

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION (STAMP) NO. 23339 OF 2016**

Printek Graphix (India) Pvt. Ltd.

.. Petitioner

versus

Union of India & Anr.

.. Respondents

Mr. Partha Sarathy Sarkar for Petitioner.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.****DATE : 25 AUGUST 2016****P.C.:**

1] Not on board. Upon production, taken on board.

2] The petitioner before us is the borrower Printek Graphix (India) Pvt. Ltd. When the land bearing survey no. 71, hissa no. 2, Shil Phata Road, Valivali Village, Taluka Thane, District Thane and plant and machinery were brought for auction sale with the reserve price of Rs.6,44,50,000/- and Rs.27,00,000/- respectively for the land and building and the plant and machinery. In a public auction the plant and machinery alone was successful wherein the auction purchaser offered Rs.27,00,000/-. However, no one came forward to purchase land and building. We are now concerned only with the auction of plant and machinery and the present writ petition is nothing to do with the sale of the land and building.

3] Since the auction purchaser of the plant and machinery did not deposit balance amount of 75% with other costs after depositing 25%

of the auction amount, the present petitioner came up with an application before the Debt Recovery Tribunal – III that he has one buyer Mr. Shivaji Wagralkar who has a demand draft for Rs.27,00,000/-. Therefore the DRT must accept said buyer and allow him to deposit Rs.27,00,000/- to complete the sale of plant and machinery. The main contention of the writ petitioner was that since dues were not adjudicated, none of the properties could be brought for sale therefore he relied upon Rule 6(1)(d) that the plant and machinery should be permitted to be sold through a private treaty. However, DRT did not accept the offer made by the writ petitioner through private buyer opining that after accepting 25% of the highest bid amount the Tribunal must allow the process to be completed since the auction purchaser will have certain rights in his favour after taking part in the auction and being declared as higher bidder. Therefore the request of the writ petitioner whether Rule 6 or 8 are to be applied could not be considered since there was no challenge to the auction sale. Aggrieved by the same an appeal came to be preferred before the Tribunal. Substantial portion of the argument and also order of the Tribunal is on Section 18 of the Act whether there has to be concession to the borrower not to deposit any amount as indicated in the above provision. Learned Judge after referring to Section 18(1) of the SARFAESI Act of 2002 ultimately opined that since the appeal is filed against the order of the DRT, unless and until statutory deposit in terms of Section 18 is made no appeal could be entertained. Accordingly, the appeal came to be dismissed. Aggrieved by the same, the present writ petition is filed.

4] As we could notice from the records, the notice under section 13(2) was issued way back in September 2013 and at that point of time, the amounts due were about Rupees Seventeen Crores and

odd. By the time the impugned order came to be passed the dues were about Rupees Twenty Crores. Apparently possession of the secured property is already taken over by the bank. It is unfortunate that though the property was brought for sale on five occasions the bank was unsuccessful to sell the property for realisation of money. For the first time there was some bidder for the purchase of plant and machinery just at the reserve price of Rs.27,00,000/-. After accepting 25% of the initial deposit the writ petitioner borrower came in with an application in question and the orders came to be passed. Since entire matter is under consideration of DRT i.e. what should happen to 25% of the amount deposited by the auction purchaser and whether the sale has to be confirmed or not, we cannot express any opinion so far as the issue of auction purchase of the plant and machinery. The application of the writ petitioner was to accept the private treaty since a private purchaser was ready to purchase property at the very same price offered by the auction purchaser. Only after taking the auction purchase proceedings to a logical end, the DRT can decide further course of action. It is entirely within the discretion of the DRT to do what it should if the auction sale of plant and machinery is a failure. At this stage, we cannot insist that the DRT should accept the proposal of the writ petitioner borrower and we cannot find fault with the impugned order of the Appellate Tribunal that before challenging any order and agitating the same before the Tribunal the statutory deposit under Section 18 has to be made. Under these circumstances, we decline to interfere with the impugned order. Accordingly, writ petition is dismissed.

CHIEF JUSTICE

(M. S. SONAK, J.)