HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.23363 of 2015

ORDER: (Per R. Subhash Reddy, J)

The petitioner, a company registered under the Companies Act, 1956, has filed this Writ Petition seeking Mandamus, to declare the action of the 3rd respondent in disposing of its representation under Section 13(3) of the Securitisation And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002
(for short "the Act") by a non-speaking and laconic order dated 29.06.2015, as illegal and arbitrary and to set aside the same.

2. The petitioner-company is operating two divisions, i.e. Agiruculture/Agri-Bio Sciences Division and Bio-Technology and Life Sciences Division. Construction of Bio-Pharma unit started in the year 2009 and the respondent-Bank has partly financed for Phase I by way of term loan to the extent of Rs.30.00 crores vide letter dated 26.08.2010. The petitioner executed various loan documents, including hypothecation of assets to secure term loan, on 29.09.2010. Subsequently, on the request of the petitioner, further loan of Rs.20.00 crores was sanctioned for cash credit facilities, i.e. an amount of Rs.12.00 crores towards working capital requirements of Bio-Pharma unit and Rs.8.00 crores towards Agri division, unit situated at Tummanapalli, Hosur, Tamilnadu. The loan account of the petitioner was irregular as stated in the counter-affidavit filed by the 2nd respondent and irregular portion of the term loan was Rs.1.89 crores as on 30.06.2013 and Rs.11.06 crores as on 24.03.2015. As per the terms of sanction of loan, loan was to be repaid in four quarterly instalments of Rs.18.75 lakhs each in the year 2012-13, four quarterly instalments of Rs.150 lakhs each in 2013-14 and four quarterly instalments of Rs.193.75 lakhs each in 2014-15, 2015-16 and 2016-17. In view of defaults committed by the

petitioner, loan account of the petitioner was classified as "NPA" on 31.03.2015 and the respondents have invoked the provisions under the Act and issued demand notice through its Authorised Officer, i.e. Chief General Manager of the branch on 11.04.2015. On receipt of demand notice, petitioner addressed representation dated 23.06.2015 to the respondents referring to earlier letter dated 12.06.2015 requesting to withdraw the notice issued under Section 13(2) of the Act and opposed in declaring it and its guarantor as wilful defaulters, as proposed by the respondent-Bank as per the Bank and Reserve Bank of India guidelines.

3. It is the grievance of the petitioner that though valid and tenable objections were raised, on receipt of demand notice issued under Section 13(2) of the Act, respondents have not considered such objections in a proper perspective and such rejection of objections runs contrary to the ratio laid down by the Hon'ble Supreme Court in *Mardia Chemicals Ltd. Etc. v. Union of India and Ors.*

4. In the affidavit filed in support of the Writ Petition, it is the case of the petitioner that as per condition No.1 of the loan granted for Phase I, it was specifically mentioned that Bio-Pharma Division of the company should deal exclusively with the respondent-Bank, as such, the petitioner is prevented from approaching any other financing agency. It is stated that petitioner proposed extension of Research and Development which is an integral part of Bio-Pharma Industry and the same is essential for process improvements, improvements in yields and for cost reductions which will give a competitive advantage to the company. It is stated that, for the proposed extension, though there were oral assurances from the authorities of the respondent-Bank for additional term loan of Rs.25.00 crores and in spite of the fact that such proposal was recommended by the local branch and the Central office, Head Office rejected the same without assigning any reasons and in view of the oral assurances given by authorised officers of the respondent-Bank, petitioner believed the same and proceeded further for extension. Precisely, it is the grievance of the petitioner that the indecisive attitude on the part of the senior executives of the respondent-Bank in not considering the proposal for additional term loan is a big setback to the company's commercial production plans resulting in loss of valuable time and money. It is pleaded that in spite of such odds, the petitioner-company paid Rs.22.18 crores towards the outstanding

loan upto June, 2014 and the respondents have illegally and arbitrarily declared the account of the petitioner as "NPA" and issued demand notice under Section 13(2) of the Act, calling upon the petitioner to discharge the entire outstanding amount of Rs.48,51,06.225/-. It is also the case of the petitioner that after rejection of the additional term loan request from the respondent-Bank, petitioner has started alternative funding options; though they were taking active steps to run the unit properly and in spite of the information furnished in the representation, notice has been issued. Further, pleading that the collaterals held by the respondent-Bank are almost 200% of the total outstanding, prayed to declare the notice as illegal. It is also pleaded that, in response to the notice issued under Section 13(2) of the Act, petitioner has given two options, which read as under:

"Option-I:

i. Sanction the additional Term Loan of Rs.45 crores to complete Phase II. The company has already invested around Rs.25.00 crores as its contribution way back by end 202.

ii. Restructure the existing loans as follows:

a. Convert the existing overdue amount of Principals and interest in term loan from 01-01-2015 to 31-03-2016 as Term Loan No.II which is repayable in 12 quarterly instalments from 30-09-2016

b. Conversion of irregular portion in working capital accounts into working capital term loan which is repayable in 12 quarterly instalments from 30-09-2016.

