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

<u>WRIT PETITION No. 19827 of 2017</u>

<u>O R D E R:</u> (per SK, J)

The petitioners assail the action of the IDBI Bank Limited in taking physical possession of the secured assets. They seek a consequential direction to reopen and release the possession of the said assets in their favour.

2. The petitioners stood as guarantors for the cash and credit facilities availed by Anil Singh and others. Admittedly, the petitioners are related to the principal borrowers. As a default was committed in relation to the repayment of the loans availed from the IDBI Bank Limited, a Demand Notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assests and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act), was issued by the Bank followed by measures under Section 13(4) thereof. By order dated 25.04.2017, the Collector and District Magistrate, West Godavari District, directed delivery of possession of the secured assets offered as guarantee by the petitioners to the Bank. This order was passed in exercise of power under Section 14 of the SARFAESI Act. Aggrieved thereby, the petitioners are before this Court.

3. Sri B. Harinatha Rao, learned counsel for the IDBI Bank, would submit that though the possession notice mentions the outstanding due towards the subject loan account as Rs.4,93,89,500/-, it was with reference to the date 31.03.2014. He would submit that the present outstanding dues in relation to the subject loan account would be in the range of Rs.7,00,00,000/-.

4. Smt. Almas Begum Mohammed, learned counsel for the petitioners, would submit that a poultry products business is being run in the secured assets

and the livelihood of about 550 employees would be at stake if the industry is shut down abruptly.

5. As the Bank is still at the stage of taking possession and is yet to initiate measures for sale of the property, we are of the opinion that sufficient time may be granted to the petitioners to prove their *bona fides* and to clear the entire outstanding dues in relation to the loan for which they offered their properties as security.

6. Smt. Almas Begum Mohammed, learned counsel, would submit that a Demand Draft for Rs.75,00,000/- is available with her and the same would be deposited with the Bank in proof of the petitioners' *bona fides*. The original Demand Draft bearing No.744505 dated 17.06.2017 drawn on State Bank of India, Tanuku Branch was produced by her.

7. Taking note of the aforestated averments, we dispose of the writ petition with the following directions.

(i) The petitioners shall immediately deposit a sum of Rs.75,00,000/- with the IDBI Bank Limited.

(ii) Upon such deposit, the respondent-Bank shall surrender physical possession of the secured assets to the petitioners in which the poultry products business is being carried on.

(iii) The Bank shall however continue to remain in symbolic possession of the said properties and would be at liberty to proceed on the strength of the order dated 25.04.2017 passed by the Collector and District Magistrate, West Godavari District, in exercise of power under Section 14 of the SARFAESI Act.

(iv) The petitioners shall deposit a sum of Rs.2,08,34,000/- on or before 31.07.2017.

(v) The petitioners shall again deposit a sum of Rs.2,08,34,000/- on or before 31.08.2017.

(vi) The petitioners shall deposit Rs.2,08,34,000/- along with the balance dues, if any, apart from the accrued interest, if any, and costs and expenses as quantified by the respondent-Bank on or before 30.09.2017.

8. Upon such deposits being made, the Bank shall treat the loan accounts as fully discharged and return the title documents to the petitioners. In the event the petitioners commit default in payment of any of the instalments as stated supra, the Bank would be at liberty to proceed with the matter in accordance with law from the stage of taking possession under Section 14 of the SARFAESI Act.

9. It is made clear that the petitioners would not be entitled to extension of time, be it for any reason whatsoever, and would have to abide by the time stipulations stated supra. This order shall however not preclude the petitioners from availing any one-time settlement schemes offered by the Bank in the interregnum. Pending miscellaneous petitions, if any, shall also stand disposed of. No order as to costs.

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SANJAY KUMAR, J

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GUDISEVA SHYAM PRASAD, J

22nd June, 2017

Note: Issue C.C. by tomorrow
B/o KSM

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