HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
HON'BLE Dr.JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.9880 OF 2016

ORDER: (Per NRR,J)

Heard Ms. R.Sushma, learned counsel for the petitioner, for a considerable length of time.

2. The petitioner has availed certain financial assistance from the 1st respondent-IDBI Bank. Unfortunately, it has not recycled the debt properly which resulted in the loan account being declared as a non-performing asset and consequently measures provided under Section 13 of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), have been adopted by the 1st respondent-Bank. Now under Sub Section 4 of Section 13 of the Act, the 1st respondent bank has proposed to sell away the mortgaged asset and so security interest was created by e-auction mode on 30.03.2016 between 2.00 to 3.00 P.M. The sale notice, which is published in the newspapers on 23.02.2016, triggered this writ petition.

3. There is no denial of the fact that the petitioner answers the description of the 'borrower' as defined under Section 2(1)(f) of the Act, which enactment has been ushered in to regulate securitization and reconstruction of financial assets and enforcement of security interest. The 1st respondent also answers the description of 'bank' under Section 2(1)(c) of the Act, as it is a banking company. The expression 'securitization' is defined, as meaning the property on whose security interest is created, under Section 2(1)© of the Act. Whereas, the expression property is defined under Section 2(1)(t) of the Act. Thus, the security interest created by the petitioner over the immovable property clearly answers the definition of 'secured asset', and hence it is liable to

be proceeded against by the secured creditor-the 1st respondent herein under Section 13 of the Act, as well as 14 of the Act but however, Ms. Sushma, the learned counsel for the petitioner would submit that in spite of the best efforts put in by the petitioner, it could not recycle the debt. The petitioner is very anxious to liquidate the entire liability as quickly as possible preferably within three (3) to four (4) months. This request of the petitioner deserves consideration. When the industrial entrepreneur seeks to protect his interest and also simultaneously save the immovable property from being sold for distress value, an attempt should be allowed to save the same.

4. Having regard to the above, we permit the respondents to proceed further by conducting the sale by e-auction mode and also permit them to receive 25% of the bid amount, however, we direct the respondents not to issue confirmation or sale certificate till 01.08.2016, provided, in the meantime, the petitioner demonstrates the bona fides by depositing a sum of not less than Rs.30,00,000/-(Rupees thirty lakhs only) on or before end of each of the months namely April, May, June, and July, 2016 and also ensures that the entire liability together with incidental expenses incurred by the respondent bank for undertaking securitization measures are liquidated latest by 31.07.2016. In case, the petitioner commits any default, the respondents are at perfect liberty to confirm the same in favour of the highest bidder accepting the balance 75% of the bid amount and also execute sale certificate and register and deliver vacant possession of the secured asset but not otherwise.

5. In the result, the Writ Petition is disposed of. No costs.

6. Consequently, miscellaneous Petitions, pending if any, shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

Dr.B.SIVA SANKARA RAO, J

Date: 29.03.2016.

VVR