IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.31413 of 2016 &

W.M.P.No.29201, 27262 of 2016

M/s.Hotel Milestonnez India Private Ltd.,
Rep.by M.Rajamanickam,
No.34, Santhavelur, Sunguvachatram Post,
Sriperumbudur,
Kancheepuram District - 602 106. ... Petitioner

-vs-

1.State Bank of India,
Stressed Assets Management Branch,
By its Authorised Officer,
Office at "Red Cross Buildings",
No.32, Montieth Road,
Egmore, Chennai - 600 008.

2.The Registrar,
The Debt Recovery Appellate Tribunal,
No.55, Ethiraj College Salai,
Egmore, Chennai - 600 008. ... Respondents

Prayer: Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the second respondent to extend the time by sixty days from 22.07.2016 to comply with the conditional order dated 15.07.2016 passed by the second respondent in AIR S.A.No.274 of 2016 to deposit Rupees One Crore as stipulated by Debt Recovery Appellate Tribunal, Chennai, in charge at Allahabad.

For Petitioner : Mr.S.Jayakumar
For Respondent No.1 : Mr.Balamurali
for Mr.Shivakumar

O R D E R

[Order of the Court was made by N.AUTHINATHAN, J.]

The petitioner has come up with the present writ petition for a Writ of Mandamus, directing the second respondent / Tribunal to extend the time by sixty days from 22.07.2016 to comply with the conditional order dated 15.07.2016 passed by the second respondent in AIR S.A.No.274 of 2016 to deposit Rupees One Crore.

2.The first respondent Bank had sanctioned cash credit facility to the tune of Rs.10 Crores to the petitioner for the expansion of its business. The petitioner and its Promoters created an equitable mortgage of their properties. In addition to that, the first respondent Bank had sanctioned a Corporate Term Loan to the tune of Rs.5.25 Crores to the petitioner on 17.06.2013. The petitioner had executed the Supplemental Agreement of Loan for increase in Overall Limited (C1A) on 18.06.2013 in favour of the first respondent Bank. The Promoters of the Company created an equitable mortgage of their properties to secure the said facilities Rs.16225 Crores availed by them. The account of the petitioner Company has become irregular. They committed default in repayment for the first term loan. Hence, as per Reserve Bank of guidelines all the accounts of the petitioner were classified as "non-performing asset" [NPA] as on 29.06.2013.

3.The Bank issued demand notice dated 20.01.2015 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") calling upon the petitioner to pay a sum of Rs.12,06,18,484.26. Again, on 20.05.2015, the Bank issued demand notice calling upon the petitioner to pay a sum of Rs.12,81,56,322.69. Thereafter, the Bank issued possession notice dated 07.09.2015 and 14.09.2015 in respect of the secured properties.

4.The petitioner approached the Debt Recovery Tribunal-III, Chennai, assailing the possession notice dated 14.09.2015 in S.A.No.434 of 2015 in respect of three mortgaged properties situated at Mangadu, Santhavellor and Virugambakkam residential house. An interim stay was granted subject to the condition to pay a sum of Rs.2 Crores. However, the stay order was subsequently vacated on 18.12.2015 on the ground that the conditional order was not complied with.

5.Pending disposal of the above Application, the respondent Bank issued e-auction sale notice dated 16.02.2016 for the sale of the Virugambakkam and Kattupakkam properties. Challenging the e-auction sale notice, the petitioner has filed S.A.No.67 of 2016 and the tenant of the Santhavellor property preferred S.A.No.70 of 2016 and obtained an order of stay subject to the condition that he should deposit a sum of Rs.1 Crore.

6.Thereafter, the Bank has issued two sale notices and the petitioner herein filed S.A.Nos.174 and 175 of 2016 on the file of the Debt Recovery Tribunal-III, Chennai. The Debt Recovery Tribunal-III, has granted stay of confirmation of sale in S.A.No.175 of 2016 in respect of the Virugambakkam property. By a subsequent order, the Debt Recovery Tribunal-III has extended the stay on 10.05.2016 and the petitioner was directed to make substantial payments before the next date of hearing on 02.06.2016. on 02.06.2016, the Tribunal having arrived at a conclusion that the petitioner was interested only in delaying the issue vacated the interim stay order.

