IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-12-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE DR.JUSTICE P.DEVADOSS

WRIT PETITION No.40390 of 2015
and
M.P.No.1 of 2015

M/s.Ankit Ispat (P) Ltd
Registered Office
AML Towers
No.9, 6th Street, Gopalapuram
Chennai 600 086
Rep. By its Director .. Petitioner

vs

The Central Bank of India
Mount Road Branch
No.86, Ground Floor
Tarapore Tower
Anna Salai, Chennai 600 002
Rep. By its Authorised Officer/
Chief Manager .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the notice issued by the respondent herein in CBI ; 0879:2015-2016 dated 15.12.2015 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and quashing the same and forbearing the respondent from initiating or continuing any proceedings under the SARFAESI Act during the pendency of the Reference under Case No.157 of 2015 on the file of the Board for Industrial Finance and Reconstruction, New Delhi.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.AL.Ganthimathi

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The deponent of the affidavit, namely one of the Directors of the petitioner-Company, would state that it is an industrial company engaged in the manufacture of Mild Steel Ingots for the purpose of it's industrial activity and it availed loans from various banks and financial institutions such as State Bank of India, Central Bank of India, India Bull Housing Finance Ltd., and it's total secured liability as on 15.12.2015, is Rs.2,772.34 lakhs.

2.It is the claim of the petitioner that it ran into rough weather owing to adverse economic and market conditions witnessed by the industry, and as a consequence, was not able to absorb the fixed and variable costs and overheads, which resulted in huge losses, and the same had a multi-pronged adverse impact on it and the net worth of the petitioner-company became negative and consequently, it had become a sick industrial company within the meaning of Section 3(1)(O) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), and the Board of Directors of the petitioner-company also resolved to file a reference to the Board for Industrial Finance and Reconstruction (BIFR) under Section 15(1) of SICA and a reference was filed on 4.11.2015, before the said Forum under Section 15 of SICA for determination of the measures that may be adopted by the petitioner-company for rehabilitation and revival of the company.

3.It is further averred by the deponent that the BIFR has taken the said reference on file and registered a case in Case No.157 of 2015, and vide proceedings dated 17.11.2015, intimated the petitioner about the registration of the reference and also restrained the company from disposing of or alienating in any manner, any fixed assets of the company without the consent of the Board.

4.The grievance now expressed by the petitioner, is that with regard to the financial facilities availed by it, the Central Bank of India viz. the respondent herein, has issued a notice on 15.12.2015, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) calling upon the petitioner to pay the amount demanded within 60 days, failing which, they will be constrained to take appropriate legal action against the petitioner.

5.Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner, would submit that admittedly, the reference before the BIFR, came to be registered on 17.11.2015, and a notice under Section 13(2) of the SARFAESI Act was issued by the respondent-bank on 15.12.2015, which is later in point of time, and in the light of the ratio laid down by the Hon'ble Supreme Court of India in the decision reported in (2015) 1 SCC 166 (KSL AND INDUSTRIES LIMITED V. ARIHANT THREADS LIMITED AND OTHERS), the recovery proceedings initiated by the respondent-bank under the SARFAESI Act, have to be deferred till the culmination of the proceedings before the BIFR and prays for appropriate orders.

6.This Court has carefully considered the submission made by the learned Senior Counsel for the petitioner, and also perused the materials placed before it, as well as the judgment relied on by the learned Senior Counsel.

7.The Hon'ble Supreme Court of India in the above cited decision, has held as under:-

> "The effect of Section 34(2) of the RDDB Act must necessarily be to preserve the powers of the authorities under SICA and save the proceedings from being overridden by the later Act i.e. the RDDB Act. Thus, a harmonious scheme is found in relation to the proceedings for reconstruction of the company under SICA, which includes the reconstruction of debts and even the sale or lease of the sick company's properties for the purpose, which may or may not be a part of the security executed by the sick company in favour of a bank or a financial institution on the one hand, and the provisions of the RDDB Act, which deals with recovery of debts due to banks or financial institutions, if necessary by enforcing the security charged with the bank or financial institution, on the other."

8.In the light of the above cited judgment, the petitioner is at liberty to submit it's response to the impugned notice under Section 13(2) of the SARFAESI Act, dated 15.12.2015, within 60 days from the date of receipt of the said notice and the respondent-bank on receipt of the same, is directed to consider the explanation as well as the judgment rendered by the Hon'ble Supreme Court of India and reported in (2015) 1 SCC 166 (KSL AND INDUSTRIES LIMITED V. ARIHANT THREADS LIMITED AND OTHERS), and take a decision in accordance with law, as expeditiously as possible, and not later than 15 days thereafter and communicate the decision taken, to the petitioner and till then, shall defer further proceedings in terms of the impugned notice. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

nsv

//True Copy//

Sub Assistant Registrar

To:

The Authorised Officer/
Chief Manager
Central Bank of India
Mount Road Branch
No.86, Ground Floor
Tarapore Tower
Anna Salai, Chennai 600 002

+1cc to M/s.AL.Gandhimathi, Advocate, S.R.No.69413
+1cc to Mr.F.B.Benjamin George, Advocate, S.R.No.69696

bvr(CO)
kra(11/01/2016)

W.P.No.40390 of 2015

bvr co
kra 11.01.2016