IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2015

DATE OF DECISION : 05.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

W.P.No.15730 of 2014
and
M.P.Nos.1 to 3 of 2014

Punjab National Bank,
Rajaji Salai Branch, Chennai-1
Subsequently Migrated to Large Corporate
Branch & presently to Asset Recovery
Management Branch,
having office at Khivraj Buildings, Third Floor,
No.624, Annasalai, Chennai-600 006.
represented by its Chief Manager. .. Petitioner

Vs.

1.The Chairperson,
Debts Recovery Appellate Tribunal,
Chenani.
2.The Presiding Officer,
Debt Recovery Tribunal-II, Chennai.
3.M/s.Exim Rajathi India Pvt. Ltd.,
represented by its Directors,
Flat No.A/5, 5th Floor, No.6/7 Sun City Apartments,
Santhome High Road,
Mylapore, Chennai-4.
4.M.Chandrika
5.M.Rajasekar
6.M.Madan Prakash
7.M.Lakshman
8.Neena Murugesan
9.Kumari M.Ashita
10.Jennifer Yassey
11.K.L.Sumy
12.M/s.Rajathi Properties Holdings Pvt. Ltd.,
represented by its Directors,
Flat No.A/5, 5th Floor, No.6/7, Sun City Apartments,
Santhome High Road, Mylapore,
Chennai-4.
13.B.Jayashree

14.D.Yasodha
15.M/s.Rajathi Agencies,
Prop. Mrs.M.Chandrika,
Flat No.A/5, 5th Floor, No.6/7, Sun City Apartments,
Santhome High Road, Mylapore,
Chennai-4.
16.Hotel Breeze Ltd.,
represented by its Managing Director,
having its registered office at
No.854, Poonamallee High Road,
Kilpauk, Chennai.
17.M/s.Pegascus Assets Reconstruction Pvt. Ltd.,
507, Dalalmal House,
Nariman Point, Mumbai-21.
18.M/s.3 Eye Infotech Trusteeship Services Ltd.,
3rd to 6th Floor, INTL Infotech Park,
Tower No.5, Vashi Railway Station Complex,
Vashi, Navi Mumbai-400 703.
19.Bank of India,
Star Gouse, Erabalu Chetty Street,
Chennai-1.
20.India Bulls Financial Services Ltd.,
F-60, Malhotra Buildings,
II Floor, Cannaught Palace,
New Delhi-1.
21.UTI Bank Ltd.,
Presently Axis Bank,
Trishol, III Floor,
Samartheshwar Temple,
Law Garden, Ellisbridge,
Ahmedabad, Gujarat-380 006. .. Respondents

This Writ petition is preferred under Article 226 of Constitution of India praying for a writ of certiorarified mandamus to call for the records and quash the impugned order dated 28.4.2014 passed in M.A.No.140/2013 by DRAT, Chennai and consequently allow the I.A.No.333 of 2013 in O.A.No.146 of 2013 on the file of the DRT-II Chennai.

For Petitioners : Mr.M.L.Ganesh

For Respondents : Mr.P.S.Raman, SC
for Mr.A.Kalaiselvi for R-16
Mr.E.Omprakash
for M/s.Ramalingam Associates for RR17 and 18
Mr.S.Namasivayam for R-3
Mr.T.Saminathan for RR4 to 9
Mr.K.Mohandas for R-19
RR1 and 2 Tribunal
RR10 and 14 - not ready in notice
RR11,12,13,15,20 and 21 no appearance

ORDER

SATISH K.AGNIHOTRI, J.

The petitioner Bank has come up with this petition, questioning the legality and validity of the order dated 28.4.2014 passed by the Debt Recovery Appellate Tribunal, Chennai in M.A.No.140 of 2013 and also seeking a relief to allow I.A.No.333 of 2013 filed in O.A.No.146 of 2013 pending on the file of the Debt Recovery Tribunal-II, Chennai.

