IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.38868 of 2016
and
WMP No.33311 of 2016

M/s.Eurotech Global Solutions
India Private Limited
rep. by its Managing Director
K. Chandrasekar .. Petitioner

vs.

IDBI Bank
Rep. by its Authorised Officer
No.72, May Flower 'E' Castle
Dr. Balasundaram Road
Opp. Avinashi Road
A.T.T Colony
Coimbatore- 641 018. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Declaration, to declare the letter of the respondent dated 31.08.2016 in IDBI/SARFAESI/ETC/2016-17 issued under section 13(2) of SARFAESI Act as unlawful and invalid and pass further orders.

For Petitioner : Mr. B.Nedunchezhiyan

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

M/s. Eurotech Global Solution India Private Limited represented by its Managing Director, has sought for a Writ of declaration, to declare the demand notice dated 31.08.2016 issued by IDBI Bank, under Section 13(2) of SARFAESI Act, 2002, as unlawful and invalid.

2. Material on record discloses that the writ petitioner has availed financial assistance comprising of cash credit of Rs.1,70,00,000/- on the terms and conditions, in the loan agreement dated 22.05.2012. The loan account has been

classified as Non-Performing Assets (NPA). Therefore, the Bank by demand notice dated 31.08.2016, under Section 13(2) of the SARFAESI Act 2002, has called upon the writ petitioner to pay a sum of Rs.1,75,46,667/-, within a period of 60 days, together with interest thereon, with effect from 01.08.2016, at the contractual rates upon the footing of 15% compound interest, until payment/ realisation, failing which IDBI Bank, as a secured creditor shall be entitled to enforce its security interest, without intervention of the Court or Tribunal, by taking recourse to one or more of the measures under Chapter 3 of the Act, including (but not limited to) taking over possession and/or management of the secured assets, short particulars, whereof are given in Annexure I-B, to the notice dated 31.08.2016, for realising its debts and the costs thereof. According to the petitioner, in response to the demand notice dated 31.08.2016 issued under Section 13(2) of the SARFAESI Act, 2002, a reply dated 03.10.2016 has been sent but no orders have been passed. Hence, a Writ of Declaration has been sent, as stated supra.

3. We have heard the learned counsel for the writ petitioner and perused the material available on record.

4. As per Section 13(2) of the SARFAESI Act, 2002, where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under subsection (4). As per Section (3), the notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower. As per Section 3(A), if, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

5. Although it is the contention of learned counsel for the petitioner that a reply under Section 13(3)A has been acknowledged on 04.10.2016 and that the Bank had not sent any further communication, that would not give rise to a ground, to issue any Writ of declaration, declaring the demand notice issued under Section 13(2) of the SARFAESI Act, 2002, as unlawful and invalid, as the case may be. Reading of Section 13(3)-A also makes it clear that even if the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A, as the case may be. If only, the secured creditor takes any of the measures under subsection (4) to Section 13 or by authorised officer, the writ petitioner gets the right to challenge the same before the appropriate forum. In the light of the above statutory provisions, this Writ Petition seeking for declaration, is rejected.

6. In the result, the writ petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

To

+1 cc to Mr.B.nedunchezhiyan,advocate,sr.63767.

ksj(co)
krd 14/12

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