DEBTS RECOVERY TRIBUNAL AT LUCKNOW

Present: A.H. Khan, Presiding Officer

Case No. Original Application No.717 of 2023

Dated: 03.01.2024

	Kotak Mahindra Bank limited, a banking company having its branch office at 1st Floor, 5/27, Vishal Khand, GomtiNagar, Lucknow-226001 having its **Registered Office** at 27 BKC, C27, G Block, Bandra Kurla Complex Bandra (E) Mumbai-400051 and its Regional office at G-17, Sector-18, Noida Gautam Budh Nagar, Noida-201301 through its Authorized Officer	……applicant Bank
	Versus	
1.	M/S Putul Enterprises having address A-2, Khasra No.686, Nai Basti, Village Devli, khanpur South Delhi-110062	
2.	Mr. Birendra Prasad, aged about adult S/o Shri Jagdish Prasad having address A-2, G/F Khasra No.686, Nai Basti Devli, Near Satya Sai Public School, Deoli South Delhi-110062	
3.	Mrs. Savitri Devi aged about adult D/o Shri Uma Shanker Prasad having address Flat No. A-2, Khasra No.686, U/G/F Nai Basti Village Devli Khanpur Pushpa Bhawan South Delhi, Delhi-110062	
		……defendants

Counsel for the applicant-bank: Shri Ritesh Goel, Advocate.
Counsel for the defendants : None

JUDGMENT

1. This Original Application has been filed by the applicant Bank under Section 19 of the Recovery of Debts & Bankruptcy Act, 1993, against the defendants for the recovery of Rs.38,75,403.55 (Rupees Thirty Eight Lac, Seventy Five Thousand, Four Hundred Three and Paisa Fifty Five Only) together with pendentelite and future interest, costs and other reliefs etc.

2. The brief facts of case are that the defendant No.1 is proprietorship firm through concerned proprietor defendant No.2 are the borrower and co

borrower and defendant No.3 is Guarantor in this O.A; as the defendant Nos.1,2&3 with KYC approached the applicant-bank through loan application in 09.02.2022 for term loan facility of Rs.42,34,829/- to purchase of commercial equipment, which was duly considered and sanctioned on 15.04.2022 on certain terms and conditions (Exhibit No.A-2) to this original application

3. To secure the aforesaid Term loan facility of Rs.42,34,829/-, the defendant No.1,2&3 signed and executed various necessary security documents like Loan cum Guarantee agreement (Loan No. CV-4550147*) (for construction Equipment Tipper Signa 2825 Tata Chassis No.MAT802029N3CO7684, Engine No. 7B6A250D062 Registration No.MH46BU1991)*, D.P. Note, power of attorney and Guarantee agreement by with defendant No.3 on 15.04.2022 in favour of applicant bank, as by signed and executed the bank guarantee agreement defendant No.3 confirms her liabilities joint, several as same as equal to the principal borrower (Exhibit No.A-2 to A-6) as mention into this Original application

4. To avail repayment of the term loan facility, the applicant bank had opened a loan account in the name of the defendant No.1.

5. After availing the aforesaid term loan facility, the defendants fails to maintain financial discipline also failed to comply with the terms and conditions of the loan agreements as required in the matters defendants were reminded time to times to regularize the loan accounts but on committed regular defaults no response or efforts made to regularize the unpaid EMIs Schedule, as did not care to deposit the amount since loan account became highly irregular with over dues interest consequently, the said Loan account were classified as NPA on 13.01.2023 as per RBI

guideline therefore the applicant bank issued Recall Notice on 03.06.2023 and again on 23.06.2023(Exhibit No.A-7)and sent to repay entire outstanding dues but defendants failed loan accounts still un liquidated, hence, this Original Application has been instituted.

6. As per book of the applicant bank and maintain in the usual and ordinary course of Banking Business, an Outstanding as the Rs.38,75,403.55 (Rupees Thirty Eight Lac, Seventy Five Thousand, Four Hundred Three and paisa Fifty Five Only) including interest as on 02.06.2023 were lying due for payment, defendants are jointly and severally liable to pay the same, which they did not pay despite repeated requests and demands the applicant Bank has filed the copy of Statement of loan account(Exhibit No.A-8 colly) to this Original application.

7. The cause of action arose for filing the present application firstly when the aforesaid term loan facility was sanctioned on 15.04.2022 by the applicant bank on the execution of necessary document upon hypothecation as the cause of action further arose on 13.01.2023 when the loan account of defendants classified as NPA since non deposits the cause of action finally arose on when the applicant Bank issued sent last Recall Notice on 23.06.2023 to recalling the entire outstanding dues and they failed to repay the same.