2. The facts, in nutshell, as projected by the petitioner Bank before the Tribunal are that the petitioner Bank had sanctioned various credit facilities, such as Packing credit, cash credit, WCTL, FOBNLC/FOUBNLC from time to time to the third respondent Company. The respondents 3 to 15 have offered the properties as collateral security for the loan liability. It is further stated that the 16th respondent Hotel Breeze Ltd. had executed a negative lien in favour of the petitioner Bank for the loan liability of the third respondent Company. The third respondent had created charge over the Breeze Hotel property which was proposed to be sold off. It is further stated that the third respondent Company had brought in additional securities, i.e., agricultural lands situated at Pappan Kuzhi village, Senthamangalam village and also had created equitable mortgage. The scheduled property mentioned in detail in the O.A. does not have M/s.Hotel Breeze Ltd.'s property.

3. The petitioner Bank sought relief against the respondents 3 to 16 / defendants 1 to 14 therein to pay a sum of Rs.181,73,53,822.14 together with interest at the rate of 16.25% + 2% penal interest and further to pay a sum of Rs.46,25,844.48 with same interest and also Rs.7,59,20,106.59 with same interest, with monthly rests from the date of the application to till date of payment in full and also to pay a sum of Rs.15,98,96,432.90 together with same interest.

4. In the pending O.A., the petitioner preferred an application, being I.A.No.333 of 2013 seeking directions against the 16th respondent herein/ Hotel Breeze Ltd. to furnish security for the OA claim amount, in default to attach the said property. The Tribunal, by an order dated 2.8.2013, directed the 16th respondent to furnish security to the extent of the OA claim amount on or before 19.8.2013, specifying in default the scheduled property would be attached. The 16th respondent was also restrained from selling, alienating or creating third party interest over the said property, though in pursuance of the said order, no security was furnished by the 16th respondent. Thus, by order dated 16.9.2013, the Revenue Recovery Inspector was directed to attach the property. At that stage, I.A.No.415 of 2013 was filed by the 16th respondent to set aside the interim order of attachment. The Tribunal, having considered all facts of the case, held that the order dated

16.09.2013 passed in I.A.No.333 of 2013 on the basis of negative guarantee dated 10.12.2008, was not sustainable in law. Accordingly, the same was set aside. Thereagainst, an appeal was preferred before the Appellate Tribunal. The Appellate Tribunal, by order dated 28.04.2014, dismissed the appeal. Questioning the said order, the present writ petition has been filed by the respondent Bank.

5. The sheet anchor of the case of the petitioner is the agreement dated 10.12.2008 between the petitioner and the authorised signatory for Hotel Breeze Limited, whereunder it is prescribed that the Breeze Hotel Limited guarantees certain facilities extended to the third respondent as under :

Nature of facility	Rs. in Crore
Packing credit	135.00
FOBP/FOUBP/FABC	15.00
Sub limit FABC	(10.00)
Sub limit FOUBP	(5.00)
FOBNLC/FOUBNLC	25.00
ILC/FLC	10.00
Ceiling (FB & ILC/FLC)*	180.00
ILG	5.00
Ceiling (NFB) **	10.00

*Total outstanding under FB limits and LC(DA) not to exceed Rs.180 Crore.

**Total outstanding under LC limit & LG limit not to exceed Rs.10 Crore.

It was further agreed between the parties as under :

> 1.The party of the first part hereby undertakes, agrees and covenants that the party of the first part shall not sell, alienate, transfer, mortgage or dispose of the property described in the Schedule hereunder in any manner whatsoever without the consent of the party of the second part during the currency of the availment of the aforesaid credit facilities extended to him / borrower until the repayment and discharge of the aforesaid facilities in full.
>
> 2.The party of the first part agrees that in the event of contravention or attempt to contravene the condition as contained in Clause 1 hereof, it is open to party of the second part to recall the entire loan outstanding and/or to take such legal action as may be considered expedient and necessary.

3.This agreement is supplemental and in addition to other documents executed by the party of the first part.

6. The said agreement was contested on the ground that it is in the nature of an undertaking not to sell, alienate, mortgage and encumber or to dispose of the property owned by the 16th respondent. The contention of the petitioner that the said document creates negative lien on the property was rejected as having no basis. Thus, no charge was admittedly created over the said property.

