IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM:

THE HON'BLE DR.JUSTICE VINEET KOTHARI
and
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.25102 of 2017
and
WMP.Nos.26541 and 26542 of 2017

1. M/s.Sekar Stores Home Mart,
Represented by its Partner
Mr.S.V.S.Manivannan

2. M/s.Sekar Stores Home Centre,
Represented by its Partner
Mr.S.V.S.Manivannan

3. Mr.S.V.S.Manivannan

4. Mrs.Geetha Manivannan ... Petitioners

..Vs..

1. The Authorised Officer,
Pridhvi Asset Reconstruction & Securitisation
Company Ltd., Rajaprasadmu, 4th Floor, Wing No.1,
Plot No.6, 6-A, 6-B, Masjid Bandar Road,
Kondapur, Hyderabad 500 084.

2. M/s.Mantra Industries Ltd., Rep. by Managing Director,
No.17, Shiv Ganga Apartments,
S.L.Road, Mulund, (West) Mumbai-400 080.

3. The Debt Recovery Appellate Tribunal,
At Chennai, 4th Floor, Indian Bank Building,
No.55, Ethiraj Salai, Egmore,
Chennai-600 008. ... Respondents

Prayer:

Writ Petition filed under Article 226 of Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the Third Respondent in AIR. (SA) No.13 of 2017 dated 24.08.2017 and quash the same and directing the third respondent to take up the appeal filed by the petitioners without insisting on the mandatory deposit in terms of second proviso to Sec.18 of SARFAESI Act and to decide the case on merits in accordance with law.

For Appellant	:	Mr.S.Silambanan for Mr.J.Arun Prasad
For Respondents	:	Mr.Srinath Sridevan

O R D E R

(Order of the Court made by DR.VINEET KOTHARI, J.)

The petitioners have filed the present Writ Petition aggrieved by the Impugned Order dated 24.08.2017 passed by the learned Debts Recovery Appellate Tribunal requiring the petitioner to deposit a sum of Rs.82,00,000/- (Rupees Eighty Two Lakhs) as condition for maintaining the Appeal against the order of the Debts Recovery Tribunal dated 23.12.2016 in S.A.No.16 of 2016 by which the Application filed by the petitioners was dismissed.

2.The petitioners seems to have already approached this Court on various rounds of litigations and against the Debt due in two loan accounts, which is shown in page 123 of the paper book, the outstanding as on 31.12.2015 is Rs.668.38 lakhs. The learned Tribunal has asked the petitioners to deposit a sum of Rs.82 lakhs, after taking into account a sum of Rs.85 lakhs deposited by the petitioners against the net outstanding of Rs.167 lakhs, while passing the Impugned Order.

3. The Co-ordinate Bench of this Court has passed the following order in this Writ Petition on 20.07.2019 by quoting the various deposits made by the petitioners. The operative portion of the said order is quoted below for ready reference:

"In the earlier round of litigation, W.P.No.6313 of 2017, the petitioners have challenged an order made in I.A.No.56 of 2017, in A.I.R (SA) No.13 of 2017, dated 20/2/2017, on the file of the Debts Recovery Appellate Tribunal, Chennai, contending inter alia that the Debts Recovery Appellate Tribunal, Chennai, has erred in imposing onerous condition of pre-deposit, without taking note of the amount already paid to the Bank.

2. On 15/3/2017, a Hon'ble Division Bench of this Court, in W.P.No.6313 of 2017, has granted interim stay of the order impugned therein, on condition, the petitioners therein, depositing Rs.25 lakhs with the Debts Recovery Appellate Tribunal Chennai. Deposit has been made.

3. Subsequently, when W.P.No.6313 of 2017, came up for further hearing, a Hon'ble Division Bench, while directing the parties, to approach the Mediation and Conciliation Centre, for one time settlement has further directed to deposit Rs.50 lakhs, with the Debts Recovery Appellate Tribunal, Chennai.

4. Finally, when the matter came up on 23/6/2017, borrowers/petitioners therein had submitted that out of 1172.42 lakhs demanded by the authorised officer, Pridhvi Asset Reconstruction and Securitisation Company Limited, Hyderabad, first respondent therein, borrowers have deposited a sum of Rs.850 lakhs into the loan account, between 3/8/2013 and 5/9/2013 and a further sum of Rs.60 lakhs, as per the orders of the Debts Recovery Tribunal - III, Chennai, in all amounting to Rs.910 lakhs. Borrowers have further submitted that remaining amount due and payable is Rs.262.42 lakhs.

