IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.17286/2020 & WMP.No.21376/2020

1.P.Bhuvaneswari
2.P.Naveen Chakravarthy ..Petitioners

Versus

1.Union of India
Ministry of Finance
Department of Financial Services
New Delhi, represented by its Secretary.

2.The Secretary
The Reserve Bank of India,
Central office Building
Mumbai, Maharashtra 400 001.

3.Assistant Manager
Consumer Education & Protection Cell,
Reserve Bank of India [III Floor]
Fort Glacias, Post Box No.40,
16, Rajaji Salai, Chennai 600 001.

4.Chief Manager
Punjab National Bank,
10, Raja Street,
Theagaraya Nagar, Chennai 600 017.

5.Chief Manager
Punjab National Bank
Asset Recovery Management Branch
PNB Towers, Mezzanine Floor
No.46-49, RH Road, Chennai 600 014.

6.Chairman cum Managing Director,
Punjab and National Bank,
7, Bikaji Cama Place,
New Delhi 110066.

7.M/s.Drill Jig Busing Co Madras Pvt Ltd
Plot No.44, SIDCO Estate,
Ambattur, Chennai 600 098. ..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus certiorarified mandamus, calling for the records pertaining to the impugned order i.e, the letter dated 13.05.2019 bearing No.CEPC[Che]/2197/2.1.2017/2018-2019 sent by the 3rd respondent to the 1st petitioner and quash the same and further direct the 2nd respondent investigate into the affairs of the 4th and 5th respondent pertaining to handling of the loan account and SARFAESI proceedings of MK Cables and Conductors Pvt Ltd.

For Petitioners Mr.M.S.Krishnan
Senior Counsel assisted by
Mr.B.Deepak Narayanan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

(1) The 1st petitioner is a suspended Director of M/s.M.K.Cables and Conductors Private Limited and in the affidavit filed in support of this writ petition, would aver among other things that the 4th respondent had sanctioned a loan amount of Rs.10.76 Crores on 31.03.2011 to the Company, viz., M/s.M.K.Cables and Conductors Private Limited and for the due repayment of the loan, the Company also created security in the form of mortgage in respect of two properties situate at Gummidipoondi and Ponneri respectively. It is the specific case of the petitioner that in respect of the property situate at Gummidipoondi, which form part of SIPCOT Industrial Complex, at the time of execution of Memorandum of Deposit of Title Deeds, 20,000 sq.ft., of a factory shed was the subject matter of the schedule of property and whereas, the actual measurement of the said shed is about 60,000 sq.ft.

(2) Since the Company, due to vagaries of business, was not able to carry on its operation, the Accounts were classified as Non Performing Assets and respondents 4 and 5 had initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [in short ''SARFAESI Act''], which led to various litigations, the details of which are made available in the voluminous typed set of documents filed along with this writ petition.

(3) One of the creditors, viz., Shri Balaha Commercial Private Limited, had invoked the jurisdiction of the National Company Law Tribunal at Chennai [in short ''NCLT''] by filing an application under Section 9 of Insolvency and Bankruptcy Code, 2016 [IBC] against the said Company. The NCLT, Chennai Bench, vide order dated 30.07.2019 has passed the following orders and it is relevant to extract the same:-

> ''6.[I] That Moratorium is hereby declared prohibiting all of the following actions, namely,
>
> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other Authority ;
>
> (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein ;
>
> (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act] ;
>
> (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor .
>
> [II] That the supply of essential goods or services to the corporate debtor, if continuing, shall be terminated or suspended or interrupted during moratorium period.
>
> [III] That the provisions of sub-section [1] of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
>
> [IV] That the order of moratorium shall have effect from 30.07.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section [1] of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

[V]That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code/

[VI]That this Bench hereby appoints Mr.R.Sankaran as Interim Resolution Professional [Reg.No.IBBI /IPA-001 /IP-P01692/2019-2020 / 12608], E-Mail: sanumlegal@gmail.com Mobile No.9840029397 with his consent to carry the functions as mentioned under the Insolvency and Bankruptcy Code.''

(4)The Company also filed an application under Section 17[1] of the SARFAESI Act before the Debts Recovery Tribunal-II, Chennai, in Sa.No.126/2018, to declare the Auction Sale Notice dated 04.05.2018 as null and void with a consequential direction, forbearing the Punjab National Bank [PNB] [respondents 4 to 6] from conducting E-Auction Sale on 28.05.2018. The Debts Recovery Tribunal-II, Chennai, vide order dated 13.12.2018, has set aside the E-Auction sale held on 28.05.2018 with a further direction, directing Company to create a mortgage in respect of additional constructed area with the 1st respondent Bank in addition to the earlier mortgage, on or before 28.12.2018 with a default clause and in the event of creation of additional mortgage by the Company, PNB was granted liberty to issue fresh sale notice for entire mortgaged properties for better price with fresh Valuation Report and it appears that in compliance of the said order, the Company has also executed the mortgage.

