BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS. JUSTICE R.THARANI

W.P.(MD)No.20962 of 2018
and W.M.P.(MD)Nos.18743 and 18744 of 2018

M/s.Ess Ess Tool Room Services
Rep. By its Partner P.S.Karthic
S/o.P.K.Sitaraman
No.10, 40/1 Nanbargal Street
Prakash Nagar
Tiruverambur
Trichy 620013 : Petitioner

Vs.

1. The Executive Director,
Andhra Bank,
Dr.Pattabi Bhavan
No.5-9-11 Saifabad
Hyderabad - 500 004.

2. The Deputy General Manager,
Andhra Bank
No.564/1 D.B.Road
R.S.Puram
Coimbatore - 641 002.

3. Chief Manager & Authorized Officer,
Andhra Bank
No.26 Warners Road
Cantonment
Trichy.

4. The Director,
Micro Small and Medium Enterprises,
Nirman Bhavan, 7th floor
Maulana Azad Road
New Delhi - 110 108. : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records of the third respondent in letter No.1775/61/69 dated 24.09.2018 quash the same as illegal consequently direct the 1st and 4th respondents to appoint a committee for restructuring the petitioner's units Account OCC NO.177513100 000034 and Term loan No.177530100 008878 and take decision of viability.

For Petitioner : Mr.K.Asok Kumar Ram
For Respondent No.3 : Mr.Pala Ramasamy
For Respondent No.4 : Mr.S.Sivakumar

ORDER

[Order of the Court was made by R.SUBBIAH, J]

This Writ Petition has been filed challenging the letter of the third respondent dated 24.09.2018, in which it has been stated that since the restructing is not viable, the same has not been considered by the competent authority.

2.It is the case of the petitioner that the petitioner is a manufacturing unit and has been supplying defence weapon materials to the Central Government Ordinance factories and is also supplying small arms components and is registered with the MSME Department. While so, the petitioner has been sanctioned OCC facility to a limit of Rs.1,95,00,000/- and term loan is availed for a sum of Rs.1,20,00,000/- and totally, the respondent bank has sanctioned loan to the petitioner for a sum of Rs.3,15,00,000/- and repayment has been made periodically and there is no default on behalf of the petitioner company. However, the respondent bank has issued demand notice on 03.11.2017 by calculating the interest upto 31.10.2017 by treating the petitioner's account as NPA on 30.10.2017. Hence, the petitioner has made several representations. On receipt of the demand notice, the petitioner has paid a sum of Rs.6,24,039/-. However, the respondent bank issued possession notice on 26.06.2018 and 29.06.2018 published through Dhinamani and Indian Express. When the petitioner's request has not been acceded to, the petitioner has filed a writ petition before this Court in W.P.(MD) No.17638 of 2018 to consider the representation of the petitioner dated 26.02.2015. This Court, by order dated 16.08.2018, has directed the respondent Bank to consider the representation of the petitioner within a period of two weeks. Thereafter, on receipt of the said order of this Court, the petitioner submitted their source of viability documents along with a letter on 07.09.2018. However, the said documents have not been considered by the third respondent and as such, they have passed the impugned order vide letter dated 24.09.2018, which is unjust and liable to be quashed.

3. When the matter is taken up for hearing, the learned counsel for the respondent Bank has raised a ground as to the maintainability of the writ petition, by placing reliance on the recent judgment of the Honourable Supreme Court dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP(C)Nos.16758 - 16772 of 2015 and submitted that when there is an alternative remedy available, the writ petition is not maintainable and should not be entertained and hence, prayed for the dismissal of this writ petition.

4. However, the learned Counsel appearing for the petitioner, by way of reply, submitted that when the documents submitted by the

petitioner have not been considered by the respondent Bank, the same can be questioned by filing the writ petition under Article 226 of the Constitution of India.

5. Heard the submissions of the learned Counsel for the parties and perused the materials available on record.

6. In the recent judgment of the Honourable Supreme Court dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP(C)Nos.16758 - 16772 of 2015, it is held as follows:

> "Despite several judgments of this court, including a judgment by Hon'ble Mr.Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr., vs. Mathew K.C., (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).
>
> The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-
>
> 18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd., vs. Prem Heavy Engineering Works (P) Ltd., and Another, (1997) 6 SCC 450, observing:-
>
> > "32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."
>
> The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside."

7. In view of the recent judgment of the Honourable Supreme Court, we are of the opinion that the present writ petition is not maintainable and the appropriate remedy available for the petitioner is to approach the Debts Recovery Tribunal and thus, the present writ petition fails.

8. In the result, this writ petition stands dismissed, however, granting liberty to the petitioner to approach the Debts Recovery Tribunal in accordance with law. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Executive Director,
Andhra Bank,
Dr.Pattabi Bhavan
No.5-9-11 Saifabad
Hyderabad - 500 004.

2. The Deputy General Manager,
Andhra Bank, No.564/1 D.B.Road
R.S.Puram,Coimbatore - 641 002.

3. Chief Manager & Authorized Officer,
Andhra Bank
No.26 Warners Road
Cantonment,Trichy.

4. The Director,
Micro Small and Medium Enterprises,
Nirman Bhavan, 7th floor
Maulana Azad Road
New Delhi - 110 108.

+1 cc to Mr.Pala Ramasamy,Advocate,SR.No.95532

RR
SS/PM/SAR 3/14.12.2018/4P/6C

Order made in
W.P.(MD)No.20962 of 2018
and
W.M.P.(MD)Nos.18743 and 18744 of 2018
14.11.2018