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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* HON'BLE SRI JUSTICE P. KESHAVA RAO

+W.P.No.46017 of 2018

% Date: 18-12-2018

#Between:

1. M/s. Bhuvaneshwari Marine Food Processing Pvt. Ltd., rep. by its Managing Director, Sri, E. Prasada Rao, R/o. D.No.6-21-63-B, Lakshmi Venkateswara Nilayam, 1st Floor, 15/2, Arundalpet, Guntur, A.P.
2. E. Prasada Rao, S/o. Sri Govindaiah, R/o. flat No.405, Sri Ram Residency, 3rd Lane, Shyamala Nagar, Guntur.

….. Petitioners

And

1. Union of India rep. by its Secretary to Government Finance & Planning Department, New Delhi.
2. The Chief General Manger, State Bank of India, A.P. Area, Gun Foundry, Hyderabad.
3. The Authorized Officer, S.B.I., Stressed Assets Recovery Branch, Administrative Unit Campus, Siripuram Junction, Balaji Nagar, Visakhapatnam-530003, A.P.
4. The Assistant, General Manager, S.B.I., Stressed Assets Recovery Branch, Siripuram Junction, Balaji Nagar, Visakhapatnam-530003, A.P.

…. Respondents

! Counsel for the Petitioners : Mr. P.V. Venkateswara Rao

^ Counsel for Respondent No.1 : Mr. K. Lakshman ASG

^ Counsel for Respondent No.2 : Mr. Maruthi Jadav

^ Counsel for Respondents.3 & 4: M/s. Pearl Law Associates

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> HEAD NOTE:

? Cases referred

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ORDER: (Per VRS,J)

Challenging the auction sale notice dated 12.12.2018 and also praying for extension of time to comply with the terms and conditions of the One Time Settlement, the borrowers have come up with the above writ petition.

2. Heard Mr. P.V. Venkateshwara Rao, learned counsel for the petitioners. Mr. Maruthi Jadav, learned counsel takes notice for the Bank.

3. Admittedly, the petitioners were issued with a demand notice under Section 13(2) of the SARFAESI Act, 2002 way back on 02.06.2015. The petitioners sought an OTS and the Bank was gracious to offer an OTS in September, 2015. But the OTS failed.

4. Therefore, the Bank issued a notice of sale in March, 2016 and the same was questioned by the petitioners by way of an appeal under Section 17 in S.A.No.102 of 2016. The Debts Recovery Tribunal passed an order permitting the petitioners to sell one property, to see if the same could satisfy the entire loan. But the said order of the Tribunal was challenged by the Bank by way of a writ petition in W.P.No.22594 of 2016. Therefore, the proposal got stalled.

5. For a third time, an OTS was offered by the Bank by their letter dated 05.09.2018. Under the said letter, the application money paid by the petitioners to the tune of Rs.34,35,351/- was obliged and the petitioners were imposed with two conditions, viz., (1) to pay 20% of the OTS on or before 05.10.2018; and (2) to pay the balance amount within

six months. Clause-III of the OTS letter dated 05.09.2018 reads as follows:

> "Clause-III. 20% of the OTS amount (Rs.13741405.0) will have to be deposited by you as upfront money within thirty days from the date of this letter, i.e. within 05.10.2018 failing which the OTS sanction will be rendered infructuous. This would include the amount deposited by you along with the application."

6. Obviously, the petitioners failed to comply with the condition. Therefore, the Bank issued a news paper publication on 12.12.2018 for bringing the property to sale. Immediately the petitioners have come up with the above writ petition seeking (1) extension of time to comply with the condition stipulated in the OTS letter; and (2) to set aside the auction sale notice.

7. On the first prayer, we have no doubt that it is not the duty of the Court to tamper with the terms and conditions of an OTS. A scheme for OTS is offered by the Banks, partly due to the inability of the Bank to recover the whole of the amount due and partly to put an end to further litigation and salvage the whole issue. Therefore, by its very nature, an OTS is a commercial decision. The same cannot be tinkered with by a legal decision. Therefore, the first part of the prayer for grant of extension of time to comply with the condition stipulated in the OTS letter cannot be sustained.

8. Coming to the second prayer, the same is against the sale notice. The sale notice is opposed on the ground that a property whose market value was fixed at one time by the valuer at Rs.62 crores is now valued at just Rs.8 crores. Therefore, the upset price fixed by the Bank is attacked.

9. We do not wish to go into the said question. The fact remains that the demand notice was issued 3½ years ago and the bank is unable

to proceed further. The petitioners have an effective alternative remedy of appeal to the Debts Recovery Tribunal. The petitioners are not new to the Debts Recovery Tribunal as they have already approached the Debts Recovery Tribunal and obtained favourable orders. Therefore, the petitioners are obliged to try their very same luck before the Debts Recovery Tribunal. Hence leaving it open to the petitioners to go before the Debts Recovery Tribunal, the writ petition is dismissed. There will be no order as to costs.

10. As a sequel, pending miscellaneous petitions, if any, will stand closed.

V. RAMASUBRAMANIAN, J.

P. KESHAVA RAO, J.

18th December, 2018
Js.

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