IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.20704 of 2019
and
W.M.P.No.19859 of 2019

Shri Sakthi Paper of India Pvt.Ltd.,
rep.by its Director,
P.Swaminathan ...Petitioner

.Vs.

State Bank of India,
Commercial Branch
Krishna Towers,
No.1087/A-F, Avinasi Road,
Coimbatore-641 037 ...Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the records of the respondent pertaining to their demand notice dated 04.06.2019 in CB CBE/2019-20, SARFAESI/3, classifying the petitioner as NPA on 30.04.2019 when the moratorium issued by the National Company Law Tribunal, Chennai on 15.04.2019 for a period of 6 months and quash the same as illegal and premature and void not binding of the company.

For Petitioner : Mr.S.N.Amarnath

For Respondent : Mr.K.Chandrasekaran

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

Shri Sakthi Papers India Pvt. Ltd., represented by its Director P.Swaminathan, has filed this writ petition in this Court aggrieved by the notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ('SARFAESI Act' for short), issued by the respondent-State Bank of India, on 04.06.2019.

2.The said notice inter alia was also addressed to other five persons, who were Promoters/Directors/Guarantors of the said borrower company ('SSPIPL' for short). One of the Guarantors Mr.K.Viswanathan, who was also issued the same Notice, had approached this Court by way of writ Petition in W.P.No.23911 of 2019, which came to be disposed of by a Co-ordinate Bench of this Court, on 21.08.2019, dismissing the Writ Petition as premature and it was held by the Co-ordinate Bench that the aggrieved party cannot challenge the proceedings under Section 13(2) of the SARFAESI Act, but can challenge only the measures taken under Section 13(4) of the SARFAESI Act, before the Debts Recovery Tribunal. Before the said dismissal of the writ petition, filed by the Guarantor, on 21.08.2019, the present Writ Petition was filed in this Court, on 24.06.2019.

3.The learned Counsel Mr.S.N.Amarnath, appearing for the petitioner, urged that the petitioner company had filed its Insolvency Petition under Section 10 of the Insolvency and Bankruptcy Code, 2016, ('IBC' for short) and a Moratorium order was passed in the case on 15.04.2019, by the National Company Law Tribunal, Chennai ('NCLT' for short) and thereafter, on 04.06.2019, after a Moratorium was declared by NCLT, Chennai, to make efforts to rehabilitate/revive the said company under the provisions of the IBC, the respondent bank could not have declared the account of the petitioner company as NPA (Non-performing Assets), on 30.04.2019 and hence, in the present writ petition filed, the notice issued under Section 13(2) of the SARFAESI Act, declaring the assets as NPA deserves to be quashed by this Court.

4.The learned counsel for the respondent Bank Mr.K.Chandrasekaran on the other hand submitted that by a statutory amendment to Section 14(3) of the IBC, 2016 (Act 26/2018), with effect from 06.06.2018, it has been clarified that the Moratorium declared under Section 14(1) of IBC, 2016, shall not apply to a surety in a contract of guarantee to a Corporate Debtor. The learned counsel therefore submitted that as far as applying the Moratorium order dated 15.04.2019 to the present case is concerned, the same is not applicable, as the notice in question, issued under Section 13(2) of the Act, was directed only against the Guarantors of the company-Corporate Debtor and it was clearly stipulated in the said notice dated 04.06.2019 itself that the notice is addressed to the borrower company SSPIL only for the purpose of information and is the Bank does not intend to proceed against the mortgaged assets of the borrower company, but it intends to proceed only against the other properties of the Guarantors. It is therefore submitted that at this stage of Section 13(2) notice, the petitioner/borrower company cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. He also submitted that the petitioner/borrower company is in fact espousing the cause of the Guarantors in the present case, as some of the Guarantors are also Promoters or Directors of the company and one of them had already filed a Writ Petition before this Court and the same was dismissed by the Co-ordinate Bench of this Court, on 21.08.2019.

5.Having heard the learned counsels appearing for the parties, we are satisfied that the present Writ Petition filed by the petitioner/borrower company is for a collateral purpose and it is not maintainable for two reasons, viz., (I) it is premature for this Court to pronounce upon the validity of the notice issued by the respondent bank under Section 13(2) of the SARFAESI Act and (II) Unless the measures are initiated under Section 13(4) of the Act, the petitioner cannot even approach the Debts Recovery Tribunal against such measures under the provisions of the SARFAESI Act. It has been rightly held by the Co-ordinate Bench of this Court in the order dated 21.08.2019 to this effect.

6.The declaration sought by the petitioner/borrower company that the respondent bank could not have declared the account of the company as NPA on 30.04.2019, after the Moratorium order was passed by NCLT, on 15.04.2019, cannot be issued by this Court, simply because the entire matter with regard to restructuring, rehabilitation or revival of the said company is pending before the NCLT under the provisions of the Insolvency and Bankruptcy Code, 2016. If the petitioner company has any grievance about the very initiation of the proceedings by the respondent bank by issuance of notice under Section 13 (2) of the SARFAESI Act, it can very well bring this fact to the notice of the NCLT for appropriate orders thereon. The NCLT, which is seized of the entire case of the company for its revival/rehabilitation, can take into account these developments at the hands of the respondent bank. The petitioner/borrower company appears to have not even raised its objections or filed its reply to the said notice before the respondent bank itself. Therefore, it is absolutely premature for this Court to make any such declaration as prayed for by the petitioner. The borrower company also cannot be permitted to indirectly expouse the cause of its Guarantors, who may be independently liable to pay the dues of the borrower company.

7.In these circumstances, we are of the considered opinion that the present writ petition filed by the borrower company against notice Under Section 13(2) of the Act served upon it only for information purpose by the bank is not maintainable and the same deserves to be dismissed and is accordingly dismissed. No costs. Connected miscellaneous petition is dismissed.

msk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Manager,
State Bank of India,
Commercial Branch
Krishna Towers,
No.1087/A-F, Avinasi Road,
Coimbatore-641 037

+2cc to Dr.S.N.Amarnath, Advocate, SR.No.85912
+1cc to Mr.K.Chandrasekaran, Advocate, SR.No.85743

W.P.No.20704 of 2019

Kak(12/11/2019)