is completed through all mode, which is considered false and misleading and the process of service is bad in the eye of law.

In view of above, the following orders/directions are passed:

1. POS order dated 07.09.2021/Auction held on 05.11.2021 is set aside. Accordingly, the objection filed the CD No.1 and objections/IAs filed by other independent third party objectors and the Performa Defendant Bank etc, became infructuous and accordingly, it stands disposed.
- 2 Request of Third Party Objector for instituting enquiry against the bidder and the bank official is not allowed, as the Recovery Officer is not empowered to institute such enquiry against the bank officials or forfeit the auction money deposited by the highest bidder under the Rule-11 of the Second Schedule of the Income Tax Act, 1961. Under provision of Rule -11, recovery Officer has been empowered only up to the extent the institution/conduct enquiry for the issues arising with the ownership of the properties.
3. CH Bank is directed to file the proper application for impleading the LRs of deceased CDs.
4. The POR and Valuation report on record is more than two year old and hence, CH Bank is directed to file fresh POR.

5. The Bidder is directed to furnish the account details for refund of bid amount deposited by them.(emphasis added)

The case is adjourned to 11.05.2023”

14. It is recorded in order dated 03.05.2023 passed in CWP-22367-2021, that respondent No. 9 was informed to have filed application before Tribunal seeking refund pursuant to order dated 24.04.2023 and had expressed its inclination to pursue the matter. Keeping in view the same, it was directed by this Court that a specific affidavit be filed by respondent No. 9 as to the stand it wishes to take in present proceedings. Pursuant thereto, affidavit dated 15.05.2023 was filed with CRM-8696-CWP-2023 stating that said respondent would seek refund of entire bid amount alongwith poundage fee and interest at the rate of 12% as the said amount cannot be appropriated in any productive commercial sites. It is stated in affidavit that though claim of refund would not express subscription to the correctness of order passed by Recovery Officer but as the sale did not exist, amount should be refunded.

15. Learned counsel for respondent No. 9 submits that said respondent does not wish to challenge any of the proceedings. It is only interested in refund of its money which is a huge amount and has been deposited in bonafide manner. Sale, as on today, does not exist, therefore, said amount should be directed to be refunded. Proceedings before learned DRT were not carrying on merely on account of pendency of present writ petitions even though there is no order staying said proceedings with the result that the amount was not released. It is further submitted by learned counsel for respondent No. 9 that passing of order dated 14.05.2024 by learned NCLT, Chandigarh has rendered both the writ petitions infructuous, however, same is not an impediment in the release of amount in question, which is lying deposited with Recovery Officer, DRT-III. Said amount is not in discharge of any liability and once the sale has been set aside and not challenged by either the answering respondent or the Bank or corporate debtor, there is no question of any impediment to release of said amount.

16. Learned counsel representing the IRP raised an objection to the release of said money with reference to Section 14 of IBC 2016 to contend that once moratorium has kicked in, jurisdiction to direct release of any sum would lie with learned NCLT and not this Court.

17. Learned counsel for petitioner – Bank as well as other two banks do not deny that order dated 24.04.2023 whereby auction in favour of respondent No. 9 has been set aside has not been subjected to challenge and said order stands as on today having attained finality.

18. Learned counsel for petitioner in CWP-22367-2021 and IRP representing petitioner in CWP-11117-2022 are unable to deny that in view of order dated 14.05.2024 passed by learned NCLT, both the writ petitions are indeed rendered infructuous.

19. In our considered opinion, there is no merit in the objection raised by learned counsel for IRP appointed by learned NCLT qua the prayer for release of bid amount by respondent No. 9. Factual aspect of auction having been conducted on 05.11.2021, pursuant to orders of this court in CWP-22367-2021, subsequent decision on the objections by Recovery Officer and setting aside of auction proceedings as well as sale in favour of respondent No. 9 vide order dated 24.04.2023 passed by Recovery Officer, is also a matter of record. With passing of order dated 24.04.2023, which as per information provided to us, stands unchallenged as on date, sale of property in

question in favour of respondent No. 9 clearly does not exist. It is a matter of record that refund of the amount in question has been ordered vide order dated 24.04.2023.

20. Section 14(1) of IBC 2016 reads as under:-

" 14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

21. In consonance thereto, it was directed by learned NCLT, Chandigarh vide order dated 14.05.2024 as under:-

"14. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

"(a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent."

22. It is to be noted that any money, amount or property which may be for the benefit of corporate

debtor can doubtlessly not be directed to be released or dealt with by this Court at this stage in view of proceedings before NCLT. However, in the present given factual matrix, it cannot be held by any stretch of imagination that corporate debtor has any legal right or beneficial interest qua the bid amount which has been deposited by the auction purchaser (respondent No. 9) in respect to auction/sale which has admittedly been set aside with refund thereof being ordered and the said order not being challenged till date. Merely because the matter kept hanging fire on account of pendency of present writ petitions cannot in any manner entitle the IRP to take the objection as has been raised before us. Possession of property is admittedly not with respondent No. 9, it was never handed over to it. No right over the same vests in respondent No. 9 and conversely corporate debtor or the Bank also do not have any right to claim money deposited towards bid amount, admittedly lying with Recovery Officer. Said money/amount cannot be stated to be for the benefit of corporate debtor. Once that be the position, it cannot be said that this Court would not have jurisdiction to direct release of said amount. It would indeed be imminently unjust towards respondent No. 9 to insist that application should now be filed by it before learned NCLT. It is, thus, held that respondent No. 9 is entitled to release of the amount deposited by it in terms of order dated 24.04.2023.

23. Keeping in view the facts and circumstances as above, it is directed that amount deposited by respondent No. 9 be released by Recovery Officer expeditiously in terms of order dated 24.04.2023. With the said direction, both writ petitions are disposed of as infructuous at this stage, without expression of opinion on the merit of the matter or even entertainability thereof, keeping in view the passing of order dated 14.05.2024 by learned NCLT, Chandigarh Bench. Parties would be at liberty to avail remedy(ies) available to them in accordance with law before appropriate Forum(s).

24. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

May 24, 2024

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