5. When the above said application was disputed by the Bank, vide order, dated 23/6/2017, in W.P.No.6313 of 2017, a Hon'ble

Division Bench of this Court, has remitted the matter to the Debts Recovery Appellate Tribunal, Chennai, to consider the disputed facts and to arrive at the exact amount, due and payable. Thus, the matter in I.A.No.56 of 2017 in A.I.R (SA) No.13 of 2017, has been reopened by the Debts Recovery Appellate Tribunal, Chennai.

6. After hearing the arguments of the learned counsel for the parties and perusal of the latest statement produced by the Bank and by observing that the said order can safely be relied on, for the purpose of pre-deposit, vide proceeding, dated 24/8/2017, in AIR (SA) No.13/2017, the Debts Recovery Appellate Tribunal, Chennai, has directed the petitioners, to make pre-deposit, of Rs.82 lakhs, in two instalments, at Rs.41 lakhs each. Debts Recovery Appellate Tribunal, Chennai, has further directed the petitioners, to make first instalment of Rs.41 lakhs, with the Registrar of the Tribunal, within four weeks from 24/8/2017 and the remaining amount, in the next four weeks thereof.

7. The said order is impugned on the grounds inter alia that the Debts Recovery Appellate Tribunal, Chennai, has failed to consider the payments made between the period 3/8/2013 and 5/9/2013 and subsequent deposits, as per the direction of Debts Recovery Tribunal - III, Chennai, and order of this Court made in W.P.No.6313 of 2017.

8. Attention of this Court was also invited to the admission of the receipt by the Bank. Letter, dated 5/9/2013, issued by Pridhvi Asset Reconstruction Company Limited to D.Anbumani, Chennai, reads as hereunder:-

“With regard to the above matter in order to discharge the mortgage we have received the following payments:-

i. Rs.50 lakhs received from you by way of DD

ii. Rs.650 lakhs received from Religare Finvest Ltd paid on behalf of Mr.Anbumani.

iii. Rs.150 lakhs received from Mr.S.V.S.Manivannan”

9. Debts Recovery Appellate Tribunal, Chennai, in the impugned proceeding, dated 24/8/2017, has taken note of the deposit of Rs.60 lakhs, in Debts Recovery Tribunal - III, Chennai. Appellate Tribunal has also taken note of the deposit of Rs.25 lakhs, with the Registrar of the Debts Recovery Appellate Tribunal, Chennai, as per the order of this Court, made in W.P.No.6313 of 2017.

"Details of payments made by the petitioners

a. 27/3/2012, the first respondent sanctions loans for a sum of Rs.800 lakhs (Rupees Eight Hundred lakhs only) to the petitioner's firm.

Rs.536.50 lakhs + Rs.263.50 lakhs = Rs.800 lakhs.

b. 11/1/2013, the first respondent issued Demand Notice under Section 13 (2) of SARFAESI Act, claimed Rs.1172.42 lakhs from the petitioner's firm.

Rs.760.41 lakhs + Rs.412.01 lakhs = Rs.1172.42 lakhs

c. After the demand notice, the appellants deposited a sum of Rs.850 lakhs into the loan account between the period from 3/8/2013 to 5/9/2013; Rs.60 lakhs paid as per the order of DRT - III, Chennai and Rs.25 lakhs as per the order of the Hon'ble High Court at Madras, vide W.P.No.6313 of 2017.

Rs. 50.00 lakhs
Rs.650.00 lakhs

Rs.150.00 lakhs
Rs. 60.00 lakhs
Rs. 25.00 lakhs

Rs.935.00 lakhs

> 10. On the basis of the above, and placing reliance on the decision of this Court, in Sivakumar Textiles Vs. DRAT, Chennai & Others, reported in {2012 (2) D.R.T.C 231 (Madras)}, Mr.Silambanan, learned Senior Counsel for Mr.J.Arun Prasad, submitted that as against the total claim, an amount of Rs.1172.42 lakhs, stated in notice, issued under Section 13 (2) of the SARFAESI Act, 2002, a sum of Rs.935 lakhs, representing more than 80% of the amount alleged due and payable has been deposited with the Bank and Tribunals, and in such circumstances, the impugned order, directing the petitioners, to make a further deposit of Rs.82 lakhs, is unwarranted and therefore, the impugned order deserves to be set aside.
>
> 11. Going through the material on record, we deem it fit to issue notice to the respondents through Court and privately returnable by 12/10/2017. There is prima facie case. There shall be an order of interim stay of the impugned proceeding, till then."

