IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.12.2016**

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) Nos.3006 and 3007 of 2016
and
C.M.P.Nos.15178 to 15183 of 2016

Empee Sugars and Chemicals Limited
Rep. by its Chairman
Mr.M.P.Purushothaman
Empee Towers, 59 Harris Road
Pudupet, Chennai - 600 002 .... Petitioner in both CRPs

vs.

1.The Punjab National Bank
Large Corporate Branch
Office at Rayala Towers, III Floor
No.781-785, Anna Salai
Chennai - 600 002
Rep by its Chief Manager

2.M/s.Empee Distilleries Ltd
Represented by its Directors
Mr.M.P.Purushothaman
Regd. Office, Empee Towers
No.59, Harris Road, Pudupet
Chennai - 600 002

3.M.P.Purushothaman

4.Ms.Nisha Purushothaman

5.Sheeju Purushothaman

6.Bank of India
Large Corporate Bank
Office at Tarapore Towers
No.826, Anna Salai, Chennai - 600 002
Rep. by its Chief Manager

7.Indian Overseas Bank
Cathedral Branch
Office at No.762, IOB Building
Anna Salai, Chennai - 600 002
Rep by its Chief Manager

8.Edelweiss Asset Reconstruction Company Ltd.,
Represented by its Authorised Signatory
Having its registered office at
Edelweiss House
Off C.S.T. Road, Kalina, Mumbai - 98 .... Respondents

Civil Revision Petitions filed under Article 227 of the Constitution of India against the proceedings dated 06.09.2016 made in I.A.No.525/2016 in O.A.No.502 of 2016 and Warrant of Commissioner dated 12.09.2016 made in I.A.No.527/2016 in O.A.No.502 of 2016 by the Debts Recovery Tribunal - 2, Chennai and consequently for a direction to refrain from interfering with petitioner's peaceful possession and enjoyment of the property.

For Petitioner in both CRPs : Mr.R.Nagasundaram
For Respondents : Mr.M.L.Ganesh, for R1
Mrs.S.Indumathi Ravi, for R8

COMMON ORDER
(delivered by **S.MANIKUMAR*, J)***

On 22.09.2016, we passed the following order.

On the materials on record, and considering the submissions advanced, on 19.9.2016, we passed the following order:

"It is submitted by Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner that in I.A.No.525 of 2016 in O.A.No.502 of 2016, an interim order has been granted not to alienate the schedule property. In I.A.No.527 of 2016 in O.A.No.502 of 2016, the Debts Recovery Tribunal-2, Chennai, has issued a warrant of commission, on 12.09.2016, which reads as follows:

"WHEREAS, the counsel for the Petitioner/Appellant Bank filed an I.A.No.527 of 2016 in O.A.No.502 of 2016 to appoint an Advocate Commissioner to seize the hypothecated goods described in the schedule to the I.A. and sell the same in public auction.

AND after hearing the counsel, the Hon'ble Tribunal passed an order on 02.09.2016 appointing Mr.M.Thirumalaisamy, Advocate, ICF Complex, Kalugumalai Street, Sankarankoil, Tirunelveli District, is appointed as Advocate Commissioner.

THEREFORE, Mr.M.Thirumalaisamy, Advocate, is appointed as Advocate Commissioner to seize the hypothecated goods described in the schedule to the I.A.

Counsel for applicant bank filed memo Sr.No.8408, dated 12.09.2016, praying for issue of Warrant of Commissioner.

The Advocate Commissioner is directed to execute the warrant in terms of the above order and submit a report, on or before 28.10.2016. The petitioner/applicant bank is directed to render all the assistance to the Advocate Commissioner to take inventory of the hypothecated goods described in the schedule to the IA., and hand over the same to the petitioner/applicant. The Advocate Commissioner is permitted to take assistance of local police, if required."

2. Pursuant to the same, the learned Advocate Commissioner has sent a letter, dated Nil, to the revision petitioner, which is extracted hereunder:

From,

M.Thirumalaisamy,
Advocate Commissioner, appointed by
DRT-2 in I.A.No.527 of 2016 in O.A.No.502 of 2016.

To

M/s.Empee Sugars and Chemicals Ltd.,
Rep., by its General Manager,
at Edaikkal Village, Ambasamuthram,
Thirunelveli District.

Sub: Handing over of possession of the 2x25 M.W. Power Plant in operation under test run process in the premises.

According to the director of the DRT, Chennai, vide I.A.No.527 of 2016, dated 12.09.2016 in O.A.No.502 of 2016, the physical possession of the sugar mill located at Edikkal Village, Ambasamuthram Taluk, Tirunelveli District, was taken today in the presence of the officers of Punjab National Bank and was witnessed by yourself. During the process, it was noticed that the one unit of 2x25 M.W. Power Plant located in the property, which is to be taken possession is running for test in purpose so you are here by directed to shut down the unit and hand over physical possession of 2x25 M.W. Power Plant to me on or before 20.09.2016 in order to complete the process of execution of the above said warrant."

3. Mr.ARL.Sundaresan, learned Senior Counsel appearing for the petitioner submitted that the power plant is in

operation and there are many workers, working in the said plant.

