IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C).No. 7382 of 2015 (W)

PETITIONERS:
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1. DEWA PROJECTS
   CORPORATE OFFICE:42/108A, ABRAHAM MADAMAKKAL ROAD
   MARINE DRIVE, NEAR GOSREE BRIDGE, KOCHI-682018
   REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR
   SHRI.K.VENUGOPALAN NAIR.

2. HOTEL VENUS INTERNATIONAL, S.S. KOVIL ROAD, THAMPANOOR
   THIRUVANANTHAPURAM, REPRESENTED BY ITS PROPRIETOR
   SHRI. K. VENUGOPALAN NAIR

3. SHRI.K.VENUGOPALAN NAIR,
   T.C.6/139, 'CHITHIRAM', VATTIYOORKAVU.P.O
   THIRUVANANTHAPURAM-695013.

4. M/S.ANSU ENTERPRISES
   (NOW CONVERTED INTO A PRIVATE LIMITED COMPANY),
   SREE NAGAR, NO.14 XLI/1620, MANACAUD.P.O
   THIRUVANANTHAPURAM-695009
   REPRESENTED BY ITS DIRECTOR SHRI.K.VENUGOPALAN NAIR.

   BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
   SRI.P.GOPINATH
   SRI.P.BENNY THOMAS
   SRI.K.JOHN MATHAI
   SRI.JOSON MANAVALAN
   SRI.KURYAN THOMAS

RESPONDENTS:
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1. UNION OF INDIA
   REPRESENTED BY THE SECRETART TO GOVERNMENT
   DEPARTMENT OF FINANCIAL SERVICES
   MINISTRY OF FINANCE, 3RD FLOOR, JEEVAN DEEP BUILDINGS
   SANSAD MARG, NEW DELHI-110001.

2. UNION BANK OF INDIA,
   ERNAKULAM MAIN BRANCH, UNION BANK BHAVAN, M.G.ROAD
   ERNAKULAM-682035. REPRESENTED BY ITS ASST. GENERAL MANAGER

3. ANDHRA BANK,
AJAY VIHAR, M.G.ROAD, ERNAKULAM-682016
REPRESENTED BY ITS SENIOR BRANCH MANAGER.

4. ORIENTAL BANK OF COMMERCE,
SAMUDRA, IYYATTIL JUNCTION
NEAR HOTEL KAVITHA INTERNATIONAL, CHITTOOR ROAD
ERNAKULAM-682011, REPRESENTED BY ITS CHIEF MANAGER.

5. INDIAN OVERSEAS BANK,
ERNAKULAM BRANCH, OPP.KAVITHA THEATRE
THEKKEKARA MANSION, FIRST FLOOR, M.G.ROAD
ERNAKULAM-682035
REPRESENTED BY ITS ASST.GENERAL MANAGER.

6. CORPORATION BANK,
ERNAKULAM BRANCH, FIRST FLOOR, RADHAKRISHNA BUILDING
XXXVII/398 B, CLOTH BAZAR ROAD, P.B.NO.2528
ERNAKULAM, KOCHI-682031
REPRESENTED BY ITS CHIEF MANAGER.

7. PUNJAB NATIONAL BANK,
D.H.ROAD, ERNAKULAM-682016
REPRESENTED BY ITS CHIEF MANAGER.

8. ALLAHABAD BANK,
ERNAKULAM BRANCH, SABU & CYPRIAN BUILDING
R.MADHAVAN NAIR ROAD, OPP.DOLPHIN CLUB
ERNAKULAM-682016, REPRESENTED BY ITS CHIEF MANAGER.

9. DENA BANK,
JOSE JUNCTION, M.G.ROAD, ERNAKULAM-682016
REPRESENTED BY ITS CHIEF MANAGER.

10. SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA,
FINANCE TOWERS, 2ND FLOOR, P.O.BOX NO.4209
KALOOR, ERNAKULAM-682017
REPRESENTED BY ITS DEPUTY GENERAL MANAGER.

11. M/S.EDELWEISS ASSET RACONSTRUCTION COMPANY LTD,
14TH FLOOR, EXPRESS TOWERS, NARIMAN POINT
MUMBAI-400 0021
REPRESENTED BY ITS CHIEF OPERATING OFFICER.

