THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION NO.38058 OF 2017

O R D E R

(*Per Hon'ble Sri Justice Sanjay Kumar)*

Trinity Beverages Private Limited Employees Union and its General Secretary are the petitioners. Their prayer in this writ petition reads as under:

> 'It is prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction and more particularly, one in the nature of Writ of Mandamus
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> i. declaring the Notice dated 28.11.2016 issued under Section 13 (4), Sale Notice dated 29.08.2017 and the publication caused in the newspapers on 21.10.2017 proposing to conduct an e-auction on 30.11.2017 for the sale of the Subject Property including the plant and machinery contained therein as arbitrary, unconstitutional and consequently set-aside the same;
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> ii. permitting the 2nd Respondent Company to continue the business and manufacturing operations at the manufacturing unit of the 2nd Respondent located at the Subject Property and direct the 2nd Respondent Company to deposit the generated income from the conduct of business at the Subject Property with the 1st Respondent Bank on day to day basis towards arrears in loans;
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> iii. appointing a manager/receiver/administrator to monitor the conduct of business of 2nd Respondent Company at the Subject Property; and
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> iv. pass such other Order or Orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.'

Heard Sri S.Niranjan Reddy, learned senior counsel appearing for Sri K.V.Rusheek Reddy, learned counsel for the petitioners, and Sri M.Narender Reddy, learned senior counsel representing Sri M.Srikanth Reddy, learned counsel for the State Bank of India, the first respondent herein. In the light of the order proposed to be passed by this Court, we are of the opinion that the other respondents do not need to be put on notice nor afforded an opportunity of hearing as the *lis* is primarily between the petitioners and the first respondent bank.

In so far as the sale notice dated 29.08.2017 is concerned, whereunder the respondent bank proposed to put the secured asset to sale on 30.11.2017, we are informed that the said sale failed to materialize for want of bidders. Challenge to this sale notice is therefore rendered purely academic and does not warrant consideration on merits at this stage.

The main grievance put forth by the petitioners is that the respondent bank did not adhere to the statutory duty cast upon it in terms of Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'), as interpreted by the Supreme Court in ***KESHAVLAL KHEMCHAND AND SONS PRIVATE LIMITED V/s. UNION OF INDIA***[1].

Sri S.Niranjan Reddy, learned senior counsel, would point out that Section 13(4) of the SARFAESI Act affords a choice to the secured creditor to take recourse to one or more of the measures enumerated thereunder. He would rely upon the observations of the Supreme Court in para 35 of ***KESHAVLAL KHEMCHAND AND SONS PRIVATE LIMITED*** which read as under:

'**35**. In our view, such a classification is relevant and assumes importance in the decision-making process of the secured creditor under Section 13(2) as to which one of the steps contemplated under Section 13(4) should be resorted to in the case of a given defaulting borrower. We hasten to add that it may not be the only factor which determines the cause of action to be taken by the secured creditor. The magnitude of the amount due and outstanding in a given case,

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[1] (2015) 5 SCC 770

the reasons which prompted the borrower to default in the repayment schedule, the nature of the businesses carried on by the defaulting borrower, the overall prospects of the defaulter's business, national and international market conditions relevant to the business of a defaulter, in our opinion, are some of the factors which are germane to a decision that action under Section 13(4) is required to be taken against a defaulting borrower. Even in a case where on a rational and objective consideration of all the relevant factors including the representations/objections referred to under Section 13(3-A), the creditor comes to a conclusion that steps contemplated under Section 13(4) are required to be taken in the case of a particular defaulter, the further question as to which one of the steps contemplated under Section 13(4) is required to be taken or would meet the ends of justice is a matter for a further rational decision on the part of the secured creditor.'

Sri M.Narender Reddy, learned senior counsel appearing for the bank, would fairly concede that the record does not reflect the bank having applied its mind to the various options available to it in terms of Section 13(4) of the SARFAESI Act before deciding to put the secured asset to sale.

However, as the proposed sale has fallen through on its own for want of bidders, the respondent bank is restored to the earlier position and would therefore be at liberty to apply its mind to the choices available to it under the statutory provision in terms of the law laid down by the Supreme Court in ***KESHAVLAL KHEMCHAND AND SONS PRIVATE LIMITED*** at least now and take a reasoned decision.

Sri S.Niranjan Reddy, learned senior counsel, would further point out that the second respondent is a running concern and the sale of its assets at this stage would adversely impact the livelihood of its employees. This aspect of the matter would have to be looked into and borne in mind by the first respondent bank while making a choice as to which of the measures available to it under Section 13(4) of the SARFAESI Act should now be taken recourse to.

Though challenge has also been made to the possession notice dated 28.11.2016 issued by the bank under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, we are not inclined to interfere with the said possession notice at this stage.

Sri M.Narender Reddy, learned senior counsel, would further inform us that this possession notice has already been subjected to challenge by the second respondent company, the borrower, in S.A.No.1413 of 2017 before the Debts Recovery Tribunal, Hyderabad.

In any event, as the bank is now required to take a decision as to which of the measures it would take recourse to under Section 13(4) of the SARFAESI Act, it would necessarily have to make an informed choice before it proceeds to secure actual physical possession. This would be necessary as we are told that the second respondent company's Unit is a running concern and taking over of the actual physical possession without a decision first being taken by the bank as to whether it should be assigned or leased or sold under Section 13(4)(a) or whether management of its business should be taken over under Section 13(4)(b), would impair the future running of the Unit if it is brought to a standstill. The respondent bank shall therefore take concrete measures for securing the possession of the secured asset only after taking a reasoned decision as to which of the choices available to it under Section 13(4) should be taken recourse to. It is open to the respondent bank to consult the petitioner employees union so as to gauge the viability of the concern so as to take a reasoned decision.

The writ petition is disposed of accordingly. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

20th DECEMBER, 2017

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