

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
and  
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.11930 of 2018  
and  
W.M.P.No.13945 of 2018

M/s.PPS Enviro Power Private Limited  
Represented by its Managing Director  
Plot No.102/36, Defence Officers Colony  
Ekkatuthangal, Chennai - 600 032 ... Petitioner

Vs.

M/s.State Bank of India  
Stressed Assets Management Branch  
"Red Cross Buildings", 32, Montieth Road  
Egmore, Chennai - 600 008 ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration or any other appropriate writ or order or directions, to declare the act of the respondent in sending notice to the petitioner's clients by the respondent's bank as illegal.

For Petitioner : Mr.V.Arunagiri  
For R3 : Mr.K.Chandrasekaran for SBI

ORDER

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

Notice issued under Section 13(4)(d) of the SARFAESI Act, 2002 r/w Rule 4(5) of the Security Interest (Enforcement) Rules, 2002, impugned in this writ petition is reproduced:

"The Chairman,  
M/s.Upasana Engineering Ltd.,  
98-A, III Floor,  
Dr.Radha Krishnan Salai,  
Mylapore, Chennai - 600 004.

Dear Sir,

M/s.PPS Enviro Power Private Limited (PPSEPPL)

We have granted various credit facilities to M/s.PPS Enviro Power Private Limited, Plot 102/36, Defence Officers Colony, Ekkatuthangal, Chennai-600032 also at D-97A, Phase 1, Road No:18, IDA, Jeedimetla, Hyderabad 500 055 (herein after called, PPSEPPL). The credit facilities are interalia secured by hypothecation of receivables. The operation and conduct of the loan accounts by PPSEPPL had been irregular and became NPA.

The notice under Sec 13 (2) of the SARFAESI Act was issued to the above company on 14.11.17. Despite the above Notice, the company failed to pay our dues of Rs.234,87,62,756.59 (Rupees Two hundred and thirty four crores eighty seven lacs sixty two thousand seven hundred and fifty six and paise fifty nine only) as on 31.10.2017.

As per Sec 13(4) (d) of the SARFAESI Act, 2002, the Bank is empowered to require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money become due to the borrower, to pay the secured creditor, so much of money as is sufficient to pay the secured debt. As per sec 13 (5) of the SARFAESI Act, any payment made by any person referred above to the schedule creditor shall give such person a valid discharge as if he has made payment to the borrower.

Accordingly you are put on notice that in terms of sub section 4 (d) of Section 13 of the SARFAESI Act read with rule 4(5), of the Security Interest (Enforcement) Rules 2002 you shall not transfer, pay or otherwise outstanding monies and receivables to PPSEPPL and you have to pay directly to us for appropriating the same towards loan due. We will give you a proper receipt for the amount received directly by us.

In spite of this letter, if you make payment directly to PPSEPPL, we may thereafter be constrained to initiate legal action against you."

2. During the course of hearing, attention of the learned counsel for the petitioner, was invited to the alternative

remedy provided therefor in the statute. Though some points raised in the writ petition were urged, learned counsel for the petitioner, seeks permission of the court, to withdraw the writ petition, with liberty to approach the Tribunal. He has also made an endorsement to that effect.

3. Placing on record the above, writ petition is dismissed as withdrawn. However, there shall be no order as to cost. Consequently, the writ miscellaneous petition is dismissed. Liberty is granted to the petitioner, to approach the Tribunal. If any application is filed, time spent in this litigation be excluded.

s/d-  
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

asr

To

M/s.State Bank of India  
Stressed Assets Management Branch  
"Red Cross Buildings", 32, Montieeth Road  
Egmore, Chennai - 600 008

+1 CC to Mr.K. Chandrasekaran, Advocate sr 36322.

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SP(21/06/2018)

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