12. ASSET RECONSTRUCTION COMPANY(INDIA)LIMITED (ARCIL),
"THE RUBY", 10TH FLOOR, SENAPATI BAPAT MARG
DADAR(WEST), MUMBAI-400 028
REPRESENTED BY ITS MANAGING DIRECTOR.

ADDITIONAL RESPONDENTS

13. CORPORATION OF COCHIN, CORPORATION OFFICE, PARK AVENUE
KOCHI - 682 011, REPRESENTED BY ITS SECRETARY

14. CHIEF TOWN PLANNER,
DEPARTMENT OF TOWN AND COUNTRY PLANNING
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM 695001

15. GOSHREE ISLANDS DEVELOPMENT AUTHORITY (GIDA)
COCHIN, ERNAKULAM 682 011
REPRESENTED BY ITS CHAIRMAN

ADDL. RESPONDENTS 13 TO 15 IMPLEADED AS PER ORDER DATED 2.12.2015 IN I.A. NO.5386/2015

R2 BY ADV. SRI.A.V.THOMAS, SR.
R2,R12 BY ADV. SRI.NIDHI SAM JOHNS
R9 BY ADV. SRI.PHILIP T.VARGHESE
R9 BY ADV. SRI.THOMAS T.VARGHESE
R9 BY ADV. SMT.ACHU SUBHA ABRAHAM
R9 BY ADV. SMT.K.R.MONISHA
R9 BY ADV. SRI.BOBY C. BABY
R9 BY ADV. SRI.ANOOP BHASKAR
R3 BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)
R3 BY ADV. SRI.SRI.ANIL ABEY JOSE
R6 BY ADV. SRI.V.A.AJAI KUMAR
R8 BY ADV. SRI.K.P.RAMACHANDRAN
R8 BY ADV. SRI.SANJAY THAMPI
R10 BY ADV. SRI.C.AJITH KUMAR
R12 BY ADV. SMT.M.M.JASMIN
R5 BY ADV. SRI.SUNIL SHANKAR, SC, INDIAN OVERSEAS BANK
R4 BY ADV. SRI.SAJI P.JOSEPH, SC, ORIENTAL BANK OF COMMERCE
R7 BY ADV. SRI.SANTHEEP ANKARATH, SC, PUNJAB NATIONAL BANK
R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R BY SRI.S.B.PREMACHANDRA PRABHU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-12-2015, ALONG WITH WPC. 19773/2015 & 33321/2015 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 7382 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1	TRUE COPY OF THE JUDGMENT DATED 21.06.2005 IN WP(C)13735/2005
EXT.P2	TRUE COPY OF THE JUDGMENT DATED 20.07.2005 IN W.A.1315 OF 2005
EXT.P3	TRUE COPY OF THE JUDGMENT DATED 02.02.2007 IN C.A.7560 OF 2005
EXT.P4	TRUE COPY OF THE CONSORTIUM LENDING AGREEMENT,DATED 21.03.2007
EXT.P5	TRUE COPY OF THE MINUTES OF THE CONSORTIUM MEETING DATED 19-11-2008 COMMUNICATED LETTER DATED 4.12.2008 OF THE 2ND RESPONDENT
EXT.P6	TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 10.08.2009,COPY OF WHICH WAS FORWARDED TO THE IST PETITIONER THROUGH A COVERING LETTER DATED 12.9.2009 FROM THE 2ND RESPONDENT
EXT.P7	TRUE COPY OF THE DATED 6.11.2009 FROM THE IST PETITIONER ADDRESSED TO THE GENERAL MANAGER,UNION BANK OF INDIA
EXT.P8	TRUE COPY OF LETTER DATED 8.12.2009 ADDRESSED TO THE GENERAL MANAGER,INDIAN OVERSEAS BANK
EXT.P9	TRUE COPY OF THE MINUTES OF THE CONSORTIUM MEETING HELD ON 10.6.2010
EXT.P10	TRUE COPY OF THE MINUTES OF THE CONSORTIUM MEETING HELD ON 27.8.2010
EXT.P11	TRUE COPY OF THE LETTER DATED 11.12.2010 FROM THE IST PETITIONER TO THE 2ND RESPONDENT(LEAD BANK)
EXT.P12	TRUE COPY OF THE LETTER DATED 13.12.2010 FROM THE 2ND RESPONDENT (LEAD BANK)TO OTHER MEMBERS FO THE LENDING CONSORTION(WITHOUT ANNEXURES)
EXT.P13	TRUE COPY OF THE LETTER DATED 29.12.2010 FROM THE IST PETITIONER TO THE 2ND RESPONDENT (LEAD BANK)
EXT.P14	TRUE COPY OF THE LETTER DATED 1.1.2011 FROM THE IST PETITIONER TO THE 2ND RESPONDENT(LEAD BANK)
EXT.P15	TRUE COPY OF THE E-MAIL DATED 27.1.2011 FROM THE IST PETITIONER TO THE 2ND RESPONDENT(LEAD BANK)

