IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2017

CORAM:

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

W.P.No.20833 of 2016

M/s.Kavia Carbons (Chennai) Pvt. Ltd.,
Rep. by its Managing Director,
Mr.P.N.Agarwal. ... Petitioner

Vs.

1.Union Bank of India
Rep. by its Authorized Officer,
P.O.Box 8, 235, Oppanakkara Street,
Coimbatore - 641 001.

2.The Director,
Technology Development Board,
Ministry of Science and Technology,
Vishwakarma Bhavan,
Ground Floor, 'A' Wing,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.

3.The Director (The Finance and Administration),
NECTAR (NMBA),
Vishwakarma Bhavan,
Second Floor, Shaheed Jeet Singh Marg,
New Delhi - 110 016. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents 1 to 3 to take physical possession of the respective secured assets of the petitioner company situated at Selampalayam Pirivu Village, in G.S.No.620/A and Re-Survey No.630/1 situated at Dhalavaipattinam Village, Dharapuram Taluk, within Dharapuram Sub Registration District and Tiruppur Registration District sell the same in public auction and adjust the sale proceeds towards the outstandings in accordance with law within the time to be stipulated by this Hon'ble Court.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Ms.Aishwarya S.Nathan (for R1)
for Mr.Srinath Sridevan
Mr.D.Jawahar (for R2 & R3)

ORDER

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

On 25.01.2017, we passed the following orders.

"Record of proceedings shows that on 20/6/2016, a Hon'ble Division Bench of this Court has ordered notice returnable in two weeks. Private notice has also been permitted.

2. Prayer sought for in the writ petition is for issuance of a writ of mandamus, directing the respondents 1 to 3, to take physical possession of the respective secured assets of the petitioner Company, situated at Selampalayam Pirivu Village, in G.S.No.620/A and Re-survey No630/1 situated at Dhalavaipattinam Village, Dharapuram Taluk, within Dharapuram Sub-Registration District and Tiruppur Registration District, sell the name in public auction and adjust the sale proceeds towards the outstandings in accordance with law.

3. Though the first respondent has entered appearance, so far no counter affidavit has been filed.

4. Mr.Srinath Sridevan, learned counsel for the Respondent Bank/Union Bank of India, seeks time to file counter.

5. Material on record discloses that Bank has filed O.A.No.133 of 2014 before the Debts Recovery Tribunal, Coimbatore for the following reliefs:-

(i). To direct the defendants jointly and severally to pay a sum of Rs.1,73,09,443.48 to the applicant with subsequent interest at 15.50% per annum with compounded monthly rests from the date of application till the date of realisation (transaction being commercial), with respect to Loan Account No.334506390014035 (Term Loan I)

(ii). To direct the defendants jointly and severally to pay a sum of Rs.1,22,98,522.91 to the applicant with subsequent interest at 15.25% per annum with compounded monthly rests from the date of application till the date of realisation (transaction being commercial), with respect to Loan Account No.334505010881055 (CAS CREDIT).

(iii). To direct the defendants jointly and severally to pay a sum of Rs.11,93,567.86 to the applicant with subsequent interest at 15.50% per annum with compounded monthly rests from the date of application till the date of realisation (transaction being commercial), with respect to Loan Account No.334506390014036 (TERM Loan II) (iv). To direct the defendants jointly and severally to pay a sum of Rs.35,15,574.04 to the applicant with subsequent interest at 15.50% per annum with compounded monthly rests from the date of application till the date of realisation (transaction being commercial), with respect to Loan Account No.334506390014037 (TERM LOAN III).

(v). To direct the defendants jointly and severally to pay a sum of Rs.83,56,436.58 to the applicant with subsequent interest at 15.50% per annum with compounded monthly rests from the date of application till the date of realisation (transaction being commercial) with respect to Loan Account No.334506390014038 (TERM LOAN IV)

(vi). To direct the defendants jointly and severally to pay a sum of Rs.52,61,762.56 to the applicant with subsequent interest at 15.50% per annum with compounded monthly rests the date of application till the date of realisation (transaction being commercial) with respect to Loan Account No.334506310000014 (WCTL)

(vii). To direct the defendants jointly and severally to pay a sum of Rs.70,41,329.05 to the applicant with subsequent penal interest at 2% per annum with compounded monthly rests from the date of application till the date of realisation (transaction being commercial) with respect to Loan Account No.334506350000001 (FITL)

(viii). To grant a charge over the hypothecated movables more fully described in Schedule A hereunder in favour of the applicant and thereby ordering the sale of the hypothecated movables by private treaty or through public auction in order to realise the abovesaid amounts and to credit the sale proceeds to the loan accounts after defraying the expenses incurred.