8. Despite sufficient services of summons through registered posts but none appeared defendant opted not to contest the case before the Tribunal, hence the matter proceeded ex-parte against the defendants.

9. From the perusal of the record, it is evident that the defendants were provided with fair opportunities to contest the claim of the bank. As the defendant opted not to contest the case, so only point of consideration before

this Tribunal is as to whether bank is legally entitled to the amount as claimed in Original Application on the basis of documents and pleading submitted by it.

10. In support of the case Shri Atul Audichya Deputy collection manager of the applicant bank has filed an affidavit (Exhibit No.A-1).

11. On a careful scrutiny of the evidence on affidavit and Exhibit marked as Exhibit No.A-1 to A-8 it is proved that defendants availed term loan facility from the applicant-bank by executing loan and security documents detailed as above in favor of the applicant-Bank. A perusal of the application, evidence, documents relied upon clearly shows that defendants utilized the aforesaid loan facility granted, applicant-bank had maintained the Books of accounts in the ordinary course of banking business showing disbursal of the loan amounts. The Bank had also charged interest from time to time and the entries are relevant u/s 2A of the Banker Books of Evidence Act,1981, It is proved that the applicant bank's claim is within limitation against defendants there fore defendant Nos.1,2&3 are jointly and severally liable to pay Bank dues.

12. Accordingly, the defendant Nos.1,2&3 are directed to pay the balance dues to the applicant bank within a period of 2 months from the date of judgment, failing, which the applicant bank will be entitled to recover from the secured assets, personal movable/ immovable assets and as entitle to sell Hypothecation well as personal properties/assets of the defendants.

13. The applicant-bank has claimed @24.00% rate of interest per annum monthly rests with effect from 03.06.2023 from date of filing this original application till the date of realization and costs. The contest between applicant-bank and the defendants comes to an end after filing of this O.A.

as per the provisions of Section 19(2) of the Recovery of Debts and Bankruptcy Act 1993 (as amended from time to time) which is analogous to Section 34 to the CPC, the Tribunal/Court has discretion in awarding pendentelite and future interest. I am also supported in my view by **Hon'ble Supreme Court** in a case titled **Central Bank of India vs. Ravindra and others reported in AIR 2001 SC pages 3095.** On the basis of foregoing discussion, interest of justice will be served if pendentelite and future interest is granted **@12.00%** per annum simple in the loan account on reducing balance from the date of filing of the O.A. till the date of realization with costs.

14. In the result, the Original Application succeeds, as ex parte against the defendant Nos.1,2&3 with its costs, bank has proved the execution of security loan documents upon Hypothecation to availment of Credit facility, liabilities of defendants are joint and several to the dues, to recover Hypothecation well as personal properties/assets are to be sold.

It is, therefore, **ordered**

(i) That the Original Application No.717 of 2023 of the applicant bank for issuance of Recovery Certificate to the tune of Rs.38,75,403.55 (Rupees Thirty Eight Lac, Seventy Five Thousand, Four Hundred Three and paisa Fifty Five Only) together with **@12.00%** per annum simple interest from the date of filing of the Original Application i.e.03.06.2023 till the loan is fully liquidated and costs succeeds ex parte against the defendant Nos.1,2&3.

(ii) The applicant–bank is entitled to recover aforesaid amount by sales of Hypothecations(if not sold earlier under the provision of the S.A.R.F.A.E.S.I. Act 2002), amount, if any, already, recovered by the sales of any properties/Hypothecation or otherwise shall be adjusted towards the debts, only the balance amount shall be recoverable, If the dues of the applicant-bank still remain unsatisfied, the same shall be recovered jointly and severally by attachment and sales of the personal movable assets of all the defendants.

(iii) The defendants are here by restrained by means of injunction from depleting, transferring, encumbering, alienating or in any way dealing with their properties/estates without first paying the claim of the applicant-bank.

(iv) Let Recovery Certificate be issued immediately u/s 19(22) of the Recovery of Debts and Bankruptcy Act, 1993 by fixing 03.03.2024 before Recovery Officer, DRT, Lucknow.

The applicant bank is directed to file a memo of cost for preparing Recovery Certificate u/s 19(22) of the Recovery of Debts and Bankruptcy Act,1993.

Judgment is pronounced in the open court.

Dated: 03.01.2024

(sg).

(A.H .Khan)
Presiding Officer