7. The learned counsel for the 16th respondent-Hotal Breeze Limited, relied on certain other communication dated 31.3.2011 from the petitioner Bank to the third respondent, whereunder the third respondent was called upon to give second charge over Hotel Breeze Limited property, which was proposed to be sold off. By the subsequent communication dated 27.6.2011, it was made clear that the second charge on the Hotel Breeze Ltd had not taken place inspite of repeated reminders. The third respondent was further called upon to supply a copy of the request for NOC given to Indus Ind Bank Limited and to submit documents for creation of second charge, without fail.

8. Indisputably, no second charge was created on the said property. Even the agreement dated 10.12.2008 was contested on the ground that the agreement having been signed by late Mr.N.Murughesan, who was stated to be the authorised signatory without any resolution being passed by the Board of Directors of the 16th respondent. The Tribunal, having considered all aspects of the matter, came to the conclusion that the said property, i.e., Hotel Breeze Ltd, was sold to M/s.Sameera Hotels, Chennai on 22.4.2013 and as such, M/s.Sameera Hotels was the owner of the said property. The property of Hotel Breeze Ltd was held as secured asset under some other loan to the Indus Ind Bank and that was not the part of the secured asset in respect of the loan in question.

9. Needless to state that the OA claiming recovery of the amount was filed on 17.7.2013, much after the sale of the property in question, on which no second charge was admittedly created.

10. M/s.Hotel Breeze Ltd was the mortgagor in respect of the other loan amount granted by the Indus Ind Bank. In default to make payment, the Prescribed Authority, namely, Pegasus Assets Reconstruction Private Limited, on behalf of the Indus Ind Bank, issued a Public Notice, inviting tenders/auction on 23.02.2012. At that stage, the petitioner Bank has not taken any steps to participate in the auction or to make representation that the alleged negative lien was created in favour of the petitioner Bank also. It is informed that the said property was sold privately in the auction to the management of M/s.Sameera Hotels prior to the filing of the present OA on 17.7.2013.

11. With regard to the contention of the learned counsel for the petitioner that any other property of the borrower can be attached for recovery, we do not propose to go into this issue at this stage, as on the date when the OA was filed for recovery of the amount and also the application for attaching the property, the property was not under the ownership of the borrower and as such, the Tribunal rightly directed not to attach the said property. The decision of the Debt Recovery Tribunal-II, Chennai was confirmed by the impugned order dated 28.04.2014 holding that the order of the Presiding Officer, DRT II, Chenai does not suffer from any infirmity.

12. Further, when the case of the petitioner is pending for recovery of loan amount before the Tribunal, it is open for the petitioner to raise all issues on facts as well as on law before the Tribunal. In the instant case, we are concerned only with the order of the Tribunal as to whether the Tribunal was right in rejecting the application of the petitioner for attaching the M/s.Hotel Breeze Ltd.'s property.

13. As discussed hereinabove, the petitioner has failed to establish that there was any so-called negative lien on the property in question on the basis of the documents produced before the Tribunal. It has also been held that no second charge was created on the property in question. Thus, the orders of the Debt Recovery Tribunal as well as the Debt Recovery Appellate Tribunal are just and proper. Resultantly, we do not find any irregularity, infirmity or illegality in the orders of the Debt Recovery Appellate Tribunal sought to be impugned before us.

14. Accordingly, the writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

1.The Chairperson,
Debts Recovery Appellate Tribunal,
Chenani.

2.The Presiding Officer,
Debt Recovery Tribunal-II, Chennai.

3.The Section Officer, Writ Section,High Court, Madras

4.The Section Officer, V.R.Section, High Court, Madras

1 cc to Mr.M.L.Ganesh ,Advocate, SR.No.6344
1 cc to Mr.S.Namasivayam ,Advocate, SR.No.5988
2 cc to M/s.Ramalingam Associates ,Advocate, SR.No.5989
1 cc to M/s.A.Kalaiselvi ,Advocate, SR.No.6157
1 cc to Mr.K.Mohandas ,Advocate, SR.No.6413

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