

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION Nos.15785, 22127 and 22739 of 2017

COMMON ORDER: (per SK,J)

M/s. Sri Chandana Parboiled Rice Mill, Munagala, Nalgonda District, is the petitioner in these three writ petitions. Its grievance is with regard to the action initiated by the Andhra Bank, Munagala Branch, Nalgonda District, in relation to the loan facilities availed by it which were thereafter classified as Non Performing Assets.

The prayers of the petitioner Rice Mill in these three writ petitions read as under:

First, the prayer in W.P.No.15785 of 2017 reads thus:

'For the reasons stated in the accompanying affidavit, it is hereby prayed that this Honourable Court may be pleased to issue a writ or direction more in the nature of Mandamus declaring that the Letter No.1384/45/OTS/0057 dated 30-03-2017 of Respondent No.3 communicating to the petitioner firm on 31-03-2017, being the letter of approval under Comprehensive Corporate Compromise Policy Guidelines of the bank with a condition to appropriate the upfront amount of Rs.3.60 Crore after communication of compromise sanction on or before 31.03.2017, towards full and final settlement and failing to pay the approved compromise as per the condition all concessions allowed stands withdrawn, is in violation to the Revised Guidelines for Compromise Settlement of Chronic Non-Performing Assets (NPAs) of Public Sector Banks DBOD.BP.BC.65/21.04.117/2002-2003, January 29, 2003 as the Respondents No.2 and 3 are bound to follow the directives of the Reserve Bank of India and the act of Respondents 2 and 3 is arbitrary, prejudicial, amounting to fault, imperfection, short coming or inadequacy in quality, nature and manner of performance which is required to be maintained by or under law for the time being in force and in violation to Article 14 of the Constitution of India and to pass such other order or orders as this Honourable Court may deem fit, just and proper in the circumstances of the case.'

Secondly, the prayer in W.P.No.22127 of 2017 reads as follows:

'For the reasons stated in the accompanying affidavit, it is hereby prayed that this Honourable Court may be pleased to issue a writ or direction more in the nature of Mandamus declaring the Sale Notice of

E-Auction, dated 05.06.2017, issued by respondent No.3 under Rule 9 of Security Interest (Enforcement) Rules, 2002, deciding to sell the properties separately detailed below:

- i) All that part and parcel of the landed property of Ac.2.50 Gts. situated at Sy.No.201 including Plant & Machinery at Munagala Village, Nalgonda District, belonging to M/s. Sri Chandana Paraboiled Rice Mill Boundaries: East:Varanasi Ramalinga Prasad, West:K.Satyanarayana, North: Varanasi Ramlinga Prasad, South:National High Way-9.
- ii) All that part and parcel of House No.4-96/E in Land measuring 100 Square yards in Sy.No.766 situated at Kodad, Nalgonda District belonging to Immadi Neelima Boundaries: East: House of S.Vidyasagar, West:House of P.Laxmi, North: NH 9, South: Land of M.Papi Reddy.
- iii) All that part and parcel of the open plot measuring 1800 Sq.yards bearing H.No:5-60 situated at Nadigudem (V & M), Nalgonda District belonging to Immadi Nagalakshmi Boundaries: East: Land of I.Laxmaiah, West: Land of G.Suraiah, North: Rajvari Gadi, South: Nadigudem R & B Road.

in public auction to be conducted by way of le-auction through website/portal on 10.07.2017 to realise Rs.7,32,46,801 (Rupees Seven Crores Thirty Two Lakhs Forty Six Thousand Eight Hundred and one Rupee only as on 02.03.2016) amounts to wrong mentioning/calculation of liability of the petitioner as the Letter No.1384/45/OTS/0057 dated 30-03-2017 of Respondent No.3 bank to the petitioner firm, under comprehensive Corporate Compromise Policy Guidelines of the bank having settled the liability of the petitioner for Rs.360 lakhs (Rupees three Crore and Sixty Lakhs only), towards full and final settlement of dues, while pending disposal of the Writ Petition No.15785 of 2017 before this Honourable Court challenging the cancellation of One Time Settlement amount in contrary to the rights of petitioner in terms of the guidelines of Reserve Bank of India, amounts to arbitrary, prejudicial, fault, imperfection, short coming or inadequacy in quality, nature and manner of performance which is required to be maintained by or under law for the time being in force, violation of Article 14 of the Constitution of India and consequently to set aside the Sale notice of E-auction dated 05.06.2017 and to pass such other order or orders as this Honourable Court may deem fit, just and proper in the circumstances of the case.'

