**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

**AND**

**THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO**

**WRIT PETITION NO.6460 OF 2016**

**JUDGMENT:** *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is instituted challenging the measures adopted by the respondent – State Bank of India under Sub-Section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth referred to, for brevity, as 'the Act').

Heard Sri K.S.Naumene, learned counsel, on behalf of the petitioner and Sri B.S.Prasad, learned counsel, on behalf of the respondent – bank.

Fortunately, the facts are not in dispute. The petitioner has availed certain financial assistance from the 1st respondent – State Bank of India. The respondent answers the description of 'bank' as spelt out in clause (c) of Sub-Section (1) of Section (2) of the Act, which has been ushered in for regulating the securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Equally the petitioner answers the description of 'borrower' as defined in clause (f) of Sub-Section (1) of Section 2 of the Act and the 'debt' as defined in clause (ha) of Sub-Section (1) of Section 2 of the Act and the 'default' as defined in clause (j) of Sub-Section (1) of Section 2 of the Act and the 'financial asset' as defined in clause (l) of Sub-Section (1) of Section 2 of the Act are also squarely attracted to the present case. Under Sub-Section (1) of Section 13 of this Act, any security interest created in favour of any secured creditor may be enforced, without the intervention of Court or tribunal, by such creditor in accordance with the provisions of the said Act. Before any measure under the Act is adopted, a notice of demand is required to be drawn under Sub-Section (2) of Section 13 of the Act and that what has been done in the instant case on 29.12.2015 calling upon the petitioner to liquidate the liability of approximately Rs.12.68 crores. '60' days time is in fact accorded to every such borrower to whom notice under Sub-Section (2) of Section 13 of the Act is issued, to liquidate the liability. Only in the event of any default committed in liquidating the said liability, perhaps, the follow-up action contemplated under Sub-Section 4 of Section 13 of the Act can be initiated, but not otherwise. Though the learned counsel for the petitioner tried to impress upon us by taking to the difficulties encountered by the petitioner in his Tobacco business and as to how the default has occasioned in repayment of the debt due, but however, as pointed out that the petitioner has submitted a representation for consideration of the respondent – bank for liquidating the outstanding liability by entering into 'one time settlement' with the respondent – bank.

As of now, the 1st respondent – bank has not initiated any action provided for and contemplated under Sub-Section (4) of Section 13 of the Act. Hence, it is for the petitioner to establish his bonafides by depositing a sum, which is not less than at least 50% of the outstanding liability together with the incidental expenses incurred for undertaking the measures of Securitisation under the Act. In such an event, it would be for the respondent – bank either to enter into satisfactory terms of settlement of the entire outstanding liability or rescheduling the payment of balance liability. Therefore, subject to the condition that the petitioner herein deposits not less than 50% of the outstanding liability before the end of April, 2016 and also submits a representation as to how he proposes to liquidate the balance outstanding liability in one or more number of installments, but however not exceeding '6', it is open to the respondent – bank either to consider the offer of the petitioner for liquidating the entire liability under 'one time settlement' or adopt the method of liquidating the liability as suggested in this order. In any view of the matter, even if any sale by public auction/E-auction is undertaken by the respondent – bank, the same may not be confirmed in favour of the best bidder unless a default is committed in living up to the conditions imposed by us in this order.

With this, the writ petition stands disposed of. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

**JUSTICE NOOTY RAMAMOHANA RAO**

**JUSTICE DR.B.SIVA SANKARA RAO**

29.02.2016
Ksp