EXT.P16	TRUE COPY OF THE E-MAIL DATED 3.2.2011 FROM THE IST PETITIONER TO THE 2ND RESPONDENT(LEAD BANK)
EXT.P17	TRUE COPY OF THE E-MAIL DATED 7.2.2011 FROM THE IST PETITIONER TO THE 2ND RESPONDENT(LEAD BANK)
EXT.P18	TRUE COPY OF THE MINUTES OF THE CONSORTIUM MEETING HELD ON 28.1.2011
EXT.P19	TRUE COPY OF REPORT DATED 29.10.2011 FROM SAJIVE ASSOCIATES,CHARTERED ACCOUNTS
EXT.P20	TRUE COPY OF REPORT DATED 12.07.2011 A.K.JAIN & ASSOCIATES,COMPANY SECRETARIES
EXT.P21	TRUE COPY OF THE MINUTES OF THE CONSORTIUM MEETING HELD ON 25.5.2013
EXT.P22	TRUE COPY OF CIRCULAR BEARING NO.DBOD.LEG.NO.BC.104/09.07.2002-03 DATED 5.5.2003 ISSUED BY THE RESERVE BANK OF INDIA
EXT.P23	TRUE COPY OF THE PROPOSAL DATED 20.06.2014 PLACED BY THE IST PETITIONER BEFORE THE 2ND RESPONDENT (AS LEAD BANK).
EXT.P24	TRUE COPY OF THE LETTER DATED 29.01.2015 PLACED FROM THE 2ND RESPONDENT
EXT.P25	TRUE COPY OF THE VALUATION REPORT DATED 28.01.2014 OF THE LAND AND BUILDING OF THE IST PETITIONER PREPARED BY CUSHMAN& WAKEFIELD
EXT.P26	TRUE COPY OF THE VALUATION REPORT DATED 03.02.2012 OF THE LAND AND BUILDING OF THE IST PETITIONER PREPARED BY THE ASSESSORS ASSOCIATE
EXT.P27	TRUE COPY OF THE VALUATION REPORT DATED 10.08.2013 OF THE PROPERTY BELONGINT TO THE IST PETITIONER PREPARED BY S.RAJENDRAPRASAD
EXT.P28	TRUE COPY OF THE VALUATION REPORT DATEDE 29.03.2012 OF THE LANDS BELONGING TOT HE IST PETITIONER PREPARED BY K.A.THOMAS,APPROVED VALUER
EXT.29	TRUE COPY OF LETTER DATED 29.01.2015 FROM THE IST PETITIONER TO THE 2ND RESPONDENT
EXT.P30	TRUE COPY OF THE MINUTES OF THE MEETING OF THE CONSORTIUM HELD ON 04.02.2015.

EXT.P31	TRUE COPY OF THE SALE DEED DATED 27.03.2006
EXT.P32	TRUE COPY OF THE AGREEMENT FOR SALE DATED 25.9.2014
EXT.P33	TRUE COPY OF THE LETTER DATED 11.3.2015 FROM CLASSIC EXPORTS TO THE ASST.GENERAL MANAGER, UNION BANK OF INDIA
EXT.P34	TRUE COPY OF THE LETTER DATED 11.3.2015 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT
EXT.P35	TRUE COPY OF THE LETTER DATED 23.4.2015 ADDRESSED BY SOBHA DEVELOPERS TO THE PETITIONERS
EXT.P36	TRUE COPY OF THE LETTER DATED 18.7.2013 ISSUED BY M/S. SABARI PROPERTIES PVT.LTD TO THE PETITIONERS
EXT.P37	TRUE COPY OF THE NOTICE DATED 02.05.2015 ISSUED U/S 13(2) OF THE SARFAESI ACT, 2002
	I.A. NO.17237/2015
EXT.P33	TRUE COPY OF THE STATEMENT OF PROPOSAL