Thirdly, the prayer in W.P.No.22739 of 2017 reads as under:

'For the reasons stated in the accompanying affidavit, it is hereby prayed that this Honourable Court may be pleased to issue a writ or direction more in the nature of Mandamus declaring that the appointment of advocate Commissioner in Criminal Miscellaneous Petition No.14 of 2017 by the Chief Judicial Magistrate at Nalgonda, pending negotiations for OTS under Comprehensive Corporate Policy of Respondent Nos.2 and 3 bank *vide* Orders dated 6th February, 2017 in pursuance to Section 14 of SARFAESI Act, 2002 for taking physical possession of the secured assets (Described in Schedule Property) as extended on 21.06.2017 to handover the secured assets to Respondent No.3 pending disposal of the Writ Petition No.15785 of 2017 before this Honourable Court challenging the cancellation of One Time Settlement amount contrary to the rights of petitioner in terms of the guidelines of Reserve Bank of India amounts to arbitrary, prejudicial, fault, imperfection, shortcoming or inadequacy in

quality, nature and manner of performance which is required to be maintained by or under law for the time being in force, violation of Article 14 of the Constitution of India and consequently to set aside the Order dated 6th February, 2017 in pursuance to Section 14 of the SARFAESI Act, 2002 for taking physical possession of the secured assets (Described in Schedule Property) as extended on 21.06.2017 and to pass such other order or orders as this Honourable Court may deem fit just and proper in the circumstances of the case.'

By interim order dated 06.07.2017 passed in W.P.No.22127 of 2017, this Court directed as follows:

'Smt.V.Dyumani, learned counsel representing Sri K.Vijay Kumar Reddy, learned counsel for the respondent Bank, takes notice on behalf of respondents 2 and 3 and waives further notice. She undertakes to file her counter on behalf of the Bank.

The auction scheduled to be held on 10.07.2017 pursuant to the auction notice dated 05.06.2017 issued by the Andhra Bank is permitted to proceed. However, in the event the sale is knocked down in favour of the successful bidder, the Bank shall only receive 25% of the bid amount and shall not confirm the sale pending further orders.

Post along with W.P.No.15785 of 2017 on 13.07.2017.'

By interim order dated 10.07.2017 passed in W.P.M.P.No.28006 of 2017 in W.P.No.22739 of 2017, this Court directed as follows:

'As it is stated that the Managing Partner of the petitioner and his wife, the guarantor, may be divested of the house property which is mentioned at Serial No.4 of the warrant issued in CrI.M.P.No.14 of 2017 on the file of the learned Chief Judicial Magistrate at Nalgonda, there shall be a direction to the respondents not to dispossess the petitioner from the said house property pending further orders.'

Having advanced arguments at length, Sri S.Arun Kumar, learned counsel for the petitioner Rice Mill, submitted a proposal that if two weeks' time is granted to it, the petitioner Rice Mill would deposit the balance amount of Rs.3.24 crores due and payable in terms of the One Time Settlement offered to it by the Andhra Bank with interest thereon.

Smt. V.Dyumani, learned counsel for the Andhra Bank, sought time to get instructions from her client as to whether this offer was acceptable.

Today, Smt.V.Dyumani, learned counsel, would inform this Court that the bank is willing to accept the offer made by the petitioner Rice Mill

provided the sum of Rs.3.24 crores with interest thereon for the period of eleven months is paid by the petitioner Rice Mill within two weeks, as promised by it.

Sri S.Arun Kumar, learned counsel, would undertake that his client would abide by the offer made.

In view of this development, we see no reason to adjudicate these writ petitions on merits.

The writ petitions are accordingly disposed of directing the petitioner Rice Mill to make the payment of the sum of Rs.3.24 crores along with interest at the rate as applicable in terms of the One Time Settlement policy within two weeks from today. In the event the petitioner Rice Mill fails to make the payment as aforestated, this order shall stand withdrawn and the writ petitions shall stand dismissed. Interim orders dated 06.07.2017 and 10.07.2017 shall also stand vacated in such circumstances. It is made clear that the petitioner Rice Mill is not entitled to seek further indulgence from this Court, be it in the form of extension of time or otherwise. It is also made clear that in the event the petitioner Rice Mill makes the payment as directed supra, the auction sale, if any, already held by the Andhra Bank shall stand cancelled and the sale consideration amount, if any, received from the auction purchaser, if any, shall be refunded to such auction purchaser with interest at the rate applicable to fixed deposits during the relevant period of time.

Be it noted that by interim order dated 06.07.2017 passed in W.P.No.22127 of 2017, this Court granted interim stay of confirmation of the sale and therefore, the auction purchaser's rights have not crystallized. Further, the auction purchaser has not chosen to get himself impleaded in this */s/*, though the interim order was passed as long back as

on 06.07.2017. We therefore see no reason to put him on notice or afford him an opportunity of hearing. That apart, the direction as to refund of the amount paid by him with interest protects him adequately.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

P.KESHAVA RAO,J

Date:15.02.2018

Note:

Furnish C.C. in two days.

(B/o) GJ