10. W.P.Nos.26249 & 26230 of 2018 was earlier filed by the petitioners challenging the order of pre-deposit passed by the the Debts Recovery Appellate Tribunal dated 03.09.2018. These two Writ Petitions came to be disposed of by a Co-ordinate Bench of this Court on 09.10.2019. The relevant portion of the said order is quoted below for ready reference:

> "11.On a perusal of Section 13(2) notices dated 11.01.2013, it could be seen that the respondent - Bank had claimed a sum of Rs.11.72 crores as on 31.03.2012 together with interest. The petitioners have not

taken into consideration the interest payable by them towards the loan amount. Even after a lapse of six years, the petitioners have not discharged their liability in entirety.

12.The ratio laid down by the Division Bench of the Bombay High Court and Allahabad High Court apply to the facts and circumstances of the present case. Therefore, the orders passed by the Debt Recovery Appellate Tribunal directing the petitioners to make a pre-deposit of 25% of the amount claimed in Section 13(2) notices cannot be held as onerous or unreasonable.

13.For the reasons stated above, we do not find any ground to interfere with the orders passed by the Debt Recovery Appellate Tribunal. Accordingly, the Writ Petitions are dismissed. The petitioners are granted three weeks time from the date of receipt of a copy of this order to make the pre-deposit as directed by the Debt Recovery Appellate Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed."

11. As against the said order, SLP preferred by the petitioners before the Hon'ble Supreme Court in Petition for Special Leave to Appeal (C) Nos.31190 and 31191 of 2018, has also been dismissed. The Hon'ble Supreme Court has passed the following order while dismissing the SLP.

"We are not inclined to interfere with the judgment and order passed by the High Court.

The Special Leave Petition is dismissed. Pending applications, if any, stands disposed of.However, the time to deposit the amount is extended for a period of four weeks from today."

12. The Appellant has filed the calculation Memo showing the outstanding amount of Rs.668.38 lakhs along with calculation sheet. The said calculation sheet is quoted below for ready reference:

AS PER THE ORIGINAL DEBT ASSIGNED TO PARAS (RS. In Lakhs)						AS PER ADDITIONAL FUNDING (Rs. In Lakhs)				Outstanding amount as on 31.12.2015 as per sale notice
S. No	Name of the Account	Original Debt as on 31.03.2012 (Rs. In Lakhs)	Interest and expenses as on 31.12.2015	Recovery as on 31.12.2015	Total outstanding as on 31.12.2015	Additional funding as on 31.12.2012	Interest and expenses as on 12.08.2013	Recovery as on 13.08.2013	Total Outstanding as on 13.08.2013	
1.	Home Centre – 13 (2)	352.05	154.44	279.34	227.15	59.96	2.34	62.30	Nil	227.15
	Home Mart – 13 (2)	700.48	266.83	526.08	441.23	59.93	2.34	62.30	Nil	441.23
	Total	1052.53	421.27	805.42	668.38	119.89	4.68	124.57	Nil	668.38

*Since the loan accounts along with interest and expenses under additional funding were closed on 13.08.2013.

12.Mr.S.Silambarasan, learned Senior Counsel for the petitioners urged before us as against the dues of Rs.668.38 lakhs, the petitioners has infact paid a sum of Rs.130 lakhs after the said date and therefore as against the pre-deposit amount of Rs.167 lakhs the petitioners are willing to pre-deposit another sum of Rs. 37 lakhs (167-130). This is against the interim direction of the Debts Recovery Appellate Tribunal which requires the petitioners to pay a sum of Rs.82 lakhs (1.67-85). The learned Senior counsel for the petitioners urged before us that the petitioner be permitted to pre-deposit an amount of Rs.37 lakhs for the learned DRAT to take up the Appeal, for disposal on merits.

13. The learned counsel for the petitioners submitted that this prayer is made in the light of the fact that besides the amount of Rs.7.20 crores realized by the first respondent on 22.03.2016 which is under challenge in this Writ Petition, the petitioners have paid an substantial amount to the respondents to the extent of Rs. 9.35 lakhs which includes aforesaid sum of 1.30 lakhs. He therefore submitted that condition of 25% of the Pre-Deposit stands substantially complied.

14. Per contra, the learned counsel for the respondents Mr.Srinath Sridevan opposed the submission and urged that the amount of debt due as per Section 13 (2) notice issued to the petitioner Company was much more and the provisions of the Act cannot provide any relaxation below 25% of the debt due amount shown. Therefore, the finding of the Debts Recovery Appellate Tribunal has taken into consideration subsequent payment and the direction to pay sum of Rs.82 lakhs as pre-deposit should not be allowed to be reduced.

