IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.1437 of 2010

BAPL INDUSTRIES LTD.,
Reg.Office Bhuradia Chambers,
123/1, Bharathi Park Road, No.2,
Coimbatore - 641 043.
Rep. by its Managing Director,
Mr.M.M.Bhuradia. .. Appellant/3rd Respondent

versus

1. Canara Bank,
R.S. Puram Branch,
Rep. by Chief Manager /
Authorised Officer Th.N.Viswanathan,
No.100, D.B.Road, R.S.Puram,
Coimbatore - 641 002.

2. Appellate Authority for Industrial &
Finance Reconstruction,
Jeevan Prakash Building,
K.G.Marg, New Delhi - 110 001.

3. Board for Industrial and Financial
Reconstruction,
Jawahar Byapar Bhavan,
1, Tolstoy Marg, New Delhi - 110 001.

4. Provident Fund Commissioner,
E.P.F.O., Chennai. .. Respondents/Petitioner4,
Respondent 1,2 & 4

Writ Appeal filed under clause 15 of letter patent Act against the order dated 09.06.2010 in W.P.No.459 of 2008.

PRAYER IN WP.459/2008:

Writ Petition filed Under Article 226 of the Constitution of India for the issuance of a writ of Certiorari, calling for the concerned records relating to the orders of the 1st respondent AAIFR dated 25/9/2007 in Appeal No.53/2007 setting aside the orders of the 2nd respondent BIFR dated 19.12.2006 in Case No.77/2004 and quash the same as illegal, arbitrary, contrary to the provisions of the 3rd Proviso to S.15(1) of Sick Industrial Companies(Special Provisions) Act R/w S.41 of the SARFAESI Act

For Appellant : No appearance

For Respondents : Mr.R.Rajesh (for R1)

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Earlier, when the writ appeal came up for hearing, Mr.S.Chandrasekharan, one of the learned counsel on record submitted that Mr.K.Sivakumar Kennedy, counsel on record is no more. After the filing of the writ appeal, Mr.Chandrasekharan had been empaneled as one of the counsel for Canara Bank and therefore, he had returned, the entire cause papers to the appellant. There is nothing to indicate that the appellant had filed any fresh vakalat. In the abovesaid circumstances, we directed the Registry to print the name of BAPL Industries, in the cause list. Today there is no appearance either in person or through pleader. Therefore, this Court proposes to consider the material on record and the submission of Mr.R.Rajesh, learned counsel for Canara Bank.

2. Material on record discloses that on 24.01.2008, BAPL Industries Ltd., having Registered Office at Bhuradia Chambers, 123/1, Bharathi Park Road, No.2, Coimbatore - 641 043, availed loan from Canara Bank by mortgaging immovable properties, by deposit of title deeds. On 28.01.1998, there was a deferred payment guarantee for Rs.6,04,13,421/- by the bank. The first installment fell due on 18.02.2001. As the appellant defaulted, a notice under section 13 (2) dated 22.11.2003 of the SARFAESI Act, 2002, was issued by the bank demanding a sum of Rs.6,47,98,857/- + unapplied interest from 01.07.2003 at 16.75% per annum as due to the bank and that the appellant was directed to pay within 60 days from the date of receipt of notice, failing which, action under section 13(4) of the SARFAESI Act, 2002, will be taken. Appellant failed to pay the said amount. Therefore, possession notice dated 09.03.2004 under Section 13

(4) of the SARFAESI Act, 2002 has been issued for taking symbolic possession.

3. Being aggrieved by the possession notice, on 07.05.2004, appellant filed S.A.No.1 of 2004 under Section 17 of the SARFAESI Act, 2002, before Debts Recovery Tribunal, Coimbatore. For realising the amount due, on 12.04.2005 bank filed OA No.92 of 2005 under Section 19 of the Recovery of Debts Due to Bank and Financial Institutions Act, before Debts Recovery Tribunal, Coimbatore.

4. In the meanwhile, actual physical possession taken by the bank has been brought to the notice of the tribunal. In S.A.No.1/04 on 30.08.2006, Debts Recovery Tribunal, Coimbatore has granted conditional stay of the operation of possession notice, subject to condition that the appellant deposits Rs.2.6 Crores. Being aggrieved by the said order, appellant/BAPL INDUSTRIES LTD, Coimbatore, has approached Debts Recovery Appellate Tribunal, Chennai. On 29.11.2006, Debts Recovery Appellate Tribunal, Chennai, while sustaining the conditional order modified the amount to Rs.2 Crores, instead of Rs.2.6 Crores, and also extended time. Conditional order had not been complied with.

5. Vide order dated 19.12.2006, in Case No.77 of 2004, BIFR proceedings pending before SICA. In the light of the amendment to Section 15 of SICA Act held that i.e. Introduction of provisos 2 and 3 to Section 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985 as abated.

