

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.15784 of 2018

Jammu and Kashmir Bank Limited,
Through its Business Unit Parrys Chennai
At: Voltas International Building,
No.52, Armenian Street, Parry, Chennai - 1,
Rep. by its Authorized Officer, Mr.Sushil Kumar Gupta
... Petitioner

vs.

1. The District Collector cum Magistrate,
Tiruvallur Collectorate,
Tiruvallur - 602 001.

2. ETA Engineering Private Limited,
Rep. by its Directors
1. Mr.Abdul Cade Junai Yaseen Mohammed.
2. Mr.Khalid Buhari Abdul Kader.
3. Mr.Abdul Qadir.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the 1st respondent to forthwith consider and pass appropriate and necessary orders in the petitioners petition bearing reference number 2017/9005/01/716740/0808 dated 08.08.2017 filed before the 1st respondent under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 within such time frame as this Hon'ble Court may see fit to impose in accordance with law.

For Petitioner : Mr.Arjun Suresh

For Respondents : Mr.N.Manikandan (for R1)
Government Advocate.

ORDER

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

Seeking assistance, for taking physical possession, Jammu and Kashmir Bank Limited, Chennai, has filed petition dated 08.08.2017, under Section 14 of the SARFAESI Act, 2002, before the District Collector cum Magistrate, Tiruvallur.

2. According to the petitioner, the said petition is pending for nearly ten months. Requisition sent by the petitioner, has not been responded. Left with no other alternative, instant writ petition has been filed for a mandamus, directing the 1st respondent, to pass orders on the petition dated 08.08.2017 filed under Section 14 of the SARFAESI Act, within such time frame to be fixed by this Court.

3. Respondent No.2, is the borrower. As the District Collector cum Magistrate, Tiruvallur, the 1st respondent is bound to pass orders on the application, we are of the view that there is no need to issue notice to respondent No.2. Hence, notice to respondent No.2, is waived.

4. On this day, when the writ petition came up for admission, on instructions, inviting the attention to the schedule mentioned in the Application filed under Section 14 of the SARFAESI Act, 2002 in Reference No. 2017/9005/01/716740/0808 dated 08.08.2017 and that of the securities offered for availing the loan, Mr.N.Manikandan, learned Government Advocate, submitted that there is variance in the schedule of the property mentioned in the application i.e. Reference No. 2017/9005/01/716740/0808 dated 08.08.2017, with that of the securities offered for availing the loan mentioned in the sanction letter dated 15.01.2013 and 06.10.2013. For brevity, schedule mentioned in the application and collaterals offered supra are extracted hereunder

Schedule as in the SARFAESI Application:

Item.1:

All that piece and parcel of land along with industrial shed measuring an extent of 8350 sq.ft. bearing Plot No.10/10A (SP) at Ambattur Industrial Estate in Saidapet Taluk and Chengalpet M.G.R.District admeasuring about 0.80 acres comprised in Y.No.438 PT/453 PT of Ambattur Village bounded on the

North by: 40' Road

South by : Plot No.11(SP)

East by: Plot No.10/10B (SP)

West by: Plot No.10/P (SP)

Situated within the Registration District of Tiruvallur and Registration of Sub-Registrar, Ambattur.

Security for all facilities:

Primary:

- Hypothecation of all kind of stocks lying at various sites, book-debts and all other current assets of the company on pari-passu basis with other regular working capital lenders.Collateral:
- Hypothothecation of P&M, moveable & other fixed assets of the engineering Division of the company.
- Equitable mortgage of Factory Land and building located at South Phase-III, Main Road, Industrial Estate, Ambattur, Chennai, valued at Rs.8.71 Crs. (as per valuation of M/s.K.B.S.Associates dated 26.08.2010) on pari passu basis.
- Equitable mortgage of industrial plot of land and building located at A Wing, Udyog Bhavan, Sandwala Lane, Goregaon East, Mumbai, valued at Rs.4.86 Crs. on parri passu basis.
- Equitable mortgage of factory land and building located at Kalitheerthai Kuppam Village, Mannadapet, Pondicherry, valued at Rs.7.53 Crs. (as per valuation of M/s.K.B.S.Associates dated 26.08.2010 on pari passu basis.
- Equitable mortgage of 10844 sq.ft of Office building called "ETA Star House" (basement, ground floor and 1st floor) situated at Old No.63, New No.71, Sterling Road, Nungambakkam, Chennai - 34 in the name of the company valued at Rs.12.98 Crores as per recent valuation report of KBS Associates Pvt Ltd. dated 20.09.2011.
- Equitable mortgage of land measuring 4.32 acres (1879234 sq.ft.) & factory over it with build up area of 98776.80 sq.ft. situated at Plot No.K-6, Sipcot Industrial Area Phase 11, S.No.273pts. 274 pt and 275 pt., Mumbakkam Village, Sriperumbudur Taluk, Kancheepuram District in the name of the Company valuing Rs.15.33 Crores as per VR dated 20.09.2011 by KBS Associates Pvt. Ltd.
- Equitable Mortgage of Commercial Land & Building consisting of Ground, First, Second, Third & Fourth Floor standing in the name of the company situated at B36, ETA House, 4th Cross Dyavasandra Industrial Estate, Whilefield Road, Bangalore-48, valuding Rs.5.14 Crs.
- Equitable Mortgage of property (Ground +3 storied commercial building, ETA House located in the premises bearing GHMC No.7-1-27/5 on Plot No.9, situated at Ameerpet (Behind Green Park Hotel / Corporate Office) Hyderabad-500016 belonging to the company valuing Rs.3.00 Crs.
- Corporate Guarantee of ETA LLC Dubai.