RESPONDENT(S)' EXHIBITS

R2(B)	TRUE COPY OF THE LETTER DATED 11.03.2015 SENT BY M/S. CLASSIC EXPORTS TO THE SECOND RESPONDENT
R2(C)	TRUE COPY OF THE REPLY LETTER DATED 17.03.2015 SENT BY SECOND RESPONDENT TO M/S. CLASSIC EXPORTS
R2(D)	TRUE COPY OF THE LETTER DATED 05.05.2015 SENT BY THE FIRST PETITIONER TO THE 7TH RESPONDENT WITH COPY TO THE SECOND RESPONDENT
R2(E)	TRUE COPY OF THE LETTER DATED 07.05.2015 SENT BY THE SECOND RESPONDENT TO THE 7TH RESPONDENT WITH COPY TO THE FIRST PETITIONER

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P(C). Nos.7382-W, 19773-V & 33321 of 2015-M

Dated this the 2nd day of December, 2015.

JUDGMENT

The petitioners are identical in WP(C) No.7382 of 2015 and 33321 of 2015, but represented by different Counsel. The writ petitions have been filed essentially challenging the recovery proceedings taken against the properties, owned by all the petitioners together, which were allotted by the Gosri Island Development Authority (for short-GIDA), in the year 2005. The petitioners contend that, in addition to the 22 Acres of land, against which proceedings are now taken under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "SARFAESI Act"), the petitioners had been allotted 4 other plots, which however was not conveyed and taken possession of, because of the pending proceedings before this Court challenging the said allotment. As of now, it is an admitted fact that the Hon'ble Supreme Court has set aside the allotment in respect of the other plots and nothing remains to be mentioned about the said allotment and its subsequent cancellation.

2. The properties, which are now being proceeded against, by a Consortium of Banks, herein individually impleaded as respondents 2 to 12, are categorized as C3, C4, C5 and D, the last of which is a water-front property, so mentioned for reason of its higher value. The said plots, respectively have an individual extent of 539.02, 637.950, 632 and 408.80 cents, coming to a total of around 22 Acres. Admittedly, there is a construction, of a multistory apartment complex going on in Plot C5. The intended purchasers in which, are the petitioners in WP(C) No.19773 of 2015. The petitioners in the said writ petition seek for exclusion of the said properties from the proceedings initiated under the SARFAESI Act on the ground of they being bonafide purchasers of the apartments in the

complex.

3. WP(C) No.7382 if 2015 was filed on 19.02.2015, with prayers seeking direction to consider the petitioners' request for No Objection Certificate (NOC), so as to attempt the disposal of 15.86 Acres of property, comprising the 3 plots, wherein no construction is carried on. The writ petition also sought for a declaration, that the denial of NOC by the respondent Banks, is arbitrary and illegal and also sought for restraining the respondents from taking any recovery proceedings against the petitioners, before they are given an opportunity to sell the properties by private negotiation. The petitioners made such a prayer since they apprehended that the best price would not be fetched in a recovery step initiated by the Consortium.

4. While the above writ petition was pending, on behalf of the respondent Bank's, the lead bank of the consortium, issued a notice under Section 13(2) of the SARFAESI Act, produced as Ext.P37 in WP(C) No.7382 of

2015. This gave rise to the second writ petition at WP(C) No.33321 of 2015, which challenged the proceedings taken by the respondent Bank before the Chief Judicial Magistrate's Court, Ernakulam, for taking possession of the property. The said writ petition was filed challenging the appointment of a Commissioner and a direction to take possession, through the Commissioner. Pausing here for a moment, it is to be noticed, on 02.11.2015 when the above writ petition came up for hearing, a learned Single Judge of this Court specifically directed the petitioner to ascertain the amounts that could be deposited, to prove the bonafides with regard to the repayment proposal. An interim order of stay was also granted, which was extended intermittently by various orders since this Court had posted the case for final hearing.