15. We have heard the learned counsel appearing on either side and perused the materials available on record.

16. Though prima facie there is some merit in the contention of the learned counsel for the Respondents Mr.Srinath Sridevan, in terms of Section 18 (1) of the SARFAESI Act which stipulates that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal as directed by the Debts Recovery Appellate Tribunal and the said amount of pre-deposit of 50% of debt due can be reduced for the reasons to be recorded in writing by the Debt Recovery Appellate Tribunal to 25% and therefore the learned Debts Recovery Appellate Tribunal is bound by the statutory meters of the Section 18 (1) of the Act and it cannot waive the amount below the prescribed limits. We find that the learned Debts Recovery Appellate Tribunal has also taken into account the amount substantially paid by the petitioners towards the loan outstanding after Section 13 (2) notice was issued.

17. The interest of the respondents stands safeguarded firstly by the amount realised from the sale of the Assets which is in question before the proceeding in the Debts Recovery Appellate Tribunal and secondly, by the repayment of the borrower themselves independently.

18.The purpose of providing the pre-deposit of 25% to 50% under Section 18 of the Act of the debt due is to ensure the bonafides of the petitioners and to safeguard the interest of the Respondent Bank also, so that in case the Appeal of Borrower is dismissed, the pre-Deposit amount can be allowed to be appropriated to the loan account of the Borrowers. A substantial amount as per notice under Section 13 (2) of the Act stands already realised from the borrower either from the repayments made by it or by the sale in the present case.

19. We find that the Appellate Tribunal itself has given relaxation by taking into account the net amount after deducting the amount of realization made by the Bank from the Borrower. Therefore only net amount of 668 lakhs as on 31.12.2015 was taken into account and by computing 25% thereof with a further deduction of a sum of Rs.85 lakhs the Tribunal has arrived at a sum of Rs.82 lakhs (167-85) which was directed to be paid by the petitioners for maintaining the Appeal in question.

20. It is the contention of the petitioners that 25% of the amount of Rs.668.38 lakhs is Rs.167 lakhs. As against the aforesaid amount of Rs.167 lakhs, the petitioners have already paid a sum of Rs.130 lakhs and if the same is adjusted from the aforesaid amount of Rs.167 lakhs, the petitioners would be required to Pre-Deposit only Rs.37 lakhs instead of Rs.82 lakhs in two instalment of Rs.41 lakhs each as was ordered by the Debt Recovery Appellate Tribunal in the impugned order. The learned counsel for the petitioners submits and undertakes that the balance of Rs.37 lakhs would be deposited within a period of 6 weeks from the date of this order by the Petitioner Borrower.

21. We have considered the submission of the learned counsel for the petitioners and the respondent bank. We find the submission of the learned counsel for the petitioners reasonable, as the Debts Recovery Appellate Tribunal has itself allowed deductions of payments made by the petitioners while arriving at the balance amount to be pre-deposited by the petitioners. However, there are no records before us to substantiate that the petitioners have already paid a sum of Rs.130 lakhs after the amount of Rs.668.38 lakhs was demanded from the petitioners. The petitioner has to therefore substantiate the same before the Debt Recovery Appellate Tribunal.

22. The Petitioners shall further deposit the aforesaid amount of Rs.37 lakhs within a period of 6 weeks from today as undertaken by them and file appropriate memo and documents to establish before the Debt Recovery Appellate Tribunal that they have already paid a sum of Rs.130/- lakhs.

23. In case, the Debt Recovery Appellate Tribunal finds that the petitioners have indeed paid a sum of Rs.130 lakhs as has been claimed by the petitioners and have further deposited aforesaid sum of Rs.37 Lakhs, the Debt Recovery Tribunal shall proceed to dispose the appeal on merits in accordance with law.

24. With the above observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

arr/jen

To

1. The Authorised Officer,
   Pridhvi Asset Reconstruction & Securitisation
   Company Ltd., Rajaprasadmu, 4th Floor, Wing No.1,
   Plot No.6, 6-A, 6-B, Masjid Bandar Road,
   Kondapur, Hyderabad 500 084.

2. M/s.Mantra Industries Ltd., Rep. by Managing Director,
   No.17, Shiv Ganga Apartments,
   S.L.Road, Mulund, (West) Mumbai-400 080.

3. The Debt Recovery Appellate Tribunal,
   At Chennai, 4th Floor, Indian Bank Building,
   No.55, Ethiraj Salai, Egmore,
   Chennai-600 008.

+1cc to Mr.J.Arun Prasad, Advocate, S.R.No.93589
+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.94076

W.P.No.25102 of 2017

VSNII(CO)
CS/04/12/2019