

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.2720 of 2015
and M.P.No.1 of 2015

Union Bank of India,
Rep by its Chief Manager /
Authorised Officer,
Industrial Finance Branch,
I Floor, 'Union Bank Bhavan',
139, Broadway,
Chennai - 600 108 ...Petitioner

Vs

1. The Assistant Commissioner,
Employees' Provident Fund Organisation,
Ministry of Labour and Employment,
Regional Office,
37, Royapettah High Road,
Chennai - 600 014.
2. M/s.Zylog Systems Ltd,
No.155, Thiruvalluvar Salai,
Kumaran Nagar,
Sholinganallur,
Chennai - 600 119.
3. M/s.Zylog Systems India Ltd,
No.155, Thiruvalluvar Salai,
Kumaran Nagar,
Sholinganallur,
Chennai - 600 119

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent pertaining to the notice dated 11.11.2014 in Ref.No.CHN/TN/49094 and 52369/Recovery/Reg1/2014 and quash the same, and consequently forbear the first respondent from interfering with the petitioner's right to proceed against the assets of the second and third respondents under the Securitisation Act, 2002.

For Petitioner : Mr.Srinath Sridevan
For Respondent 1 : Mr.K.Gunasekar

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr.Srinath Sridevan, learned counsel appearing for the petitioner and Mr.K.Gunasekaran, learned counsel appearing for the first respondent.

3. The petitioner is a Nationalised Bank and challenge in the Writ Petition is to the proceedings of the respondent organisation dated 11.11.2014, in and by which, a statutory First Charge of the dues under the Employees Provident Fund Act on the property of the third respondent has been created. According to the petitioner, the third respondent borrowed loan from the petitioner Bank and was later declared as a defaulter, and, auction under SARFEASI Act was initiated to bring the property for sale. At that stage, the impugned proceedings were served on the petitioner, wherein the first respondent, by referring to Section 11(2) of the EPF and MP Act, 1952 and two other decisions of the Hon'ble Supreme Court in Maharashtra State Co-operative Bank Ltd., Vs the Employees; P.F. Organisation and others [2010-1LLJ-644 (SC)] and EPF Commissioner Vs.O.L. Of Esskay Pharamaceuticals Company [2012-I-LLJ-1 (SC)], informed the petitioner Bank that any auction conducted by them shall be subject to the statutory First Charge of EPF dues, being a sum of Rs.7,89,49,926/- and the same is liable to be paid in priority over all other dues and debts including any statutory dues from the proceeds of sale in terms of Section 11(2) of the Employees Provident Funds & Miscellaneous Provisions Act, 1952.

4. The petitioner Bank, before approaching the respondent Organisation, submitted a representation dated 30.12.2014 and requested the respondents to consider the following:

- a) Give an undertaking to lift the charges registered by your office at SRO, against these two properties, on receipt of realized amount against these properties, net of our charges. You will agree with us that without which we may not be in a position to convey valid titles to the auction purchasers and realize the bid amount.

b) Consider eliminating Penalty and other charges over and above the actual default amount payable by the company, considering that we (Union Bank of India and Syndicate Bank) are PSU Undertaking and the company has already defaulted to the tune of Rs.469 Cr., to us

c) Please also provide us the complete break up of your claim for our audit purpose."

Since the said request was kept pending, the petitioner Bank is before this Court.

5. It is submitted that the petitioner Bank being a Nationalised Bank is liable to suffer great hardships and losses if the impugned proceedings are upheld. Since the petitioner's Bank Consortium is liable to recover a sum of Rs.2.13 crores, it has requested the respondent organisation to consider their request.

6. After hearing the learned counsel appearing for the parties and after considering the above facts, in my view, the petitioner Bank and the respondent organisation should work together in the matter so that the dues payable to the workmen are first settled. However, since the petitioner Bank is a secured creditor, it would be better for the Bank to proceed with the recovery process with the active involvement of the respondent organisation. The offer made by the Bank in its representation dated 30.12.2014 is to be considered to protect the interest of all concerned in the recovery process. Hence for these reasons, the impugned order need not be quashed, as the impugned order only sets out the legal position.

7. In the light of the above discussion, the Writ Petition is disposed of by directing the first respondent to consider the petitioner's representation dated 30.12.2014, hold a discussion among themselves and take a pragmatic decision in the matter, so as to be beneficial to both. The above direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this order. Until then, the property should not be sold by the petitioner Bank in Public Auction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To:

1. The Assistant Commissioner,
Employees' Provident Fund Organisation,
Ministry of Labour and Employment,
Regional Office,
37, Royapettah High Road,
Chennai 600 014.

+1cc to Mr.K. Gunasekar, Advocate, S.R.No.68593

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.68447

CTK(CO)
EU(19/1/2016)

W.P.No.2720 of 2015



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