5. The Banks, after issuing Section 13(2) notice under the SARFAESI Act, considering the objections of the borrowers took symbolic possession of the property on

18.08.2015, against which a Securitisation Application numbered as S.A. No.351 of 2015 is said to have been moved before the Debts Recovery Tribunal, Kerala (Ernakulam and Lakshadweep). The said S.A. is said to have been taken up for consideration and reserved for orders. The Consortium of Banks have also filed an Original Application under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for brevity 'DRT Act'), in July, 2015 as O.A. No.446 of 2015 for recovery of Rs. 538 Crores as on 30.06.2015. The alternative action has been taken up by the Consortium of Banks, allegedly due to the lethargy of the petitioners in making any repayment and also the attempts made to frustrate the recovery proceedings. It is also submitted by the learned Senior Counsel appearing for the Consortium of Banks that the debt was getting time barred and it was expedient that the Bank take up proceedings, to stave off the threat of limitation.

6. The learned Counsel appearing for the petitioners in WP(C) No.7382 of 2015, would contend that, contrary to the assertion made by the Consortium of Banks, the petitioners' attempt to sell off the property was frustrated by reason of the denial of NOC by certain Banks among those included in the Consortium. It is also submitted that in the course of the proceedings before the Supreme Court, the petitioners have made considerable payments to the Consortium as indicated in paragraph 17, coming to a total of Rs.166.26 Crores. The petitioners have also entered into an investment agreement with one 'IL&FS' an investment company, who had invested an amount of more than 125 Crores, of which 82 Crores is said to have been deposited to the Consortium of Banks.

7. The learned Senior Counsel appearing for the respondent Bank however would contend that the entire money, so brought in, ought to have been deposited with the Consortium of Banks and that the petitioners have

violated the terms of the agreements with the various banks, in having brought in the investment, through another Nationalized Bank, which was not part of the Consortium. Serious objection is also raised against the action of the petitioners in not having transferred the entire investment to the account maintained with the Consortium. It is also argued that even when agreements were entered into with the individual purchasers of apartments, in the multistory complex, the petitioners were supposed to bring in the amounts received as consideration through the escrow account maintained with the banks, which the petitioners failed to.

8. The learned Senior Counsel, appearing for the petitioners in WP(C) No.33321 of 2015 would however, refer to the specific contention raised in WP(C) No.7382 of 2015, pointing out that the proposal for sale of the properties did not fructify, for reason only of the NOC having not been granted by the Banks. The petitioners, it is

asserted, have been repeatedly following up with all the Banks for NOC and though 9 Banks issued it with conditions, the others refused to issue it, which eventually led to the present stalemate.

9. The learned counsel for the petitioners would also pointedly refer to a Memo dated 16.11.2015 filed in WP(C) No.7382 of 2015, wherein the following proposals have been listed out for settlement of the dues:

> “1. The primary security property designated as plot Nos.B,C3 and C4 will be sold plot wise without any sub division. (Though the petitioners had suggested that the maximum value will be obtained if the plots are sub-divided, the above proposal is placed in view of the objections raised by the counsel for the Banks regarding sub-division).
>
> 2. Plot No.C-5 where construction has commenced will be sold only after sale of plot Nos.B,C3 and C4 and only if the proceeds from the sale of plot Nos.B,C3

and C4 are insufficient to settle the liabilities.

3. The reserve price for plots will be fixed as per the valuation undertaken by the consortium banks.
4. The petitioners will be permitted to find buyers offering prices higher than or equal to the reserve price fixed.
5. The sale shall be advertised by the consortium banks through national print and electronic media. The petitioners may be permitted to offer their suggestions regarding the mode of advertisements.
6. This Hon'ble Court may appoint an Advocate Commissioner to be the Chairman of an 'asset sale committee' which will comprise of one nominee of the consortium banks and one nominee of the 1st petitioner.
7. The asset sale committee will endeavour to sell plots B, C-3 and C-4 before 31.03.2016. All other terms of

> sale shall be in accordance with the protocol followed by banks under the provisions of the SARFAESI Act.”

Both the Counsel would urge that this Court may, considering the fact that sale of properties by the Bank would only result in under valuation, agree to the proposals and proceed with the sale of properties by the 'asset sale committee' for satisfaction of the dues to the Bank ensuring the participation of the nominee of the petitioner also to be a part of the sale process but under the overall supervision of this Court, through the Advocate Commissioner.

