

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

WRIT PETITION No.17921 of 2017

ORDER: (per SK,J)

This writ petition was filed with the following prayer:

For the reasons stated in the accompanying affidavit and in the circumstances as stated above, it is therefore prayed that this Court may be pleased to issue a writ order or direction, one more particularly in the nature of Writ of Certiorari to quash the order dated 19.05.2017 passed by the Debts Recovery Appellate Tribunal in Tender No.88 of 2017 which confirmed the order of dismissal dated 10.04.2017 in I.A.No.20 of 2017 by the Debt Recovery Tribunal, Visakhapatnam in S.A.No.162 of 2015 and issue consequential directions.

- A. To call for the records in S.A.No.162 of 2015 and the connected records thereto.
- B. To direct the 1st and 2nd respondents to grant/give NOC to the petitioner company for its merger and amalgamation with M/s. Sri Brunda Infrastructure Private Limited pending in C.P.Nos.297 & 298 of 2016 on the file of the National Company Law Tribunal, Hyderabad.
- C. To direct the 1st & 2nd respondents to grant/give NOC to the petitioner company and M/s. Sri Brunda Infrastructure Private Limited to facilitate in mobilizing sanction of facilities of term loan and working capital limits in their name from any other bank or financial institution or any other entity,

And pass any such other or further orders as this Court deems fit and proper in the circumstances of the case.'

Having heard Sri D.V.Seetharama Murthy, learned senior counsel representing Sri N.Ashwani Kumar, learned counsel for the petitioner, we are of the opinion that the order dated 19.05.2017 passed by the Debts Recovery Appellate Tribunal, Kolkata, insisting upon a pre-deposit as required under the second proviso to Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), does not suffer from any illegality. On the other hand, the very application in I.A.No.20 of 2017 filed by the petitioner in SA No.162 of 2015 before the Debts Recovery Tribunal, Visakhapatnam, was utterly misconceived as the petitioner sought a direction thereunder to the respondent bank to issue a 'No Objection Certificate' in relation to the proposed merger

of the petitioner with another corporate entity. Such an application did not fall within the ambit of the SARFAESI Act and the Debts Recovery Tribunal, Visakhapatnam, ought not to have entertained the same. However, it did so and rejected the request of the petitioner on merits.

Having suffered this adverse order, the petitioner appealed to the Debts Recovery Appellate Tribunal, Kolkata, which insisted upon the statutory pre-deposit as a condition precedent to entertain the appeal. As the very application filed by the petitioner before the Debts Recovery Tribunal, Visakhapatnam, in I.A.No.20 of 2017 in S.A.No.162 of 2015 was misconceived, any observations made in the order dated 10.04.2017 passed by the Debts Recovery Tribunal, Visakhapatnam, while dismissing the said I.A. can have no binding effect and it is left open to the petitioner to invoke appropriate remedies available to it in law in relation to the grievance sought to be raised by it in the said I.A. In the event the petitioner does so before the proper authority, such authority shall consider the matter on its own merits and in accordance with law without reference to the observations made by the Debts Recovery Tribunal, Visakhapatnam, in its order dated 10.04.2017 in I.A.No.20 of 2017 in S.A.No.162 of 2015.

The writ petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

GUDISEVA SHYAM PRASAD,J

Date:07.06.2017

Note:

Furnish C.C. in two days.

(B/o) PGS