(ix). To order sale of the Schedule - B mortgaged immovable properties more fully described hereunder in order to recover the above said amounts with subsequent interest and costs and credit the sale proceeds to the loan accounts after defraying the expenses incurred

(x). To award costs of the application to the applicant.

6. Though Mr.Srinath Sridevan, learned counsel for the respondent Bank submitted that there is a Paripasu charge on the properties with two other Companies and that the same is being sorted out by the Bank and required time for filing counter, perusal of the reply statement filed by the defendants 1, 2 and 4 in O.A.No.133 of 2014, on the file of the Debts Recovery Tribunal, Coimbatore, shows contention has been made by them that M/s. Union Bank of India, Coimbatore,has denied the existence of Paripasu charge

and whereas, before this Court, Bank has made oral submissions that the said charge is being sorted out.

7. Borrower, by letter dated Nil. May 2014, has offered the secured properties to be taken over and sold in public auction towards recovery of the outstanding amount. According to Mr.R.Bharath Kumar, learned counsel for the borrower/writ petitioner, no sooner notice under Section 13 (2) of the Act was issued, in May 2015, the borrower has offered to handover all assets belonging to the Company, but the Bank has not responded.

8. Per contra, learned counsel appearing for the Bank submitted that on receipt of the letter dated Nil May 2014, a reply dated 15th May 2015 was issued, requesting the borrower to remove the machineries and assets, for the loan availed by the borrower from TDB & NMBA, and so far, the same has not been done.

9. According to the learned counsel for the Bank, the Bank is demarcating the machineries and assets. Fact remains that from 2014, properties have not been taken over and brought for public auction, for realisation of the outstanding amount.

10. Apart from the above and though Mr.Srinath Sridevan, learned counsel for the Bank submitted that there is a crown debt and therefore, Bank was not in a position to bring the properties for auction to realise the outstanding amount, on the facts and circumstances of the case, when provisions of SARFAESI Act 2002, enables the secured creditor, to take recourse to any of the measures, under Section 13 (4) of the Act for recovery of the outstanding amount and for the delay caused by the Bank, the borrower should not suffer. With the above preliminary observation, we grant time to file counter.

11. Post on 1/2/2017."

2. On this day, when the writ petition came up for further hearing, Mr.R.Bharath Kumar, learned counsel for the borrower and Ms.Aishwarya, learned counsel for the Union Bank, Coimbatore, 1st respondent, submitted that physical possession of the secured assets, at the place mentioned in the prayer, has been taken on 06.03.2017. Added further, learned counsel for the bank, submitted that twice i.e. on 13.06.2017 and 27.07.2017, the abovesaid property was brought for auction, but the sale was not effected.

3. Mr.D.Jawahar, learned counsel for the respondents 2 and 3 submitted that an arbitration award has also been passed.

4. Be that as it may, relief cannot be granted to the respondents 2 and 3, in the instant writ petition. In the light of the submission made by the learned counsel for the writ petitioner as well as 1st respondent-bank, relief sought for in the writ petition has become infructuous. Accordingly, writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Authorized Officer,
Union Bank of India
P.O.Box 8, 235,
Oppanakkara Street,
Coimbatore - 641 001.

2.The Director,
Technology Development Board,
Ministry of Science and Technology,
Vishwakarma Bhavan,
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3.The Director (The Finance and Administration),
NECTAR (NMBA),
Vishwakarma Bhavan,
Second Floor, Shaheed Jeet Singh Marg,
New Delhi - 110 016.

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.60241
+2cc's to Mr.D.Jawahar, Advocate, S.R.No.60943
+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.60332

W.P.No.20833 of 2016

BR(CO)
CA(11/09/2017)