Option-II:

As informed earlier the Company is sincerely making efforts to raise and infuse additional Equity by way of Preferential Allotment or strategic investment partner. Hence we request you to keep the action under SARFAESI Act in abeyance for period of 12 months and restructure the present loan as mentioned in Option-I (ii) 1 & 2."

5. The 2nd respondent has filed counter-affidavit denying the allegations made by the petitioner. It is stated in the counter-affidavit that this Writ Petition is not maintainable in view of the subsequent steps taken pursuant to the demand notice issued under Section 13(2) of the Act. It is further stated that consequent to the notice under Section 13(2) of the Act, notice under Section 13(4) of the

Act is issued and symbolic possession of the secured assets is taken. It is further stated that in view of the remedy available under Section 17 of the Act, there is no reason for the petitioner to approach this Court by way of this Writ Petition, under Article 226 of the Constitution of India. In the counter-affidavit, while stating that initially the respondent-Bank has granted term loan of Rs.30.00 crores and further Rs.20.00 crores by way of cash credit facilities, it is pleaded that petitioner has committed irregularities in the term loan accounts and also committed defaults and by 24.03.2015 the overdue portion in the account of the petitioner was Rs.11.06 crores. It is also stated that as the status of the term loan account was in such a situation, petitioner once again approached the Bank for sanction of additional term loan for its Phase II unit at Hyderabad and the Head Office of the Bank which is the sanctioning authority, on considering the status of the term loan account, found that the proposal of the petitioner was not viable and the conduct of the petitioner in running the term loan account was unsatisfactory; petitioner has failed to fulfil the terms and conditions of sanction despite repeated reminders and entire sale proceeds were not routed through C.C. Account. The stock/inventory reports and other financial information were not submitted by the company and the overall conduct was not satisfactory. While denying the allegation of petitioner to the effect that oral assurances for grant of additional term loan were made by the respondents-authorities, it is pleaded that in view of the default committed, account of the petitioner was rightly classified as “NPA”. It is further stated that petitioner has not filed any objections on 12.06.2015, except enclosing a letter along with the letter dated 23.06.2015. It is further stated that objections of the petitioner were considered by the Assistant General Manager and as proposal of the petitioner vide conditions I and II were not agreeable, impugned order was issued. In the

counter-affidavit, it is also pleaded that petitioner has promoted Phase II unit without consent of the Bank or the concurrence of the Bank and though petitioner could earn profits out of the Agri Unit at Tamil Nadu, but has diverted all its finances and failed to repay the instalments. While pleading that declaration of account of the petitioner as “NPA” was as per the norms issued by the Reserve Bank of India, it is stated that possession of the assets taken is not in violation of the directions of the Hon’ble Supreme Court in *Mardia Chemicals Ltd.* (supra).

6. Petitioner has filed reply-affidavit disputing certain allegations made in the counter-affidavit filed on behalf of the respondents.

7. Heard Sri S. Ravi, learned senior counsel assisted by
Sri N. Vijay, learned counsel on record for the petitioner and
Sri Ambadipudi Satyanarayana, learned standing counsel for the respondent-Bank.

8. It is contended by the learned senior counsel appearing for the petitioner that even after raising valid and tenable objections to the notice issued under Section 13(2) of the Act, vide letters dated 12.06.2015 and 23.06.2015, respondents have not considered the same and passed a laconic order. It is further contended that in view of the ratio laid down by the Hon'ble Supreme Court in *Mardia Chemicals Ltd.* (supra), it is obligatory on the part of the respondents to apply their mind as regards the conditions raised by the petitioner; however, the respondents have not considered the objections of the petitioner in a proper perspective and rejected the same in a mechanical manner. It is also submitted that only on the ground that objections were addressed to the Branch Manager/Assistant General Manager, the same have not been considered.

9. On the other hand, it is submitted by the learned standing counsel for the respondent-Bank that in view of the issuance of further notice under Section 13(4) of the Act, it is for the petitioner to approach the Debts Recovery Tribunal under Section 17 of the Act and there is no reason to approach this Court by way of Writ Petition at this stage questioning the demand notice issued under Section 13(2) of the Act. It is further submitted that petitioner has not filed any letter dated 12.06.2015 and there is no proof of receipt of such letter by the respondent-Bank; such letter is enclosed to the further letter of the petitioner dated 23.06.2015; in spite of the same, respondents have considered all the objections as required under law and issued the impugned order and there are no valid grounds for interference.

