

# **SUPREME COURT OF INDIA**

Devi Ispat Limited

Vs.

State Bank of India

(Gyan Sudha Misra and Madan B. Lokur JJ.)

16.04.2014

## **JUDGMENT**

### **MADAN B. LOKUR, J.**

1. Petitioner No.1 (Devi Ispat) is engaged in the manufacture and trade of iron and steel products while petitioner no.2 is one of its Directors.
2. Devi Ispat had availed of credit facilities from the State Bank of India with an overall limit of Rs. 29.5 crores. This credit facility was enhanced from time to time to Rs. 68.5 crores and Devi Ispat sought a further enhancement to Rs. 93 crores but that was not sanctioned.
3. While the Bank was processing the request of Devi Ispat, it issued a letter to it on 10th January 2013 informing that its cash credit account is irregular inasmuch as the outstanding was about Rs.11.7 crores against the permissible limit of Rs. 5.6 crores. Devi Ispat was also informed that it was not servicing the interest of cash credit, Foreign Currency Non- Resident Bank Account etc. It was also informed that its account was heading for becoming a non-performing asset (NPA) and Devi Ispat was requested to regularize all its accounts by 14th January 2013 failing which there would be no alternative but to call up the advance.
4. Devi Ispat replied to the above letter but since the response was not satisfactory another letter was issued by the Bank on 14th January 2013 calling upon Devi Ispat to regularize its accounts position failing which the Bank would be constrained to take

appropriate action.

5. Since there was again no positive response from Devi Ispat, the Bank issued a letter on 18th January 2013 intimating Devi Ispat that its account had been classified as an NPA on 16th January 2013 and it was requested to regularize the accounts position within seven days.

6. Instead of regularizing its accounts, Devi Ispat sent a reply on 22nd January 2013 pointing out that the cash credit account had been operated on 19th October 2012 and therefore its declaration as an NPA on 16th January 2013 (that is on the 90th day instead of on completion of 90 days) was in violation of the guidelines issued by the Reserve Bank of India.

7. The Bank then issued a notice to Devi Ispat under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act) on 28th January 2013 demanding payment of the outstanding liabilities due to the extent of about Rs. 17.9 crores, \$ 1.11 crores (of the FCNB account ) and interest.

8. Devi Ispat reacted by filing a writ petition in the Calcutta High Court challenging, inter alia, the declaration of its being an NPA and for setting aside the previous letters issued by the Bank.

9. The learned Single Judge hearing the writ petition dismissed it by an order dated 19th March 2013 on the sole ground that Devi Ispat had an alternate statutory remedy under Section 13(3A) of the SARFAESI Act to make a representation against the letter issued under Section 13(2) thereof.

10. Section 13(3A) of the SARFAESI Act reads as follows:

13. Enforcement of security interest.

(1) , (2) and (3) xxx

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such

representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

11. After the dismissal of its writ petition, Devi Ispat made a representation to the Bank under Section 13(3A) of the Act on 22nd March 2013. This was followed almost immediately thereafter by an intra court appeal filed against the order of the learned Single Judge. Although the appeal was filed on 1st April 2013 (and we have gone through the contents of the appeal memo) there is no mention of Devi Ispat having made a representation to the Bank under Section 13(3A) of the Act.

12. Be that as it may, the representation was considered by the Bank and rejected on 2nd April 2013. The Division Bench was informed of this during the hearing of the intra court appeal on 26th April 2013.

13. The Division Bench was of the opinion that in view of the observations by this Court in *Mardia Chemicals v. Union of India*[1] as well as the provisions of Section 13(3A) of SARFAESI Act, the writ court was right in not entertaining the writ petition and permitting the issues raised by Devi Ispat to be considered by the Bank through the statutory mechanism.

14. While upholding the view of the learned Single Judge and despite the fact that the representation made by Devi Ispat had been rejected on 2nd April 2013, the Division Bench heard the matter on merits. However, it did not deal with the merits of the case since Devi Ispat had availed of the statutory remedy available to it. Accordingly, the appeal filed by Devi Ispat was dismissed on 26th April 2013.

15. While challenging the order dated 26th April 2013 passed by the Division Bench, learned counsel submitted that Devi Ispat had no alternative but to file a writ petition challenging the notice issued by the Bank on 18th January 2013. We find no merit in

this contention.

16. Firstly, Devi Ispat had an alternate remedy to make a representation to the Bank under the provisions of Section 13(3A) of the Act and there was no reason to by-pass the statutory mechanism.

17. Secondly, Devi Ispat did in fact make a representation to the Bank under Section 13(3A) of the SARFAESI Act and that representation was rejected on 2nd April 2013 during the pendency of the intra court appeal. The statutory remedy having been availed of by Devi Ispat, nothing really survived in the dispute raised.

18. Thirdly, we now find from the written submissions submitted by the Bank that it has taken possession of the secured assets of Devi Ispat on 25th May 2013 and 27th May 2013 under the provisions of Section 13(4) of the SARFAESI Act and a possession notice has also published in the newspapers on 31st May 2013.

19. On the facts on record and the statutory remedy having been availed of, we see no reason to interfere with the impugned order passed by the Calcutta High Court. However, it is left open to Devi Ispat to take such appropriate steps as may be considered necessary for safeguarding its interests.

20. There is no merit in this petition and it is accordingly dismissed.

[1] AIR 2004 SC 2371