- Counter Guarantee of the borrower Company for NFB limits."

5. Learned Government Advocate further submitted that for the abovesaid reason, orders are yet to be passed in the application filed under Section 14 of the SARFAESI Act, 2002 and he prayed for four weeks time.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. Section 14 of the SARFAESI Act, 2002 mandates that on receipt of an affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit, pass suitable orders for the purpose of taking possession of the secured assets, within a period of 30 days from the date of application. Proviso to the said Section states that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate, within the said period of thirty days, for the reasons beyond his control, he may after recording reasons, in writing, for the same, pass the order within such also period but not exceeding in aggregate 60 days.

8. The Principal Secretary to Government, vide, Letter No.19498/Res.II/2014-1, dated 09.07.2014, has issued directions, stating that there should be speedy disposal of the application filed under Section 14 of the SARFAESI Act. The said letter is extracted hereunder:-

"I am to invite your kind attention to the reference cited (copy enclosed) wherein the GM, SLBC, Chennai, has requested to advise the District Collectors (District Magistrates) for speedy disposal of applications filed by banks to assist in taking possession of securities of the defaulters charged to the banks under Section 14 of SARFAESI Act, 2002.

2. In this connection, I am to request you to take necessary action for speedy disposal of the applications filed by the banks in taking possession of securities of the defaulters charged to the banks under Section 14 of SARFAESI Act, 2002, without affecting the image of the administration."

9. Following the said letter, in W.P.No.7813 of 2016, dated 22.04.2016, a Hon'ble Division Bench of this Court, has passed the following order:-

"In the light of the above, we direct the District Collector (District Magistrate), Thanjavur District, to pass orders on the Application dated 18/8/2015 in file

Ref.No.34810/2015, filed under Section 14 of the SARFAESI Act, within the period of two months from the date of receipt of a copy of this order. While doing so, procedure set out under Section 14 of the Act should be followed. Mr.B.Kumar, learned Additional Government Pleader is directed to forward the copy of this order to the Principal Secretary to Government, Finance (Res.II), Department, Chennai for appropriate follow up action. 10. Along with the supporting affidavit, to the instant writ petition, the petitioner has also enclosed the copies of the petitions, dated 8/1/2014, 7/5/2014, 11/9/2014, 24/12/2014 and 31/1/2015, filed under Section 14 of the SARFAESI Act, 2002."

10. Placing on record the submission of the learned Government Advocate and in the light of the directions issued by the Principal Secretary to Government, vide, Letter No.19498/Res.II/2014-1, dated 09.07.2014 and following the earlier order of this Court in W.P.No.7813 of 2016, dated 22.04.2016, it is ordered as hereunder:-

"The District Collector cum Magistrate, Tiruvallur, is directed to consider the variance pointed out and dispose of the application dated 08.08.2017, if not done earlier, within a period of four weeks, from the date of receipt of a copy of this order. While doing so, District Collector cum Magistrate, Tiruvallur, should act in accordance with Section 14 of the SARFAESI Act, 2002."

11. With the above direction, this writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

ars
To

The District Collector cum Magistrate,
Tiruvallur Collectorate,
Tiruvallur.

+1cc to Mr.Arjun Suresh, Advocate, S.R.No.41228
+1cc to the Government Pleader, S.R.No.41885

W.P.No.15784 of 2018

SR(CO)
GSP(17/07/2018)