10. Having heard the learned counsel for the parties, we have carefully perused the material on record.

11. In this case, it is clear that, for the purpose of its Bio-Pharma Unit, petitioner, at first instance, availed term loan of Rs.30.00 crores which was sanctioned vide letter dated 26.08.2010 and thereafter further Rs.20.00 crores was also granted towards working capital and by way of cash credit facilities. Mainly it is the case of the petitioner that for the purpose of extension of Phase II, though it had made an application for additional term loan amounting to Rs.25.00 crores, the same has not been considered by the respondent-Bank and as a result it had lost valuable time. It is the allegation of the petitioner that in spite of the steps taken by it to mobilise the funds required from other agencies outside, respondents have not considered the same and issued the impugned order under Section 13(2) of the Act on 11.04.2015 demanding an amount of Rs.48,51,06,255/-. It is the allegation of the petitioner that on receipt of such notice, it has filed letter dated 12.06.2015 but the same is denied by the respondents. No material is placed before this Court showing that petitioner has sent letter dated 12.06.2015 to the respondents and the same has been received by them. Petitioner addressed further letter dated 23.06.2015, in which earlier letter dated 12.06.2015 alleged to have been addressed by it, is referred. It is true, letter dated 23.06.2015 is not within the period of 60 days as contemplated under Section 13(2) of the Act, but the same is considered by the respondents in the proceedings dated 29.06.2015. In the said proceedings, it is categorically stated that petitioner was never regular in maintaining its accounts with the respondent-Bank and it is pleaded that irregular portion of the term loan was Rs.1.89 crores as on 30.06.2013 and Rs.11.06 crores as on 24.03.2015. It is also stated in the counter-affidavit that in spite of repeated reminders, no steps have been taken by the petitioner and though the petitioner-company was running in profits for the financial year 2013-14 and also earning profits every year, petitioner has not paid the dues as agreed.

12. From a perusal of the letter dated 23.06.2015, the only objection of the petitioner appears to be non-consideration of the request of the petitioner for term loan of Rs.25.00 crores for Phase II unit. Except the allegation that oral assurances were given by the Authorised Officer of the respondent-Bank, no other material is placed on record to show that there was such assurance for granting additional term loan as requested by the petitioner.

In the counter-affidavit filed on behalf of the respondents, it is clearly stated that as per the Hypothecation Agreement, petitioner has categorically agreed that the respondent-Bank does not have any obligation to meet further requirements of the borrower on account of growth in business etc., without proper review of credit limits. In view of such agreement between the parties, merely because additional term loan is not granted, that, by itself, is not a ground to contend that the impugned order is illegal and arbitrary. Further, in absence of any material before this Court in support of the allegation of the petitioner that respondent-Bank has given assurance for its additional loan requirements; petitioner cannot blame the respondent-Bank for its setback on the expansion proposals. Though the petitioner alleged that there was oral assurance by the authorities of the respondent-Bank for grant of additional loan amounts, the said allegation is categorically denied in the counter-affidavit filed on behalf of the respondents. Hence, in the absence of any material before this Court to the effect that the respondent-Bank has acceded to the request of the petitioner for grant of additional term loan, no relief as sought by the petitioner can be granted. As evident from the facts and figures given in the counter-affidavit, it is specific allegation of the respondents that though petitioner was making profits in the Agro unit, it was not repaying the loan amounts regularly as per the agreed terms. Merely by making proposals for grant of additional loan facility for expanding the unit, petitioner, as a matter of right, cannot seek such grant of such facility straightaway and it is always open for the respondent-Bank to take into account the credit ratings of the petitioner and decide whether to grant further loan or not. A perusal of the impugned order makes it clear that respondents have considered the objections of the petitioner to the extent required under Section 13(2) and (3) of the Act and issued the impugned order. Although it is stated in the impugned order that petitioner has addressed its objections to the Branch Manager of the Bank, at the same time, in the very same letter, several acceptable reasons are given for not accepting the objections raised by the petitioner in the letter dated 23.06.2015. In view of the reasons assigned in the impugned order, it cannot be said that respondents have not applied mind as per ratio laid down by the Hon'ble Supreme Court in *Mardia Chemicals Ltd* (supra). In any event, we are of the view that, as further steps are taken by the respondent-Bank by issuing notice under Section 13(4) of the Act, if the petitioner is aggrieved by such steps, it is always open for the petitioner to avail remedy under Section 17 of the Act by approaching the Debts

Recovery Tribunal, but there is no reason to seek invalidation of the impugned order, at this stage. As we are of the view that impugned order is in conformity with the ratio laid down by the Hon'ble Supreme Court in *Mardia Chemicals Ltd.* (supra), we do not find any merit in this Writ Petition so as to grant the relief as prayed for.

13. The Writ Petition is devoid of merits and is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the Writ Petition stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

October 13, 2015

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