BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.03.2017

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.(MD) Nos.24486 and 24487 of 2016
and
WPMP(MD) Nos.17673 and 17676 of 2016 and
WPMP(MD) Nos.778 and 779 of 2017

M/s.Veesons Energy Systems Pvt Ltd.,
rep. By its Managing Director
Mr.V.Ramakrishnan : Petitioner in both petitions

Vs.

1.The Chief Manager & Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
No.1112, Raja Plaza, Avinashi Road,
Coimbatore - 641 037

2.The Chief Manager & Authorised Officer,
State Bank of Inida,
SME Branch, Thuvakudi Industrial Estate,
Thiruchirappalli. : Respondents in both petitions

Prayer : Writ petitions filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the first respondent in the impugned possession notice dated 18.11.2016 and to quash the same, being in derogation of the provisions of the said SARFAESI Act, the classification of NPA being contrary to the Reserve Bank of India guidelines, arbitrary exercise and failure to consider Corporate Debt Restructuring (CDR) in terms of the guidelines of Reserve Bank of India, by forbearing the respondents from in any manner proceeding under the provisions of the SARFAESI Act.

For Petitioner : Mr.AR.L.Sundaresan, Senior counsel for M/s.S.Anuradha Balaji

For Respondents : Mr.Om.Prakash, senior counsel for Mr.V.Meenakshi Sundaram

ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J.)**

This Court elaborately heard the submissions of Mr.AR.L.Sundaresan, learned senior counsel for Ms.Anuradha Balaji, learned counsel appearing for the petitioner and Mr.Om Prakash, learned senior counsel for Mr.V.Meenakshi Sundaram, learned counsel appearing for the respondents.

2. The first hurdle, which the petitioner has to get over, is with regard to the maintainability of the writ petitions against the impugned notices, which are possession notices issued under Section 13(4) of SARFAESI Act. Settled legal position in that, the writ petitions are not maintainable as against the impugned notices as the petitioner has an effective alternative remedy before the Debt Recovery Tribunal

3. The learned senior counsel for the petitioner would contend that the petitioner is a going concern and there are several employees in the concern and there are orders to be fulfilled and if in the meantime, coercive action is initiated against the petitioner, it would be prejudicial to their interest. Furthermore, it is submitted that the symbolic possession has been taken by the respondent Bank and the petitioner has taken every endeavour to infuse funds so as to bring the petitioner out of the present sticky situation. Further, it is submitted that due diligence is being conducted in the factory premises of the petitioner for the purpose of securing funds from certain third party investors.

4. The learned senior counsel appearing for the respondent bank would submit that enough indulgence has been granted to the petitioner and inspite of an earlier offer made to the petitioner to bring Rs.20 crores, within a time frame, the petitioner had only brought Rs.2.5 crores, and the bonafides of the petitioner is in question. Furthermore, it is submitted that four years have lapsed, since such an indulgence was granted by the bank and the petitioners are dragging on the matter and defeating the interest of the respondent bank, which had financed substantial sum of money to the petitioner.

5.After having heard the learned senior counsel for the parties and carefully perused the materials placed on record, we are of the firm view that the writ petitions are not maintainable against the impugned notices under Section 13(4) of SARFAESI Act. Proper remedy for the petitioner is to approach the Debt Recovery Tribunal.

6. The learned senior counsel for the petitioner would contend that if the petitioner had to approach the Debt Recovery Tribunal, they should be protected in the interregnum.

7.Considering the fact that the writ petitions were entertained by the Division Bench of this Court on 21.12.2016 and interim order of statusquo was granted in favour of the petitioner on 09.01.;2017, which has been extended from time to time, we are inclined to grant some time to the petitioner to approach the Debt Recovery Tribunal.

8.Accordingly, while dismissing the writ petition as not maintainable, the petitioner is granted liberty to approach the Debt Recovery Tribunal, to challenge the impugned possession notices. The respondent bank shall not initiate any coercive action against the petitioner and maintain statusquo, which is prevailing as on today till 30.04.2017. It is made clear that this protection shall not operate beyond the date on which petition is filed before the Debt Recovery Tribunal nor it would interdict the other statutory provisions with regard to pre-deposit if any to be paid. It is made clear that all the contentions raised by both the petitioner and the respondent bank are left open to be agitated before the Tribunal. The Tribunal,a while computing limitation, shall exclude the period from the date of filing of the writ petition i.e. on 28.11.2016 till the date on which, certified copy of this order is issued. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

+2 CC to M/s.J.MARIA ROSELINE, Advocate, SR NoS.17259 and 17797
+2 CC to M/s.V.MEENAKSHISUNDARAM, Advocate, SR No. 17473
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PSM/SV-MMS/SAR4/27.03.2017/3P/5C

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