10. The learned Senior Counsel for the lead bank of the Consortium of Banks, however would not concede to such proposals and would contend that as of now no proceedings would be taken against C5 plot, on which constructions are going on. Though the Consortium is legally entitled to proceed with the said property also, simultaneously, only considering the hardship projected of

the innocent purchasers of the apartments in the complex under construction; the sale of that property would be kept in abeyance; without in any manner conceding to any legal right of such purchasers over and above that of the Banks. The learned Senior Counsel would also undertake that, as of now, the Bank would only proceed with the possession and sale of properties at C3, C4 and D and neither C5 or the other properties mortgaged to the respondent Bank would be proceeded with. The Consortium of Banks, expect that the entire loan coming to Rs.538 Crores and interest from 30.06.2015, would be satisfied on the sale of the properties, in which event they would be able to release the other mortgaged properties. It is also submitted that, while the sale proceedings are going on, the petitioners could at any point offer the amounts due in the loan accounts and redeem the properties, before the sale or even before the transfer of such properties in sale; as permitted under Section 13(8) of the SARFAESI Act.

11. The petitioners' claim is that the petitioners' attempt to sell the property have been frustrated by the Banks, which in any event is difficult to accept, since having not complied with the terms of the agreement and having committed consistent default, the borrower can have no claim to sell the property mortgaged. Further the contention of the Consortium is that the instant case is not one where valuable properties of the borrower were mortgaged for a loan and the owners could at least attempt to sell the property at the best available price, since the very purchase of the property was effected with the money advanced by the Consortium.

12. There can definitely be no right conferred on the borrower to seek for sale of the properties mortgaged by private negotiation. The borrowers or the owners interest in the mortgaged property is protected insofar as Section 13(8) permitting redemption of the mortgage at any time before the transfer of the properties is effected. To decide

the issue, one has to look at the various proceedings initiated by the Consortium of Banks to coerce the petitioners into settling the dues and satisfying the loan. The petitioners are said to have purchased the entire property, as allotted by the GIDA, on the loan availed from the respondent Banks of about Rs.212 Crores, out of which 80% was disbursed to the petitioners. The learned counsel for the petitioners would point out that at that point of time, they had in fact paid about 35.92 Crores for the other properties also, which later on cancellation had been refunded. The petitioners, on the hardship caused by the allotment made and the subsequent cancellation effected, cannot plead that the recovery now effected has to be kept in abeyance.

13. The loan, admittedly, was taken in the year 2005 and the amounts being paid into the loan account being very minimal the Consortium of Banks had attempted to

coerce the petitioners into settling the loans earlier itself, which are evidenced by the minutes produced, of the various Consortium meetings. The reference made by both Counsel is first to Ext.P6, which enclose the minutes of the meeting of the Consortium held on 10.08.2009. Having considered the various issues, the Consortium specifically advised the petitioners to take necessary steps to dispose of plot -C3 ad-measuring 5.39 Acres within 3 to 4 months, preferably before 30.11.2009. The said proposal was taken note of by the petitioners, and reply issued at Ext.P7. It was specifically stated in Ext.P7 that one or two intending purchasers had inspected the property and since the land is situated in a prime area, they would require further time to locate a suitable buyer, with financial backing, to purchase the said properties. Nothing seems to have been done after the said communication.

14. Again, the Consortium met on 10.06.2010, the minutes of which is produced at Ext.P9. In Ext.P9 also it was specifically noticed that the borrower was able to raise only a portion of the equity, which was promised to be raised, being only Rs.75 crores as against Rs.156 crores proposed. It was also noticed that the interest overdue resulting in the reduction of Fixed Asset Coverage Ratio (FACR), which eventually coupled with the account being declared as a Non Performing Asset (NPA), would result in the Banks having no option but to proceed for recovery, going by the RBI norms. In fact, the account itself was declared NPA, first in 2009 and in various spells extending to 2014. In Ext.P9, there was also a demand again made by the Consortium, for a concrete proposal to take necessary steps to dispose of plot C-3 ad-measuring 5.39 Acres to fund the project cost. It is to be noticed that at that point, the petitioners did not seek for a 'No Objection Certificate' (NOC) nor did they proffer any purchasers to the

Consortium of Banks.

