

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.10533 of 2016 and W.M.P. No.9234 of 2016

A.K.M.G. Alloys Private Ltd.
represented by its Managing Director
G.V. Ganesh Prabhu
SF No.501/1, Thuthari Palayam
V. Kallippalayam (PO)
Palladam Taluk
Tirupur District 641 664 Petitioner

Vs.

- 1 The Reserve Bank of India
represented by its General Manager
No.16, Rajaji Salai
Chennai 600 001
- 2 The Tamil Nadu Mercantile Bank Ltd.
represented by its Authorised Officer
having registered office at
No.57, V.E. Road
Thoothukudi 628 002
- 3 The Branch Manager
The Tamil Nadu Mercantile Bank Ltd.
Dindigul Branch
No.9, Salai Road
Dindigul 624 001

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the auction sale notice dated 17.02.2016, fixing the auction sale on 23.03.2016 and 24.03.2016 issued by the second respondent and quash the same as illegal and direct the first respondent to restructure the debts of the petitioner in line with the Circular bearing reference no. DBOD No.BP.BC.34/21.04.132/2005-2006, dated 8th September 2005.

For petitioner Mr. M. Aravind Subramaniam

For RR 2 & 3 Mr. N. Dilip Kumar

ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

Mr. N. Dilip Kumar, learned Standing Counsel, accepts notice for respondents 2 and 3. Notice to the first respondent is dispensed with at this stage, as, no order prejudicial to its interest, is passed in this writ petition. Thus, with the consent of the learned counsel for the petitioner and the learned Standing Counsel for respondents 2 and 3, this writ petition is taken up for final disposal, at the admission stage itself.

2 This writ petition is filed challenging the auction sale notice dated 17 February 2016, issued by the second respondent, fixing the auction sale of secured assets on 23 and 24 March 2016 and for a direction to the first respondent to restructure the debts of the petitioner in line with the Circular bearing reference no. DBOD No.BP.BC.34/21.04.132/2005-2006, dated 8th September 2005.

3 According to the petitioner, the petitioner filed S.A. No.4 of 2016 before the Debts Recovery Tribunal, Coimbatore, (for brevity "the Tribunal") challenging the notices issued under Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act"), along with an Interlocutory Application in I.A. 44 of 2016 seeking stay of all further proceedings pursuant to the notice issued under Section 13(2), *ibid.* The Tribunal, by order dated 19 January 2016, finding that the petitioner has failed to make out *prima facie* case, observed that it is not inclined to pass any interim order and posted the matter for counter on 17 March 2016. When the matter stood thus, the impugned auction sale notice dated 17 February 2016 was issued by the respondent bank.

4 The main plank of contention of the learned counsel for the petitioner is that by the impugned auction sale notice, auction is fixed to be held on 23 and 24 March 2016. But, because of vacancy of post of the Chairperson in the Debts Recovery Appellate Tribunal, Chennai, the petitioner is not in a position to challenge the order passed by the Tribunal in the Stay Application before the Debts Recovery Appellate Tribunal.

5 Be that as it may, since the matter is already subjudice before the Tribunal, we are not disposed to make any observation on the merits of the case. However, regard being had to the fact of vacancy of the post of the Chairperson in the Debts Recovery Appellate Tribunal, in order to sub-serve the interest of justice, we deem it fit and proper to direct that the auction sale of the secured assets proposed to be held on 23 and 24 March 2016 shall go on, however, the sale of the secured assets shall not be confirmed, till the first sitting of the Debts Recovery Appellate Tribunal, Chennai. It is ordered accordingly.

The writ petition stands disposed of with the above observation. Costs made easy. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1 The Debts Recovery Appellate Tribunal,
Chennai.
- 2 The General Manager
Reserve Bank of India
No.16, Rajaji Salai
Chennai 600 001.
- 3 The Authorised Officer
Tamil Nadu Mercantile Bank Ltd.
No.57, V.E. Road
Thoothukudi 628 002.

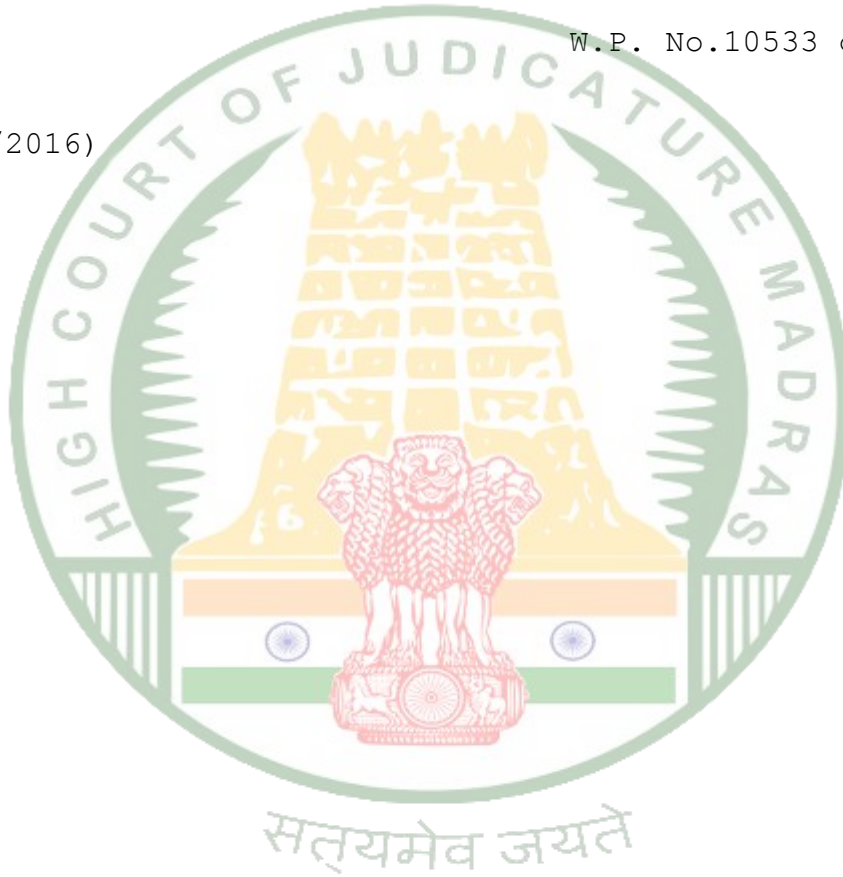
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4 The Branch Manager
The Tamil Nadu Mercantile Bank Ltd.
Dindigul Branch
No.9, Salai Road
Dindigul 624 001.

+1cc to Mr.Aravind Subramaniam, Advocate, S.R.No.18010
+1cc to Mr.N.Dilipkumar, Advocate, S.R.No.18085

W.P. No.10533 of 2016

ca(CO)
srg(23/03/2016)



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