THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.2889 of 2018

ORDER: (*Per* Hon'ble Sri Justice T. Amarnath Goud)

The petitioner firm seeks to assail the possession notice dated 25.01.2018 issued by the first respondent - Vijaya Bank, under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.

2. The case of the petitioner firm is that it had availed loan from Vijaya Bank. In the year 2012, the cash credit limit was enhanced upto Rs.1,15,00,000/- and the limit of two term loans was enhanced to Rs.25 lakhs each. As the petitioner failed to pay the interest and loan instalments, the loan account was treated as Non-Performing Asset (NPA) and accordingly the Bank issued a notice dated 07.03.2015 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act). Thereafter, the petitioner firm made several representations to the Bank for restructuring the loan account. Thereafter, the Bank addressed a letter dated 20.09.2017 to the petitioner to submit the following for restructuring the loan account.

> "1) Copies of work orders on hand for the works to be executed during the current financial year;
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> 2) The property offered as security vide Shop No.18 situated at Himayat Nagar, Hyderabad is having value of Rs.25.73 lakhs. However, the valuer in his report, dated 12.1.2017, reported that due to road widening property may be partly or fully affected. In view of possible dilution of the property offer suitable substitute for the same.

> 3) Financials of the Company
>
> 4) Infusion of 25% of equity of the loss incurred by the bank on account of restructuring as per RBI guidelines and diminution in fair value upon restructuring.
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> 5) To submit the viability and feasibility report."

3. In pursuance of the same, the petitioner firm submitted a reply on 03.10.2017 along with work orders. Apart from the same, the petitioner firm paid an amount of Rs.8,04,718/- to the Bank within two months after receipt of notice dated 07.03.2015. Being dissatisfied with the same, the Bank issued the impugned possession notice for taking possession of the secured assets.

4. The Vijaya Bank filed its counter affidavit stating that the petitioner's loan account was classified as a NPA on 28.02.2015. Demand notice dated 07.03.2015 was issued under Section 13(2) of the SARFAESI Act quantifying the outstanding dues as on 28.02.2015 at Rs.1,63,35,396-06 ps. In the gap between classification of the subject loan account as a NPA on 28.02.2015 and issuance of the demand notice on 07.03.2015, the petitioner did not pay any amount for bringing the loan account out of the classification as a NPA. The Bank issued letters dated 15.12.2015 and 17.01.2017, calling upon the petitioner to pay 7% of its credit to the non lien accounts, route all the transactions through the bank account, but the petitioner, in spite of number of letters issued, did not comply with the same and hence the Bank was constrained to invoke the provisions under the SARFAESI Act and issued the impugned possession notice.

5. Sri Ravi Kondaveeti, learned counsel for the petitioner, would submit that the Bank issued the impugned possession notice without considering the reply given to it. He would further submit that the Bank agreed before Experts Committee, State Level Inter Institutional Committee (SLIIC) for restructure of the petitioner's loan, but did not do so, in spite of petitioner's best efforts in that regard.

6. Sri E.Madan Mohan Rao, learned counsel for the Vijaya Bank, would state that the subject loan account is in the nature of cash credit facility and rescheduling thereof would be permissible in terms of banking norms, if the petitioner satisfies them. He would state that the petitioner would be required to demonstrate before the Bank the viability of its business by producing its books of accounts and other financial data.

7. In the circumstances, it would not be within the province of this Court to direct a Bank to reschedule a loan account. It is for the petitioner to satisfy the Bank as to its eligibility and entitlement for such rescheduling by producing the necessary material.

8. Leaving it open to the petitioner to do so, the writ petition is dismissed. This order of dismissal shall however not preclude the Bank from considering the eligibility of the petitioner to seek rescheduling of their loan account in accordance with the banking

norms. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date: 25.07.2018
TJMR