IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

C O R A M

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.19792 of 2015
and
M.P. No.1 of 2015

M/s. Sreenivasa Balaji Paper Mills Pvt. Ltd.,
rep. By its Director Mr.M.R.Madurai Kannan,
regd. Office at No.3 Meer Ghouse Garden,
South of Railway Line,
Udumalpet 642 126. ... Petitioner

Vs

M/s. Punjab National Bank,
No.774 Oppanakara Street,
Coimbatore 641 001,
rep. By authorised officer. ... Respondent

Prayer:-Writ Petition filed under Article 226 of the Constitution of India seeking for the issuance of a writ of Mandamus forbearing the respondent from taking any action pursuant to the notice issued U/S. 13(2) of the SARFAESI Act, 2002, dated 04.05.2015 except in accordance with the provisions of Section 13 (9) of the SARFAESI Act, 2002 and its rules.

For petitioner :Mr. M.S. Krishnan, Senior Counsel
for Mr. R. Rajesh

- - - - -

सत्यमेव जयते

O R D E R

(Order of the Court was made by SATISH K. AGNIHOTRI,J.)

WEB COPY

The petitioner, claiming to be a borrower of the outstanding amount from the respondent-Bank, has filed this writ petition seeking a direction to forbear the respondent-Bank from taking any action pursuant to the notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") dated 4th May, 2015, except in accordance with the provisions of Section 13 (9) of the SARFAESI Act.

2 Indisputably, the writ petitioner has availed working capital cash credit limit of Rs.350 lakhs, term loan of Rs.500 lakhs

https://hcservices.ecourts.gov.in/hcservices/

and non-fund based limit of Rs.100 lakhs from the respondent Bank on 21st March, 2011 and also funded interest term loan of Rs.52.40 lakhs on 9th January, 2012. The total balance amount of Rs.9,07,55,368/- was classified as non performing asset by the respondent Bank. Accordingly, the respondent bank issued a demand notice under the provisions of Section 13(2) of the SARFAESI Act on 4th May, 2015, calling upon the petitioner to pay the outstanding amount. It appears that the petitioner has made a representation on 20th May, 2015, which was replied by the respondent bank on 1st June, 2015. At this stage, without waiting for the consequential action, the petitioner has come up with this petition, seeking a restraint order against the respondent bank from taking any action pursuant to the demand notice, except in accordance with the provisions of Section 13(9) of the SARFAESI Act.

3 As projected by the petitioner, the liability of the petitioners to the respondent bank is only to the extent of 34.57% when 65.43% of liability for payment is to the Canara Bank. It is pertinent to mention here that the Canara Bank has not been impleaded as party respondent. Sub-section (9) of Section 13 of the SARFAESI Act prescribes that for recovery of money in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than 60% in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors.

4 The provision clearly contemplates action under or pursuant to sub-section (4), which has not arisen in the case on hand. The petitioner has not made representation to the Canara Bank also, informing the proposed steps to be taken by the respondent bank. Considering all facts, as aforestated, the cause of action has not arisen as on date and as such, this petition is premature.

5 In the aforestated backdrop, as no cause of action has arisen, we are not inclined to adjudicate upon the proposed dispute. However, we make it clear that if any representation is made to the secured creditor, including the present bank, the same is required to be considered in the light of the aforestated provision and other provision of law before taking any measure or action.

6 Resultantly, this writ petition is disposed of accordingly. Consequently, M.P. No. 1 of 2015 is closed. No costs.
ra/vvk

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

WEB COPY

To

The Authorised Officer.
M/s. Punjab National Bank,
No.774 Oppanakara Street,
Coimbatore 641 001.

sai(co)
prk7/7

W.P. No.19792 of 2015

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/