



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.[MD].No.24759 of 2016
and
W.M.P. (MD) Nos.17898, 17899/2016 and 246/2017

M/s.Nisha Kishan Spinning Mills Pvt. Ltd.,
Rep. by its Managing Director,
Mr.S.K.A.P.Balakrishnan : Petitioner

Vs.

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

2.State Bank of India,
Rep. by its Branch Manager,
SME Branch, Theni-02277,
No.285, Periyakulam Road,
Theni-625 531.

3.Tex Tech Indo (India) Pvt. Ltd.,
Rep. by its Manager,
R.Krishnakumar
[R-3 impleaded as per the order of
this Court dated 23.01.2017 in
W.M.P. (MD) No.907 of 2017] : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the E-Auction Sale Notice in SAMB/CBE/CLO III/1569, dated 04.11.2016 issued by the first respondent and quash the same and further, declare the subsequent alleged sale held on 15.12.2016 as null and void and consequently, direct the first respondent to conduct the sale of secured assets by way of private treaty in accordance with Rule 8(5)(d) of Secured Credit (Enforcement) Rules, 2002.



WEB COPY

For Petitioner : Mr.Veera Kathiravan,
Senior Counsel,
For M/s.Vastlaw Associates
For Respondent No.1 : Mr.S.Sethuraman,
For Mr.A.R.M.Ramesh
For Respondent No.3 : Mr.T.V.Sureshkumar,
For M/s.Genicon & Associates

O R D E R

[Order of the Court was made by R.SUBBIAH, J.]

The present Writ Petition has been filed seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the E-Auction Sale Notice in SAMB/CBE/CLO III/1569, dated 04.11.2016 issued by the first respondent and quash the same and further, declare the subsequent alleged sale held on 15.12.2016 as null and void and consequently, direct the first respondent to conduct the sale of secured assets by way of private treaty in accordance with Rule 8(5)(d) of Security Interest (Enforcement) Rules, 2002.

2. The main contention raised by the petitioner in this Writ Petition is that the first respondent issued the fresh impugned sale notice dated 04.11.2016 fixing the E-Auction on 15.12.2016 and in the said sale notice, the first respondent undervalued the property and fixed the separate reserved price for the machineries. But, the respondents have not mentioned the particulars/list of machineries in the sale notice. The petitioner identified two purchasers for the machineries by way of private sale and approached the respondent bank. However, the same was not considered by the respondents. The first respondent has conducted E-Auction sale for machineries alone on 15.12.2016 and confirmed the same in favour of a single bidder. It is contended that the respondents have not conducted the sale of machineries in accordance with SARFAESI Rules. Thus, the learned Senior Counsel for the petitioner seeks to quash the E-Auction sale notice dated 04.11.2016 and to declare the subsequent alleged sale held on 15.12.2016 as null and void.

3. The learned counsel for the first respondent as well as the learned counsel for the third respondent vehemently opposed the prayer of the petitioner stating that the petitioner is having an alternative remedy before the Debts Recovery Tribunal. Therefore, the Writ Petition is liable to be dismissed.

4. In our considered view, when the petitioner is having an alternative remedy, this Court is not inclined to entertain the present Writ Petition. However, after hearing the submissions made by the learned counsel on either side, this Court is inclined to pass the following order:



The petitioner is directed to approach the Debts Recovery Tribunal by filing an appropriate application, within a period of one week from today and on filing of such application, the Debts Recovery Tribunal is directed to consider and dispose of the same on merits and in accordance with law, within a period of two weeks thereafter. It is made clear that this Court has not expressed any opinion with regard to the merits of the claim made by the petitioner. Till the disposal of the matter by the Debts Recovery Tribunal, the respondents are directed to maintain status quo as on date.

5. The Writ Petition stands disposed of in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Authorized Officer,
State Bank of India,
Stressed Assets Management Branch,
No.1112, Raja Plaza,
Avinashi Road,
Coimbatore-641 037.
- 2.The Branch Manager,The State Bank of India,
SME Branch, Theni-02277,
No.285, Periyakulam Road,
Theni-625 531.

+1CC to M/S.ARM Ramesh, Advocate, SR.No. 3572
+1CC to M/S.Genicon & Associates, Advocate, SR.No. 3633
+1CC to M/S.Vast Law Associates, Advocate, SR.No. 3577

Order made in
W.P.[MD].No.24759 of 2016
Dated: 23.01.2017

SML
AM/SKN/SAR-1/27.01.2017/3P/6C