IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.17076 of 2017
and WMP Nos.18553 & 18554 of 2017

1. Brilliant Tutorials Private Limited,
Rep. by Mrs.Vasanti Neelakantan.
2. Mrs. Vasanthi Neelakantan ... Petitioners

vs.

M/s.Religare Finvest Limited,
having its Registered office at
D-3, P3B District Centre Saket,
New Delhi - 110 017.

Branch Office,
Bascon IT Park, 12th Floor,
New No.10/2, Old No.56,
Venkat Narayana Road,
T.Nagar, Chennai - 600 017 ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records pertaining to the proceedings in Ref.No.SAA/RFL/SARFAESI/2016/1 dated 23.09.2016 and the consequential sale notice dated 07.01.2017 as to quash the same in view of multifarious legal proceedings initiated by the respondent on the file of this Honourable High Court.

For Petitioners : Mr.T.R.Sundaram

ORDER

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

Material on record discloses that on 11.01.2016, in Company Application Nos.539 & 540 of 2015 in Company Petition Nos.281 of 2012, one of us [Honble Mr.Justice S. Manikumar], has ordered as hereunder.

"1. That the Official Liquidator, High Court, Madras, be and hereby is appointed as Provisional Liquidator of the respondent company viz., M/s.Brilliant Tutorials Private Limited.

2. That the Official Liquidator appointed herein be and hereby is directed to take charge of the assets of the aforesaid respondent company.

3. That the Ex-Directors of the respondent company be and hereby is directed to file their statement of affairs before the Official Liquidator within a period of 21 days.

4. That the notice of this company petition be affixed on the Court notice board, and at the premises of the registered office of the respondent company.

5. That the notice of this company petition returnable by 8/2/2016 be served on the respondents herein and at the registrar of Companies, Madras.

6. That the petitioner herein be and hereby is directed to publish the company petition in one issue of Tamil Daily viz., "Dina Thanthi" and in one issue of English Daily viz., "The Indian Express" and also in the Tamil Nadu Government Gazette by fixing the date of hearing on 8/2/2016.

7. That that petitioner herein be and hereby is directed to publish the company petition giving at least fourteen days clear advance notice.

8. That the petitioner company shall deposit a sum of Rs.25,000/- [Rupees Twenty Five Thousand Only] towards the initial expenses to the official Liquidator in this matter.

9. That the company petition No.281/2012 do stands adjourned to 8/2/2016."

2. In S.A.No.12 of 2017, on the file of Debts Recovery Tribunal-I, Chennai, M/s.Brilliant Tutorials Private Limited, Chennai and Vasanti Neelakantan, Chennai, joined together and challenged possession notice dated 30.12.2016 and subsequent sale notice dated 07.01.2017, stated to have been received by the applicants therein on 16.01.2017.

3. One of the grounds urged in S.A.No.12 of 2017, is that M/s.Religare Finvest Limited, New Delhi, the respondent herein has invoked the arbitration clause in the loan agreement and appointed Shri Sanjay Aggarwal, Advocate, New Delhi, as the sole arbitrator.

4. Material on record further discloses that in S.A.No.12 of 2017, applicants therein had contended that action under Section 138 of the Negotiable Instruments Act, was taken and that a

complaint preferred before the Court at Bangalore is pending.

5. Contending inter alia that the action of the respondent in invoking Section 13(4) of the SARFAESI Act, 2002 and issuing sale notice, as illegal and contrary to the statutory rules, petitioners / applicants in S.A.No.12 of 2017 have prayed for the following reliefs:

> "a. To set aside the impugned possession notice dated 30.12.2016 issued by the respondent under the provisions of SARFAESI Act (which was received by these applicants on 3.1.2017) as illegal, Excessive, unwarranted and against the provisions of SARFAESI Act.
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> b. To set aside the impugned sale notice dated 07.01.2017 issued by the respondent under the provisions of SARFAESI Act (which was received by the applicant on 16.1.2017) as illegal, Excessive, unwarranted and against the provisions of SARFAESI Act.
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> c. To provide statement of accounts with break ups for the amounts received and claimed by the Respondent herein.
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> d. To provide all documents, enclosures relied on by the respondent bank in initiating recovery action under sec. 13 of the SARFAESI Act against these applicants."

6. Material on record further discloses that on summons, the writ petitioner has appeared before the tribunal on 30.06.2017 to explain the locus standii in filing S.A.No.12 of 2017 and accordingly, a memo dated 30.06.2017 is stated to have been filed before Debts Recovery Tribunal-I, Chennai.

7. When the matter stood thus, contending inter alia that after passing the award in the arbitration proceedings No.RELIGARE/H/LOT-3/SEP-14/RB:2911/07 dated 25.07.2016 and when Execution Petition No.145 of 2016, is pending before the learned Master, High Court, Madras and when the National Company Law Tribunal is seized of the matter in C.P.No.436 of 2015 and adding further that when the respondent has also instituted criminal proceedings under Section 138 of the Negotiable Instruments Act, writ petitioner has now chosen to challenge possession notice under Section 13(2) of the SARFAESI Act, 2002 and the consequential sale notice dated 07.01.2017, stating that parallel proceedings should not be permitted.

8. From the events stated supra, it could be deduced that much water has flown. 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 has held that notice issued under Section 13(2) would not give rise to a cause to challenge. However, as per Section 13(3A) of the SARFAESI Act, 2002, 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.

9. As stated supra, auction notice dated 07.01.2017 has already been challenged before the Debts Recovery Tribunal-I, Chennai, on various grounds and S.A.No.12 of 2017 is stated to be pending. When that be the admitted position, it is not open to the writ petitioner to invoke the remedy under Article 227 of the Constitution of India to challenge the sale notice dated 07.01.2017, once again by filing a writ petition. Grounds raised before this Court are available to the writ petitioners to urge before the tribunal in S.A.No.12 of 2017, when the possession notice dated 30.12.2016 and sale notice dated 07.01.2017 are challenged.

10. In the light of the decision stated supra, writ petition challenging Section 13(2) notice dated 30.06.2016 is not maintainable. Prayer made in the writ petition, challenging sale notice dated 07.01.2017, cannot be granted.

11. For the reasons stated supra, the writ petition is dismissed at the admission stage itself. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Official Liquidator,
High Court,Madras.

+2cc to T.R.Sundaram, Advocate,S.R.No.47095/17

W.P.No.17076 of 2017
and
WMP Nos.18553 & 18554 of 2017

CU(26/07/2017)