

HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
HONOURABLE SRI JUSTICE A. VENKATESHWARA REDDY
W.P.No.10102 of 2022

Order: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. S. Ravi, learned Senior Counsel for the petitioners.

2. This petition under Article 226 of the Constitution of India has been filed by the petitioners for quashing the sale notice dated 21.01.2022, issued by the respondent/Canara Bank, under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') and for a direction to the respondent to apply the circulars of the Reserve Bank of India dated 17.03.2016 and 14.07.2017, while considering the case of the petitioners under the SARFAESI Act.

3. It appears that petitioners had availed financial assistance from the respondent by way of term loan facility for carrying out their business activities.

4. It is stated that petitioner No.1 is a Medium, Small and Micro Enterprise (MSME); Without any prior intimation, respondent had issued demand notice dated 06.04.2021 under Section 13(2) of the SARFAESI Act; petitioner submitted objection/representation against demand notice dated 06.04.2021. However, without considering the objection raised by the petitioners, respondent issued fresh demand notice dated 15.07.2021 under Section 13(2) of the SARFAESI Act, demanding an amount of Rs.5,59,24,939.66 to be paid within 60 days. Thereafter, respondent issued notice prior to sale on 03.12.2021. Petitioners tried for settling the loan account through One Time Settlement (OTS), but such efforts did not bear fruit. Finally, respondent issued the impugned sale notice dated 21.01.2022, proposing to hold auction sale of the schedule property on 28.02.2022.

5. As per the impugned sale notice, the outstanding dues of the petitioners has been quantified at Rs.5,96,26,118.98 as on 21.01.2022.

6. We may mention that petitioners have, in the meanwhile, filed Securitization Application before the Debts Recovery Tribunal-II,

Hyderabad (for short 'the Tribunal') under Section 17 of the SARFAESI Act, which has been registered as S.A.No.35 of 2022. Petitioners have also filed an interlocutory application for stay, which has been numbered as I.A.No.101 of 2022. But it is submitted that there is no Presiding Officer in the Tribunal. Hence, the writ petition.

7. Be that as it may, since petitioners have already invoked their statutory remedy under Section 17 of the SARFAESI Act, it would be just and proper, if they are relegated to the forum of the Tribunal for adjudication of their grievances. Further, if the petitioners deposit 15% of the outstanding dues as claimed by the respondents within a period of thirty days from today, respondents shall not take further steps pursuant to the impugned sale notice dated 21.01.2022 which, in any event, would be subject to outcome of S.A.No.35 of 2022 stated to have been filed by the petitioners before the Tribunal.

8. However, if there is any default by the petitioners in making the payment as above, it would be open to the respondent to

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proceed against the petitioners for realization of dues in accordance with law.

9. Writ Petition is, accordingly, disposed of. Related interlocutory application also stands disposed of.

10. No costs.

UJJAL BHUYAN , J

A. VENKATESHWARA REDDY, J

Date: 24-02-2022

Note:
Issue CC tomorrow.
B/o
LUR