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

WRIT PETITION No.7441 OF 2016

ORDER: (Per NRR,J)

The petitioners challenge the action of the respondent bank in seeking to take physical possession of the secured asset in terms and in accordance with Sub Section 1 of Section 14 of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), in this Writ Petition.

2. The petitioners have availed financial assistance from the respondent bank but failed to liquidate their liability completely and faithfully. As a result of which, the loan account has become a non-performing asset and hence, the respondent bank has initiated measures for securitization as provided for under Section 13 of the SARFAESI Act. With a view to take physical possession of the secured asset, the respondent bank has moved Crl.M.P.No.2977 of 2015 before the learned Chief Metropolitan Magistrate, Hyderabad and the learned Magistrate by his order dated 22.01.2016 appointed an Advocate-Commissioner to take possession of the secured asset and to hand over the same to the respondent bank herein. The warrant issued for this purpose is directed to be returned by 18.03.2016. It appears the Advocate-Commissioner is now seeking to enforce the warrant which triggered this Writ Petition.

3. With a view to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith, the Parliament has enacted the SARFAESI Act Act. Various expressions found mentioned in the enactment are defined under Section 2(1) of the SARFAESI Act. The expression 'Bank' has been defined under Section 2(1)(c) of the SARFAESI Act in the following terms:

"Bank" means--

(i) a banking company; or

(ii) a corresponding new bank; or

(iii) the State Bank of India; or

(iv) a subsidiary bank; or

(v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;"

4. Similarly the expression 'Borrower' has been assigned a very exhaustive definition under Section 2(1)(f) of the SARFAESI Act which runs as under:

"borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitization company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;"

5. The expression 'Financial Asset' has been defined in Section 2(1)(l) of the SARFAESI Act, as under:

"Financial Asset" means debt or receivables and includes--

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(vi) any financial assistance;

6. The expression 'default' has been defined in Section 2(1)(j) of the SARFAESI Act, as under:

"default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor ;

7. There is no dispute that the petitioners herein squarely answer the description of 'borrower' as defined under Section 2(1)(f) of the SARFAESI Act, the respondent bank answers the description of the expression 'Bank' as defined under Section 2(1)(c) of the SARFAESI Act inasmuch as it is a banking company within the meaning of Section 5 of the Banking Regulation Act, 1949. There is also further no difficulty inasmuch as the default committed by the petitioners in repayment, squarely attracts the definition of default as defined under Section 2(1)(j) of the SARFAESI Act. The Expression financial asset as defined under Section 21(l) of the SARFAESI Act also gets attracted to the facts of the present case.

8. The SARFAESI Act has been enacted by the parliament with a view to protect the security interest of the banking and financial institutions. When once a debt has become classified as a non-performing asset, the loan account is liable to be proceeded under Section 13 of the SARFAESI Act, for its securitization. A notice of demand is liable to be raised under Sub Section 2 of Section 13 of the SARFAESI Act by the bank. In the instant case, it was so done. A demand notice was issued on 11.11.2013 under Sub Section 2 of the Section 13 of the Act, calling upon the petitioners to liquidate the liability aggregating to nearly 4.91crores together with interest at the rate of 13.75% p.a. with monthly rests to be calculated w.e.f. 01.08.2013. Sri K.Chidambaram, learned counsel for the petitioners would urge that after this notice was issued, the petitioners have made certain payments and that was the reason why in Crl.M.P.No.2977 of 2015 moved before the learned Chief Metropolitan Magistrate, in particular in paragraph No.10, the bank itself has noted the liability to be of 4.927 crores as on that date. In any view of the matter, we

are not entering into any resolution of this controversy, for, it is for the petitioners to liquidate whatever be the outstanding liability. Now that the learned Chief Metropolitan Magistrate has been approached by the respondent bank under Sub Section 1 of Section 14 of the Act and the learned Magistrate has also passed an order, all that we need to observe in this case is that the action of the respondent bank is completely in accord with provisions contained under Section13 and 14 of the Act. Hence do not call for any interference at our hands but however, Sri K.Chidambaram, learned counsel for the petitioners would submit that as the petitioners are very anxious to liquidate the entire liability, given some little time, they would liquidate the entire liability. We therefore propose to regulate the exercise to be followed from now in the following manner:-

1. The respondent bank may proceed further and take symbolic possession of the secured asset in terms of the direction issued by the learned Chief Metropolitan Magistrate in order dated 22.01.2016 in Crl.M.P.No.2977 of 2015,

2. The petitioners shall not remove any of movables from the secured asset, of which an inventory is liable to be collected by the learned Advocate-Commissioner appointed by the learned Chief Metropolitan Magistrate,

3. The petitioners shall not encumber in any manner whatsoever the secured asset by inducting any tenant or any licensee therein. Further the petitioner shall not create any charge over the secured asset without the express consent and permission of the respondent bank obtained in writing,

4. The petitioners shall deposit a sum of not less than Rs.1,00,00,000/-(Rupees one crore only) on or before 29.03.2016 to the credit of the loan account and thereafter once in every fortnight, he shall make a payment of not less than Rs.1,00,00,000/- (Rupees one crore only) for liquidating the entire outstanding liability. The petitioners shall also liquidate necessary expenses incurred by the respondent bank for undertaking the securitization measures,

5. In default committed by the petitioner in living up to the promise which was made at the bar before us, which induced us to pass this order, this order will entitle the respondent bank to proceed

further by firstly taking physical possession of the secured asset by tendering a notice of 07 days duration to the petitioners by the respondent bank and thereafter realize the outstanding dues by liquidating the said secured asset in terms and in accordance with law.

9. In the result, the Writ Petition is disposed of. Consequently, Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

NOOTY RAMAMOHANA RAO, J

Dr.B.SIVA SANKARA RAO, J

Date: 08.03.2016.

VVR