7.Aggrieved by the order dated 02.06.2016, the petitioner preferred regular Appeal in S.A.No.274 of 2016 before the Debt Recovery Appellate Tribunal-III, Chennai. The Debt Recovery Appellate Tribunal-III, Chennai by an order dated 15.07.2016, in S.A.No.274 of 2016 directed the petitioner to deposit 25% of the amount mentioned in the demand notice, out of which, Rs.1 Crore within a period of seven days from the date of the order and the balance amount within a period of 30 days form the date of the order in the form of Demand Draft in the name of The Registrar, DRAT, Chennai.

8.This Writ Petition has been filed to issue a Writ of Mandamus, directing the second respondent to extend the time by sixty days from 22.07.2016 to comply with the conditional order dated 15.07.2016 passed by the second respondent to deposit Rupees One Crore as stipulated in the office of the Debt Recovery Appellate Tribunal, Chennai.

9.The Managing Director of the petitioner Company filed an affidavit in support of the petition wherein he has stated that one of his relatives agreed to pay the said sum of Rs.1 Crore ordered to be paid. However, due to sudden demise of his father, he was not in a position to mobilise funds to comply with the order of the Debt Recovery Appellate Tribunal. Not satisfied with the prayer to extend the time by sixty days from

22.07.2016, the petitioner has filed W.M.P.No.29201 of 2016 to extend the time by twelve weeks to deposit 25% of the amount claimed by the Bank in the notice under Section 13(2) of SARFAESI Act dated 20.01.2015.

10.The learned counsel appearing for the petitioner adverted to the averments made in the affidavit for seeking extension of time. The learned counsel appearing for the Bank for his part narrated the circumstances under which the order was passed by the Debt Recovery Tribunal, Chennai.

11.If an appeal is to be filed against an order of DRT, 50% of the entire amount is required to be deposited under the second proviso to Section 18(1) of SARFAESI Act. This pre-deposit can be reduced to 25% of debt by DRAT for reasons to be recorded in writing under the third proviso to Section 18(1) of SARFAESI Act. The order in question appears to have been passed in terms of Section 18(1) of SARFAESI Act. The DRAT extracted the submission of the counsel for the petitioner and it reads thus:

> "Learned counsel for the appellants submits that the appellants are ready and willing to deposit 25% amount of the demand notice issued by the respondent-Bank amounting to Rs.12,06,18,484.26. Learned counsel for the appellants further submitted that the appellants will deposit a sum of Rs.1.00 crore within a period of seven days from today and the balance amount within a period of 30 days from the date of this order."

12.In view of the submissions of the learned counsel for the petitioner, the impugned order has been passed. The order appears to be a consent order. The order conferred a benefit on the petitioner coupled with an obligation of depositing the money. The petitioner must take the benefit along with the burden. However, the petitioner without complying with the directions of the Debt Recovery Appellate Tribunal, thought it fit to file the writ petition seeking extension of time. The basic principle for grant of mandamus is that there should be a statutory duty cast on the authority and failure of such authority to perform the statutory duty.

13.As has been already noticed that the provisions of SARFAESI Act make the pre-deposit mandatory for entertaining an appeal and any departure of non-compliance would entail the rejection of the appeal. The ground on which time extension is sought for is that they could not mobilise funds due to death of one of their relatives and as such they could not comply with the directions of the Debt Recovery Appellate Tribunal. However, the ground urged for non-compliance would not appear to be legally tenable.

14.The Writ Petition has been presented on 22.07.2016. The petitioner has not complied with the directions even after the expiry of the period initially granted by the Debt Recovery Appellate Tribunal. He has not chosen to make any payment in compliance with the directions as of today [26.10.2016]. In these circumstances, we get an impression that this Writ Petition is designed only to protract the recovery proceedings rather than complying with the directions of the Debt Recovery Appellate Tribunal.

15.The provisions of Section 18 of SARFAESI Act being mandatory in nature this Court could not entertain the plea for extension of time. In this view, the Writ Petition fails and is dismissed. W.M.P.No.29201 of 2016 is also dismissed. Consequently, connected W.M.P.No.27262 of 2016 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri
To

The Registrar,
The Debt Recovery Appellate Tribunal,
No.55, Ethiraj College Salai,
Egmore, Chennai - 600 008.

+2cc to Mr.S. Jayakumar, Advocate, S.R.No.61452
+1cc to Mr.Shivakumar, Advocate, S.R.No.61400

MV (CO)
md (14/11/2016)

W.P.No.31413 of 2016