4. However, material on record discloses that O.A.No.502 of 2016 has been preferred by Punjab National Bank, before the Debt Recovery Tribunal, for recovery of Rs.121,51,76,552.12, the amount alleged to be outstanding, as on 15.07.2016. Considering the nature of the orders passed by the Tribunal and the steps taken by the learned Advocate Commissioner, we are inclined to grant interim stay of the operation of I.A.No.527 of 2016 in O.A.No.502 of 2016, for a period of three days, from today.

5. Post on 22.09.2016."

2. While passing the above said order on 19.9.2016, we have taken note of the outstanding amount which, the petitioner has to pay to the Punjab National Bank, Chennai, the applicant in O.A.No.502 of 2016 and thus we restricted the interim stay of the operation of the order in I.A.No.527 of 2016 in O.A.No.502 of 2016, for a period of three days from 19.9.2016. In the above said circumstances, the matter is listed today.

3. Reverting, Mr.J.Ravindran, learned counsel for the revision petitioner submitted that 58% of the shares have been transferred to the 8th respondent herein, namely, delweiss Asset Reconstruction Company Ltd., Represented by its Authorised Signatory, Mumbai restructuring company and that the revision petitioner, is negotiating with them, for settling the outstanding amount payable to Punjab National Bank.

4. He also submitted that though the petitioner company has intention to pay some portion of the outstanding amount, as on today, it has no means to do so. According to him, survival itself is difficult. Order impugned before us is passed by

the Debts Recovery Tribunal-II, Chennai, and the same is appealable under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act, 2002). Section 18 reads here under:

"18. Appeal to Appellate Tribunal

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under Section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

PROVIDED that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

PROVIDED FURTHER that no appeal shall be entertained unelss the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

PROVIDED ALSO that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordane with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

5. In ***Narayan Chandra Ghosh vs. Uco Bank & Ors.*** reported in ***AIR 2011 SC 1913***, the question posed before the Hon'ble Apex Court was, whether the requirement of the pre-deposit under Section 18(1) is mandatory or not? Going

through Section 18 of the SARFAESI Act, 2002 and the provisos therein, the Hon'ble Apex court, at paragraph No.8 of the said judgment, held as follows:

"8. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty percent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five percent of the debt, referred to in the second proviso. Thus, there is an absolute bar to entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty percent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity. It is well-settled that when a statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to

the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement."

6. Today, there is no Presiding Officer in Debts Recovery Appellate Tribunal, Chennai. We are apprised of the fact that a retired Hon'ble Judge and Presiding Officer of the Debts Recovery Appellate Tribunal, Allahabad, holds sitting in DRAT, Chennai. But for the vacancy in the Tribunal, the instant civil revision petitions would not have been entertained before this court under Article 227 of the Constitution of India, in ordinary course. Had the Appellate Tribunal, with the Presiding officer is functioning then, as per the third Proviso to Section 18 of the SARFAESI Act, 2002, the Appellate Tribunal, may, for the reasons to be recorded in writing, reduce the amount of deposit to not less than 25% of the debt referred to in the second Proviso. The DRT is yet to determine the amount. However, as per the version of Punjab National Bank, the applicant in O.A.No.502 of 2016, the outstanding amount is Rs.121,51,76,552.12P, as on 15.7.2016.

7. In ***Narayan Chandra Ghosh's*** case, the Hon'ble Apex Court, exercised the powers under third proviso to Section 18 of the Act, and directed the appellant therein, to deposit Rs.15,00,000/-, out of the outstanding amount of Rs.52,42,474/-. Considering the difficulties expressed, and the outstanding amount, and following the said decision, we direct

the petitioner to deposit with the Appellate Tribunal, 25% of the outstanding amount, namely Rs.121,51,76,552.12P, as on 15.7.2016, within four weeks from today, failing which, interim stay granted shall stand vacated authomatically without reference to the orders of this court. Registry is directed to post the appeal on 21.10.2016, after the expiry of four weeks, from the date of this order.

2. On this day, when the matter came up for hearing, on the basis of an order dated 26.10.2016 passed by the Hon'ble Apex Court, Mr.M.L.Ganesh, learned counsel for the first respondent bank submitted that the order dated 22.09.2016, has been confirmed by the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos.31196-31197/2016. Learned counsel for the bank further added that even during the extended time, deposit has not been made.

3. The above said submissions have not been refuted by Mr.R.Nagasundaram, learned counsel, who has come on change of Vakalat, for the petitioner in both the civil revision petitions.

4. Learned counsel for the petitioner seeks permission to withdraw the civil revision petitions. Learned counsel for the petitioner has also made separate endorsements in both the civil revision petitions. Permission is granted. Accordingly, both the civil revision petitions are dismissed as withdrawn. No leave is granted to

file any civil revision petition on the same cause of action. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petitions are closed.

(S.M.K., J.) (M.G.R., J.)
08.12.2016

Internet : Yes/No
Index : Yes/No
asr

The Registrar
Debts Recovery Tribunal - II
Chennai

S.MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

asr

C.R.P.(PD) Nos.3006 and 3007 of 2016

08.12.2016