IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

*THE HON'BLE MS. JUSTICE J. UMA DEVI

+ WRIT PETITION No.12913 of 2018

%Date: 16.04.2018

Between:

M/s.Aruna Paper Board Mills Pvt., Limited,
Suryaraopalem village, Undrajavaram Mandal,
West Godavari District, rep. by its Managing Director,
and others.

.. Petitioners

Vs.

$ Indian Bank, Tanuku Branch,
Rep.by its Authorised Officer.

.. Respondent

! Counsel for petitioner : M/s.M.V. Durga Prasad

^ Counsel for respondents : Mr.A.Satyanarayana

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? CASES REFERRED: ----

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.12913 OF 2018

ORDER: *(per Justice V. Ramasubramanian)*

Challenging two different orders, one passed by the Principal Assistant Sessions Judge and another passed by the Chief Judicial Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and also challenging the sale notice issued on 07.03.2018, the borrowers have come up with the above writ petition.

2. Heard Mr.B.Venkateswara Rao, learned counsel for the petitioners. Mr.A.Satyanarayana, learned Standing Counsel takes notice for the respondent-bank.

3. The demand notice under Section 13(2) of the Act was issued on 30.01.2016. It appears that thereafter, the petitioners negotiated with the Bank for a One Time Settlement (OTS). By a letter dated 19.11.2016, the Bank agreed for OTS. As per the terms and conditions of the OTS, the petitioners were supposed to pay a sum of Rs.880 lakhs as against the dues of about Rs.1,500 lakhs, within ninety (90) days from the date of acceptance of the OTS.

4. The time prescribed in the OTS for payment, expired on 18.02.2017. Still the Bank issued another letter dated 01.03.2017 calling upon the petitioner to make payment of the amount of Rs.836 lakhs, after giving credit to the amount of Rs.44 lakhs paid by the petitioners, on or before 06.03.2017.

5. The petitioners sought extension of time, by their letters dated 05.05.2017 and 09.05.2017. The Bank graciously agreed to grant

extension of time up to 31.05.2017. But, still the petitioners could not make payment within the extended time. The petitioners again sought extension of time after making payment of about Rs.125 lakhs. The Bank issued a letter dated 05.02.2018 granting extension of time up to 26.02.2018. Since the petitioners did not make payment on or before 26.02.2018, the Bank cancelled the OTS on 06.03.2018.

6. In the meantime, the Bank approached the Chief Judicial Magistrate, Eluru, by way of an application under Section 14 of the Act in Crl.M.P. No.2 of 2018. It appears that the Court was a Court of the Chief Judicial Magistrate cum Principal Senior Civil Judge. The learned Judge passed an order on 05.01.2018 appointing an Advocate Commissioner to take actual physical possession. Accordingly, the Bank took actual physical possession on 29.03.2018.

7. In the meantime, the Bank also issued an auction notice on 07.03.2018. Therefore, challenging (1) the order of the Chief Judicial Magistrate, (2) the sale notice and (3) the possession taken by the Bank, the petitioners have come up with the above writ petition.

8. The main grounds of attack to the impugned actions of the Bank are as follows:

i. That during the pendency of a One Time Settlement proposal, the Bank could not have secured an order under Section 14 (2) of the Act.

ii. That once a One Time Settlement proposal is accepted and some payments are made, the original demand notice issued under Section 13(2) cannot any more be relied upon, as the amounts due would have undergone a change and the Bank will have to take fresh steps with the issue of a fresh demand notice under Section 13(2) of the Act, and

iii. That without taking actual physical possession, the Bank is not entitled to put up the property to sale.

9. We have carefully considered the above submissions.

10. The first ground of attack is that during the pendency of the OTS, the Bank could not have secured an order under Section 14 of the Act. But, such a contention loses sight of an important fact, namely, that every time the terms and conditions for the acceptance of OTS are breached, the OTS does not survive. A post-facto extension of time, after the death of the OTS, would not tantamount to shackles on the hands of the Authorized Officer to proceed with the steps that he is authorized to take under Sections 13(4) of the Act.