6. Being aggrieved against the order made in Case No.77 of 2004 dated 19.12.2016, by BIFR, appellant has filed Appeal No. 53 of 2007 before the Appellate Authority For Industrial and Financial Reconstruction. Vide order dated 25.09.2007, the appellant forum, has set aside the order of BIFR dated 19.12.2016 and restored status quo ante.

7. After hearing the learned counsel for the parties, SA.No.1 of 2004 filed under Section 17 of the SARFAESI Act, 2002 was dismissed by the Tribunal on 12.03.2008. O.A.No.92 of 2005 was allowed by Debts Recovery Tribunal, Coimbatore and that on 16.05.2008, recovery certificate was issued.

8. Being aggrieved by the order of the appellate authority, under SICA, Canara Bank has filed W.P.No.459 of 2008 for a writ of certiorari to quash the order of the Appellate Authority For Industrial and Financial Reconstruction dated 25.09.2007, in Appeal No.53 of 2007, setting aside the orders of Board for Industrial and Financial Reconstruction Order, New Delhi, the 2nd respondent herein dated 19.12.2006, in case No.77 of 2004, as

arbitrary, and contrary to the provisions of the 3rd proviso to Section 15(1) of the Sick Industrial Companies (Special Provisions) Act read with Section 41 of SARFAESI Act, 2002.

9. After considering the statutory provisions of Sick Industrial Companies (Special Provisions) Act vis-a-vis, SARFAESI Act, 2002, the amending provisions, Writ Court, vide order dated 09.06.2010, allowed W.P.No.459 of 2008 filed by Canara Bank, Coimbatore. Being aggrieved, instant Writ Appeal is filed by BAPL Industries Limited, Coimbatore.

10. Record of proceedings shows that on 20.09.2000, while ordering notice, a Hon'ble Division Bench of this Court, has passed the following orders.

> "Notice returnable in two weeks. In the meantime, no coercive steps shall be taken for recovery of the amount. However, it is made clear that that appeal pending before the DRAT shall be proceeded in accordance with law."

11. Thereafter, on 06.10.2010, a Hon'ble Division Bench has recorded as hereunder.

> "It appears that at the instance of the appellant, by order dated 20.09.2010, interim stay was granted. Now the appellant, after obtaining interim stay, is seeking adjournment. The adjournment is allowed, but the interim order dated 20.09.2010 is recalled. It is made clear that the pendency of this appeal will not come in the way of the Debts Recovery Appellate Tribunal, to proceed with the matter."

12. On 31.01.2018, this Court has recorded as follows:

> "On behalf of Mr.S.Thankasivan, learned counsel on record for R.R.3 and 4, submission has been made by Mr.R.Sundara Kamesh that the above respondents have taken back the entire case papers. Submission is placed on record.
> Registry is directed to delete the name of Mr.S.Thnakasivan from the cause list.
> Mr.R.Rajesh, learned counsel for R1, Bank submitted that in all probability,matter would have been settled & he seeks time to get instructions.
> Post on 5.2.2018, immediately after motion."

13. Today, there is no representation for the petitioner. Mr.R.Rajesh, learned counsel for the Canara Bank submitted that subsequently, out of the two sureties, machineries, land and building offered as security, machineries were sold and that a sum of Rs.232.50 lakhs and Rs.15.50 lakhs, was credited on

22.03.2014 and 05.03.2015, respectively. Factory and building was also sold for Rs.552 Lakhs and credited on 16.06.2017. Appellant still owed a sum of Rs.12.42 crores, as on 31.12.2017. There is no other security available in the account of the appellant, for realisation of the balance amount.

14. Inviting the attention of this Court to the introduction of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (Act 1 of 2004) and the notification in SO.3568(E) dated 25.11.2016, Ministry of Finance, Mr.R.Rajesh, learned counsel for Canara Bank submitted that on and from 1st December 2016, Sick Industrial Companies (Special Provisions) Act, 1985 has been repealed and thus, in view of the subsequent development, nothing survives in the instant writ appeal.

15. Facts and submissions made by the learned counsel for the respondent have not been refuted. Sick Industrial Companies (Special Provisions) Act, 1985 has been repealed. Giving due consideration to the submissions, and going through the material on record, we are of the view that the Writ Appeal deserves to be dismissed both on law and facts. Accordingly, writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ars
To

1. Appellate Authority for Industrial &
Finance Reconstruction,
Jeevan Prakash Building,
K.G.Marg, New Delhi - 110 001.

2. Board for Industrial and Financial
Reconstruction,
Jawahar Byapar Bhavan,
1, Tolstoy Marg, New Delhi - 110 001.

+1cc to Mr.R.RAJESH, Advocate, S.R.No. 9867

W.A.No.1437 of 2010

TR(27/02/2018)