IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.3011 of 2017
and
W.M.P.No.2907 of 2017

M/s.Subhashri Bio Energies Pvt. Ltd.,
Rep. by its Managing Director. .. Petitioner

versus

1. Ministry of New and Renewable Energy,
   Government of India,
   Block No.14, CGO Complex, Lodhi Road,
   New Delhi - 110 003.

2. Ministry of Agriculture,
   Department of Agriculture & Cooperation,
   Government of India,
   Krishi Bhawan,
   Rajendra Prasad Road, New Delhi - 110 001.

3. Indian Overseas Bank,
   Rep. by its Chairman and Managing Director,
   763, Anna Salai, Chennai - 600 002.

4. Indian Overseas Bank,
   Rep. by its Authorized Officer,
   Fairland Branch,
   5th Cross, Brindavan Road,
   Fairlands, Salem - 636 016. .. Respondents



Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari, calling for records of the respondents, ending with the impugned proceedings of the 4th respondent in BR/0568/DN2016-17 dated 05.12.2016 and quash the same.

For Petitioner : Mr.K.Doraisamy, Sr. Counsel
for M/s. Muthumani Doraisamy

ORDER

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

M/s.Subhashri Bio Energies Private Limited, the borrower/writ petitioner has availed loan from Indian Overseas Bank, Fairland Branch, Fairlands, Salem. Consequent to default, said bank has issued notice dated 05.12.2016, under Section 13 (2) of the SARFAESI Act, 2002, demanding payment of Rs.99,48,85,739.80p, to be paid within sixty days from the date of issuance of notice, failing which, action under Section 13(4) of the SARFAESI Act, 2002, would be taken up.

2. Besides intimating M/s.Subhashri Bio Energies Private Limited / the writ petitioner, Bank has also sent a copy of the notice dated 05.12.2016 issued under sub section (2) to Section 13 of SARFAESI Act, 2002, to the guarantors of the loan account Viz.,

1. S.Durairaju, Managing Director,
M/s.Subhashri Bio Energies Pvt. Ltd.,
No.3/123, Senguttai Kadu, Munjanoor (p.o),
Tiruchengode, Namakkal District - 637 403.

2. D.Malliga, W/o. S.Durairaju, Director,
M/s.Subhashri Bio Energies Pvt. Ltd.,
No.3/123, Senguttai Kadu, Munjanoor (p.o),
Tiruchengode, Namakkal District - 637 403.

3. D.Salai Sivaprakasam, S/o.S.Durairaju,
Executive Director,
M/s.Subhashri Bio Energies Pvt. Ltd.,
No.3/123, Senguttai Kadu, Munjanoor (p.o),
Tiruchengode, Namakkal District - 637 403.

4. Mr.Nalla Govindasamy,
Director,
M/s.Subhashri Bio Energies Pvt. Ltd.,
No.3/123, Senguttai Kadu, Munjanoor (p.o),
Tiruchengode, Namakkal District - 637 403.

5. Mrs.N.Saraswathi, W/o. Nalla Govindasamy,
Director
M/s.Subhashri Bio Energies Pvt. Ltd.,
No.3/123, Senguttai Kadu, Munjanoor (p.o),
Tiruchengode, Namakkal District - 637 403.

6. V.Vikram, S/o. Viswanathan,
No.3, A.G.Apartments, No.38, Giri Road,
T.Nagar, Chennai - 600 017.

7.D.Sivamalar, W/o.V.Vikaram,
No.3, A.G.Apartments, No.38, Giri Road,
T.Nagar, Chennai - 600 017.

8. N.Natarajan,
S/o.Subbaraya Ananthar,
D.No.5/45, Senguttai Kadu,
Munjanoor, Tiruchengode Taluk
Namakkal - 637 407

9. N.Saraswathi,
W/o.N.Natarajan
D.No.5/45, Senguttai Kadu,
Munjanoor, Tiruchengode Taluk
Namakkal - 637 407

3. According to M/s.Subhashri Bio Energies Pvt. Ltd., responding to the notice under Section 13(2) of the Act, dated 05.12.2016, a detailed reply dated 18.01.2017 has been sent under Section 13(3A) of the SARFAESI Act, 2002. But, the same has not been responded so far. Contending inter alia that the proceedings initiated under Section 13(2) of the SARFAESI Act, 2002, is patently illegal and without jurisdiction, instant writ petition has been filed to quash the demand notice.

4. We have heard, Mr.K.Doraisamy, learned senior counsel for the writ petitioner and perused the materials available on record.

5. Section 13(2) of the SARFAESI Act, 2002, states that 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).

6. As per Sub Section 3 to Section 13, 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.

7. As per sub section 3A to Section 13, 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.

8. Though, writ petitioner has contended that a reply/objection, as per Sub Section 3A of Section 13, has been sent, there is no proof of acknowledgment, either for sending or receipt.

9. Nevertheless, it is the oral submission of Mr.Doraisamy, learned Senior Counsel for the writ petitioner that a representation / objection dated 18.01.2017 under Sub section 3A to Section 13 of the SARFAESI Act, 2002, has been acknowledged. If that be the case, bank has to consider as to whether it is in conformity with Section 13(3A) of the Act and take a decision. If the bank has not acknowledged any such reply/objection, as stated supra, it is for the bank to proceed in accordance with the provisions of the statute.

10. Be that as it may, notice under Section 13(2) is only a demand made by the Bank and the Hon'ble Supreme Court in Mardia Chemicals v. Union of India reported in AIR 2004 SC 2371 : 2004 (4) SCC 311, held that notice under Section 13(2) would not give rise to a cause to challenge.

11. In the light of the decision of the Hon'ble Supreme Court and discussion, we are not inclined to entertain the writ petition. Hence, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-IV)



//True Copy//

Sub-Assistant Registrar

To

1. Ministry of New and Renewable Energy,
   Government of India,
   Block No.14, CGO Complex, Lodhi Road,
   New Delhi - 110 003.

2. Ministry of Agriculture,
   Department of Agriculture & Cooperation,
   Government of India,
   Krishi Bhawan,
   Rajendra Prasad Road, New Delhi - 110 001.

+1 CC to Mr. Muthumani Doraisamy, Advocate sr 7603

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and
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SCD(CO)
sp/23/2