15. By Ext.P21, the petitioners informed the Bank about the Company's proposal to sell one of the plots, plot C-3 ad-measuring 5.39 Acres in small measurements of 0.5 - 1 acre so as to get more buyers and also sought permission to sell three personal properties out of the 19 properties mortgaged with Banks as collateral security. The member Banks, hence, requested the petitioner to submit a proposal for request for NOC to the lead Bank. The said decisions were taken by the Consortium in a meeting dated 25.5.2013, as evidenced in Ext.P21. In reply to the specific directions of the Consortium, the petitioner is said to have filed Ext.P35, produced along with an affidavit dated 9.4.2015. Ext.P35 is a proposal issued by one Sobha Developers offering to enter into a joint venture.

16. The learned Senior Counsel for the Consortium, specifically points to the proposal made at Ext.P35 to contend that the price quoted was gross under valuation,

since the very same builder had offered Rs.39.13 lakhs per cent for the adjacent property, while the present offer was only Rs.22 lakhs per cent. It was also specifically contended by the Consortium of Banks that as per the valuation, plots C-3 and C-4 would fetch Rs.32 lakhs per cent as on 2013 and the water front plot at D is valued at Rs.53 lakhs per cent. It is also submitted by the learned Senior Counsel that the fluctuating real estate prices would commend a fresh valuation and any delay now would result in the dues exceeding the asset value; which is what is contemplated by the use of the term reduction of FACR.

17. What comes to fore from the above discussion is that the petitioners' contentions regarding frustration of their attempts and the Banks' contention of the lethargy of the petitioners are all on facts, which cannot be resolved by this Court under Article 226 of the Constitution of India. Admittedly, there is a proceeding pending before the Tribunal under the SARFAESI Act and also under the DRT

Act. The petitioners would necessarily have to thrash out the same before the said forum.

18. As of now, considering the various documents placed before this Court, this Court is not convinced that a Commissioner can be appointed nor a sale proceeded with, under the supervision of this Court. A Consortium of nine Banks, most of whom are public sector banks, has decided to proceed with the sale which cannot be interdicted under Article 226 of the Constitution of India. This Court also does not have any material to assume as of now that the sale would not be conducted in a proper manner or that the same would be a distress sale. The Banks primarily are concerned with satisfaction of the loan and there are valuable properties available which could settle the entire debts.

19. This Court is also unable to agree to a request for further time to bring a concrete proposal as to the amounts to be paid. As was noticed, at the outset, when W.P.(C)

33321/2015 was admitted, there was an interim stay granted, specifically on the condition that the petitioners would ascertain the amount they could generate to prove their bona fides on or before 9.11.2015, on which date the case was posted. This Writ petition had come up before this Court on various subsequent dates too; at no point of which, a concrete proposal was placed before this Court. Even today, when the matter was argued, the submission was that the petitioners would require another two weeks time to bring out a concrete proposal. This Court is unable to permit such time since it would only lead to protraction of the recovery proceedings.

20. The reliance placed on **J. Rajiv Subramaniyan v. Pandiyas - (2014) 5 SCC 651** is premature, insofar as the sale of the properties having not yet been completed. Therein also, the Bank had proceeded against the mortgaged properties under the SARFAESI Act. The

borrowers had filed a writ petition which was later withdrawn. The borrowers had also sought for permission to sell the assets under a private treaty. Deeming the same to be a permission to enter into a private treaty, the creditor Bank gave approval for private sale of the immovable property and on the junction of a Resolution Agent, the property was sold slightly above the upset price fixed. The writ petition filed by the borrowers before the High Court was allowed and the sale was set aside, which was also confirmed by the Division Bench of the High Court. The purchaser was before the Hon'ble Supreme Court.

21. The Hon'ble Supreme Court found that the Bank could not have entered into such private sale unless the borrowers were put to notice of the same. Specific reliance was placed on **Mathew Varghese v. M. Amritha Kumar - (2014) 5 SCC 610** wherein though the Banks were held, to have a free hand to proceed against the secured creditor,

for the purpose of enforcing the secured interest, without the intervention of the Court or Tribunal; such enforcement was to be strictly in conformity with the provisions of the SARFAESI Act, 2002. Reliance was specifically placed on Section 13(8) of the SARFAESI Act to find that the same has been introduced to ensure that a creditor Bank or its officials, would not exploit the situation, to the detriment of the borrower, by virtue of proceedings initiated under the SARFAESI Act. The borrower's right on the property cannot be arbitrarily upset was the unequivocal declaration. The right of the borrower to have an opportunity to redeem the mortgaged properties, at any stage of the sale or even after the sale, before delivery of the possession cannot be taken away, especially since it is specifically conferred on the borrower/owner.