11. To recapitulate, the first OTS was issued on 19.11.2016, after ten months of the issue of the demand notice on 30.01.2016. But, after accepting the OTS on 20.11.2016, the petitioners merely paid the upfront money of Rs.44 lakhs and failed to pay the balance of Rs.836 lakhs within the period of (90) days. The period of (90) days expired on 18.02.2017. The Bank graciously extended the time by their letter dated 01.03.2017, up to 06.03.2017 and made it very clear that if the petitioners failed to make payment by 06.03.2017, the OTS offer will stand cancelled.

12. When the petitioners made representations on 05.05.2017 and 09.05.2017, for extension of time, the Bank issued a letter dated 20.05.2017, granting time up to 31.05.2017. But, the chance given by the Bank was not made use of. Therefore, the one time settlement offered and accepted became a dead letter by 31.05.2017 and there were no fetters thereafter on the hands of the authorized officer to proceed further.

13. Merely because the Bank issued a letter on 05.02.2018, after one month of obtaining an order under Section 14 of the Act, giving extension of time upto 26.02.2018, it does not mean that the OTS was operating as a cloud over the powers of the authorized officer. On the date on which an application under Section 14 of the Act was filed and on the date on which an order was passed, namely, 05.01.2018, no OTS was operating in favour of the petitioners. It appears that after the order was obtained under Section 14 of the Act, the petitioners made a request on 10.01.2018. It is only in response to that letter, the Bank granted extension by their letter dated 05.02.2018.

14. The continuous grant of extension of time, by the Bank, as a gesture of goodwill cannot be turned into a sign of weakness and cannot be converted into a legal bar for the Bank to proceed under Section14 of the Act. Therefore, the first contention of the petitioners deserves to be rejected.

15. The second contention is that after the acceptance of OTS and after payment of some amounts, the demand notice issued previously loses its vitality. But, we are unable to agree with the said contention. If this contention is accepted, every time a borrower makes payment of a token amount of Rs.1/-, the demand notice under Section 13(2) of the Act will become a dead letter. The Bank and the borrowers are not supposed to play snakes and ladders, where making payment of some money will make the demand notice under Section 13(2) of the Act a dead letter. Therefore, the second contention is also liable to be rejected.

16. The third contention is based upon an observation made by the Supreme Court in Standard Chartered Bank vs. V. Noble Kumar[1]. In the said decision, the Supreme Court formulated the methods available

[1] (2013) 9 SCC 620

for the secured creditors to take possession of the secured assets. Paragraph – 36 of the said decision reads as follows:

> "36. Thus, there will be three methods for the secured creditor to take possession of the secured assets:
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> 36.1. (*i*) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor.
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> 36.2. (*ii*) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinise the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1-A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.
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> 36.3. (*iii*) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter scrutinise the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under clause 36.2.(*ii*) above.
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> 36.4. In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets, and other subsequent rules from the Security Interest (Enforcement) Rules, 2002, shall apply."

17. Relying upon paragraph-36.4, it is contended by the learned counsel for the petitioners that the provisions of Rule-8 can come into operation only after physical possession is taken over. In this case, the sale notice was issued on 07.03.2018 and actual physical possession was taken on 29.03.2018. Therefore, it is contended that it is a case of putting the cart before the horse.

18. But, we do not think that in paragraph-36 of the Standard Chartered Bank's case (referred supra), the Supreme Court laid down a principle that unless actual physical possession is taken, no sale can take place. That is not the way to read the decision in Standard Chartered Bank's case. As a matter of fact, Section 13 of the Act confers powers upon the Authorized Officer even to appoint a team to manage and run the industry and sell it. Therefore, the different measures available under Section 13 of the Act, are not to be understood as providing for a sequence of steps, whose sequential order cannot be altered.

19. Therefore, all the contentions are liable to be rejected. Hence, the Writ Petition is dismissed.

20. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

April 16, 2018

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