THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO.42066 OF 2017

ORDER: (per SK,J)

The petitioner is a guarantor for the loan facilities extended by the State Bank of India (*hereinafter*, 'the bank') to M/s.Dikshitha Sri Software Solutions Private Limited, the third respondent herein. His grievance is with regard to the action of the bank in issuing possession notice dated 18.08.2017 without passing any orders upon his explanation-cum-objection petition dated 08.06.2017 submitted in response to the demand notice dated 21.04.2017 issued by the bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

Sri M.Srikanth Reddy, learned counsel for the respondent bank, sought time on 12.12.2017 to get instructions as to whether the petitioner's objections were disposed of in accordance with Section 13(3A) of the SARFAESI Act.

Relying on his counter-affidavit, Sri M.Srikanth Reddy, learned counsel, would now submit that the bank failed to address any response to the petitioner after receiving his objection petition dated 08.06.2017. Learned counsel would state that the said objection petition was so bereft of merit that it did not warrant any such response. However, we are not willing to accept this stand on the part of the bank.

Perusal of Section 13(3A) of the SARFAESI Act demonstrates that it mandates to the effect that the secured creditor, having received any representation or objection from the borrower, should consider the same and if he comes to the conclusion that such representation or objection is not acceptable or tenable, he should communicate the reasons for such non-acceptance of the representation or objection to the borrower. Therefore, even if the secured creditor comes to the conclusion that the representation or objection made by the borrower is completely devoid of merit, it still behoves it to record and communicate the reasons for non-acceptance of such representation or objection. As the bank now admits that, having received the petitioner's objection petition dated 08.06.2017, it failed to respond thereto, there is a clear violation of the statutory mandate of Section 13(3A) of the SARFAESI Act. Trite to state, it is well settled that failure to abide by the requirement of Section 13(3A) of the SARFAESI Act would vitiate any measures taken thereafter under Section 13(4) thereof.

In consequence, we allow the writ petition setting aside the possession notice dated 18.08.2017 issued by the bank along with all further measures, if any, taken by it on the strength thereof. This order shall however not preclude the bank from considering the petitioner's objection petition dated 08.06.2017 at least at this stage and responding thereto as per the due procedure.

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

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SANJAY KUMAR,J

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D.V.S.S.SOMAYAJULU,J

Date:14.03.2018

GJ