22. In the present case, the reliance on the aforesaid decision is to advance the case of the petitioners that the petitioners are to be permitted to enter into a private sale.

No such dictum emanates from the aforesaid decision. The Supreme Court definitely had cautioned against, the secured asset being sold for a song and it was also expected that all the banks and financial institutions which resort to the “extreme measures under the SARFAESI Act, 2002 for sale of the secured assets to ensure that such sale of the asset provides maximum benefit to the borrower by the sale of such asset”(sic). There is nothing as of now to cast an aspersion on the recovery proceeding. On the other hand the conduct of the petitioners as borrowers is not above board and the Consortium had afforded many an opportunity to settle the dues or even bring forward a purchaser.

23. The various documents referred to by the petitioners themselves indicate that the Banks, through their Consortium, have been attempting to find out a viable measure for satisfying the huge liabilities of the petitioners. The Banks had, at many a time, over the years, permitted

the petitioner to sell one of the properties and had also permitted them to bring forward a purchaser. The petitioners assertion that nothing could be done without an NOC, is only delaying tactics and the petitioners have not, till date, done anything to at least bring forward purchasers for the secured assets. The petitioners, as was noticed above, even now seek further time to make payment. The Banks, have security interest in the properties, that too very valuable properties and mortgaged for substantial amounts advanced, the dues in which are mounting for reason of accrual of interest. The Banks cannot afford to give an NOC and thus permit the petitioners to create third party interest; which would further jeopardize their security interest in the property. It cannot be ignored that the Banks, as declared by **Indian Bank v. Blue Jaggers Estates Limited - (2010) 8 SCC 129**, are trustees of public funds and public interest cannot be compromised to benefit private individuals.

24. In such circumstance, this Court is unable to countenance the argument of the petitioners that further time should be granted to permit them to bring purchasers or to sell the properties. This Court does not find any arbitrariness in the Banks, at least certain of the Banks, having declined issuance of NOCs, considering the effect it would have on their security interest. There can also be no arbitrariness found in the recovery steps now proceeded with, since the account had been defaulted for long and despite various opportunities; but for bland assurances, little has materialized by way of satisfaction of dues. The fact remains that the petitioners have not been able to satisfy the loan availed in 2005, to any satisfactory extent and the mounting interest is fast depleting the fixed asset cover offered by the properties.

25. Taking the entire circumstances into account, suffice it to record the undertaking of the Consortium of Banks, in the nature of a concession that, at present, C-5

property will not be proceeded against and proceedings would be taken to first sell the other three properties namely C-3, C-4 and D. It is also made clear that the petitioners, during the procedure for recovery, can at any point under sub-section 8 of Section 13, approach the Bank for redemption of all or any of the properties or proffer a purchaser, who could make available funds to satisfy the entire loan or to satisfy the consideration, for either of the separately demarcated properties as per the valuation arrived at by the respondent Bank. This Court does not find any tangible reason to either supervise the sale or to appoint a Committee to conduct such sale. Primarily it would be premature and also unfair to assume that the Consortium would not act in accordance with the statutory prescriptions. Then, neither an Advocate Commissioner nor this Court would have the expertise to value the property and effect sale of the same. Again the right of the borrower even as per the statute is to notice and an opportunity to redeem the property mortgaged, and not to supervise the sale.

26. In such circumstance, the respondent Bank is directed to conduct a separate valuation of the properties as on 31.12.2015 and proceed for sale of the properties only after making extensive advertisements and ensuring that the best price is received for the said properties. The auction if any conducted or a sale finalized shall only be with notice to the petitioners. The order of the C.J.M. does not suffer from any procedural irregularity and has to be sustained. The Consortium would be entitled to take possession of the properties as directed by the CJM. It is made clear that the C.J.M.'s order shall not be enforced with respect to Plot C-5, for the time being since this Court has specifically directed that the same would not be taken possession of, before the sale of the other properties.

In the result, W.P.(C) Nos. 33321/2015 and 7382/2015 would stand dismissed and W.P.(C) No. 19773/2015 would stand disposed of with the above observation. Parties to suffer their respective costs.

Sd/-
K. VINOD CHANDRAN
JUDGE

sp/jjj 05/12/15