(5)Punjab National Bank represented by its Authorised Officer, aggrieved by the said order, filed an Appeal in RA.SA.No.7/2019 on the file of the Debts Recovery Appellate Tribunal at Chennai [in short ''DRAT'']. The DRAT, vide final orders dated 21.08.2019, had found that though the mortgage in respect of the industrial shed was 20,000 sq.ft., whereas 60,000 sq.ft., of shed was the subject matter of sale, has taken note of the contents of the Memorandum of Deposit of Title Deeds wherein it was clearly mentioned and as agreed by the parties that subsequent subsequent construction to be carried out in the premises will be a subject matter of the mortgage automatically. DRAT also found from the Valuation Report that the construction area is 60,000 sq.ft and also taken note of the fact that the Presiding Officer of DRAT had himself observed that the procedure adopted by the Bank [PNB] for sale was without any infraction of any rule or procedure. The DRAT, in the light of the reasons assigned, had allowed the appeal and thereby, set aide the order passed by DRT at Chennai in SA.No.126/2018.

(6)One of the suspended Directors of the Company, viz., Mr.P.Naveen Chakravarthy, made a challenge to the said order by filing WP.No.27780 of 2019 and the said writ petition has also been entertained and interim orders were granted for a limited period by a Division Bench of this Court vide order dated 19.09.2019 and the writ petition is still pending.

(7)Mr.M.S.Krishnan, learned Senior Counsel assisted by Mr.B.Deepak Narayanan, learned counsel for the petitioner, has drawn the attention of this Court to the representation dated 26.12.2018 submitted by the 1st petitioner, viz., Tmt.P.Bhuvaneswari, to the Governor, Reserve Bank of India, [RBI] as to the misdeeds and malafide acts on the part of the respondents and would add that though the details of such incidents have been elaborated in the said representation, the 3rd respondent vide impugned communication dated 13.03.2019, had not at all taken into consideration, the said aspect and simply rejected the representation on account of initiation of the proceedings by PNB under the SARFAESI Act and granted liberty to her to approach any appropriate Forum to get redressal of the things.

(8)The primordial submission of the learned Senior counsel for the petitioner is that though One Time Proposal was mooted out and that the Company had also complied with the part of the said Settlement, it could not comply with the rest of the terms and also points out that though the Memorandum of Deposit of Title Deeds contains the subject matter of mortgage of industrial shed to an extent of 20,000 sq.ft., what was sold was 60,000 sq.ft. and in the light of various irregularities committed by the officials of PNB with an oblique and mala fide motive, the RBI should have taken appropriate action on the representation of the 1st petitioner and prays for appropriate orders.

(9)This Court has carefully considered the arguments advanced by the learned Senior counsel appearing for the petitioner and also perused the materials placed before it.

(10)The fact remains that in lieu of the default committed by the petitioners, the PNB has issued a Demand Notice u/s.13[2] of the SARFAESI Act for recovery of a sum of Rs.8,46,50,205/- and also filed an Original Application for recovrey of Rs.9,53,07,468/- and pendency of the proceedings, an order of Compromise came to be passed on 06.07.2017 by DRT in the Original Application by way of One Time Settlement and the borrower/Company had paid a sum of Rs.51 lakhs and agreed to pay the balance of Rs.820 Lakhs within 90 days ; but did not comply with the order and therefore, the Bank issued E-Auction Sale Notice dated 04.05.2018 for recovery of

Rs.10,59,46,882.63p. The auction was successful and as already pointed out, for setting aside the auction sale, the Company/borrower filed the above said SARFAESI application before the DRT and the DRT had set aside the sale with certain directions and the order of DRT came to be set aside by DRAT, Chennai dated 21.08.2019 in RA.SA.No.7/2019. A perusal of the typed set of documents would disclose prior to the auction which was successful, there were nine auction sales took place and it is also the subject to challenge by various litigations. Of course, it is open to the Company to make a challenge to the said proceedings.

(11) In the considered opinion of the Court, the representation dated 26.12.2018 submitted by the 1st petitioner to RBI is a last of such attempt under the impression that the RBI controls the administration and affairs of the Nationalised Banks. In the considered opinion of the Court, it is not so for the reason that RBI plays a limited role in the light of the monetary policy being enumerated/put in place from time to time.

(12) It is a well settled position of law that allegations of mala fide not only required to be pleaded but also to be proved strictly and the order of DRAT dated 21.08.2019 in RA.SA.No.7/2019 would prima facie disclose that proper procedure has been adopted by PNB while conducting auction sale and it was also successful and of course, the order of DRAT is also the subject matter of challenge in WP.No.27780/2019 and the same is pending adjudication before this Court.

(13) In the light of the above facts and circumstances and reasons assigned above, this Court is of the considered view that there is absolutely no merits in this writ petition and it deserves dismissal and accordingly, dismissed at the admission stage itself. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. Secretary,
Union of India
Ministry of Finance
Department of Financial Services
New Delhi.

2.The Secretary
The Reserve Bank of India,
Central office Building
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7, Bikaji Cama Place,
New Delhi 110066.

+1cc to Mr.Deepak Narayanan, Advocate, S.R.No.39927
+1cc to Mr.S.S.Meenakumary, Advocate, S.R.No.39694

WP.No.17286/2020

SPD(CO)
KKV/28/12/2020