THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 12819 OF 2017

DATE: 31st OCTOBER 2017

Between:
Meliora Asset Reconstruction Company Limited
… Petitioner

AND

The Commercial Tax Officer,
Ramachandrapuram & others.
… Respondents

Counsel for the petitioner : Sri K. Raji Reddy

Counsel for the respondents : Sri Shaik Jeelani Basha, Special Standing Counsel for Commercial Taxes (AP)

THE COURT MADE THE FOLLOWING:

<u>O R D E R</u>: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This Writ Petition is filed for issue of *mandamus* to declare the action of respondent No.1 in demanding the petitioner to remit Rs.49,50,195/- payable by respondent No.3 towards sales tax dues for the period 2011-12 to 2013-14 and AG Audit objections for the years 2010-11 and 2011-12 under Section 26 of A.P. VAT Act, 2005 as illegal and arbitrary and consequently, to set aside the letter *vide* reference No. A7/119/2014, dated 04.04.2017 of respondent No.1 and Gazette Notification No. EG No. 190/2016, dated 06.12.2016 got published by respondent No.2.

Heard the learned counsel for the parties and perused the record.

The petitioner pleaded that the Andhra Bank, Rayavaram Branch, East Godavari District has sanctioned OCC loan facilities to an extent of Rs.497.97 lacs in favour of respondent No.3, on creating charge over its plant and machinery and other immovable properties belonging to the guarantors; that the said loan facilities were subsequently enhanced; that respondent No.3 has committed default in payment of loan amount to the Andhra Bank, as a result of which, the loan was declared as 'NPA'; that the bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') against respondent No.3 and its guarantors / mortgagors. Aggrieved by the notice issued under Section 13(2) of the said Act, the borrower / mortgagors / guarantors have filed S.A. No. 306 of 2014 and S.A. No. 74 of 2015 before the Debts Recovery Tribunal, Visakhapatnam and the same are pending; and that the Andhra Bank, Rayavaram Branch has filed O.S. No. 263 of 2016 before the Debts Recovery Tribunal, Visakhapatnam and the same is also pending.

The petitioner further pleaded that the creditor i.e. Andhra Bank, Rayavaram Branch, East Godavari District has assigned the debt of respondent No.3 in favour of the petitioner under Assignment Agreement dated 30.06.2016, which was registered as document No. 5539 of 2016 on 28.10.2016 in the office of the Sub-Registrar, Ramachandrapuram; that by virtue of the said deed, the petitioner has stepped into the shoes of the creditor bank to recover the dues from respondent No.3; that while the petitioner is in the process of taking further course of action under the Act for recovery of dues from respondent No.3, respondent No. 1 addressed various letters commencing from

05.08.2016 to the petitioner and the creditor bank demanding them to pay a sum of Rs.49,50,195/- payable by respondent No. 3 towards tax under A.P. VAT Act, 2005. As noted hereinabove, this demand is challenged in this Writ Petition, on the ground that under Section 26E of the SARFAESI Act, inserted by Section 18 of Act 44 of 2016 with effect from 01.09.2016, after the registration of security interest, the debts due to any secured creditor shall be paid in priority of all other debts.

A counter-affidavit is filed by the Commercial Tax Officer, Ramachandrapuram Circle, wherein he has asserted the right of the Commercial Tax Department to recover the debt from respondent No.3.

At the hearing, learned counsel for the petitioner placed heavy reliance on Sections 26-C & 26-E of the SARFAESI Act, which read as under:

" **26C. Effect of the registration of transactions, etc.—**

(1) Without prejudice to the provisions contained in any other law, for the time being in force, any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or other creditor or filing of attachment orders under this Chapter shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction of such security interest or attachment order, as the case may be.

(2) Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and this Chapter, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease or assignment or licence of such property or attachment order subsequent to such registration, shall be subject to such claim:

Provided that nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business."

Section 26-E of the SARFAESI Act reads as under:

" **26E. Priority to secured creditors.**—Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

Mr. Shaik Jeelani Basha, learned special Standing Counsel for Commercial Taxes (Andhra Pradesh) submitted that though Section 26-E of the SARFAESI Act provided for priority to the person, in whose favour security interest is registered, for recovery of debt from the borrower, as the said provision has come into force with effect from 01.09.2016, it has only prospective operation and that as the debt was incurred by respondent No.3 prior to the said provision coming into force, the petitioner cannot claim priority.

We have carefully considered the respective submissions of the learned counsel for the parties.

From the above re-produced provisions, it is abundantly clear that after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses, etcetera. It is not in dispute that the assets, over which security interest is created by way of registration originally in favour of the Andhra Bank which was later assigned to the petitioner, are still standing in the name of respondent No.3 / the guarantors. Therefore, the question of Section 26-E of the Act being prospective or retrospective does not arise as regards the assets, which remained intact without being sold by any creditor as on the date of coming into force of the said provision. Therefore, the petitioner has priority over all other debts including revenues, taxes, cesses, etcetera payable to the Central or State Governments or local authorities.

For the afore-mentioned reasons, the demand made by respondents 1 and 2, impugned in this Writ Petition, is declared as illegal and unenforceable. However, it is needless to observe that on satisfaction of the debt of the petitioner, if any amount remains, respondents 1 and 2 shall be free to take appropriate action in accordance with law for recovery of the same.

Subject to the above observations, the Writ Petition is allowed. No costs.

As a sequel, W.P.M.P.Nos. 15923 and 15924 of 2017 filed by the petitioner for interim relief shall stand disposed of as infructuous and the order dated 12.04.2017 shall stand automatically vacated.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

31st October 2017

ksld