IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.4451 of 2021
and
WMP No.5072 of 2021
and
WMP No.5073 of 2021

B.Ramalingam ... Petitioner

Vs

1 The Managing Director,
Tamil Nadu Industrial Investment,
Corporation Ltd.
No.692, Anna Salai,
Nandanam, Chennai-600 035.

2 The Branch Manager,
Tamil Nadu Industrial Investment,
Corporation Ltd.
No.73/A, Katpadi Main Road,
Vasan E.N.T.Clinic First Floor,
Gandhi Nagar,
Vellore-632 006,
Vellore District.

3 The O.S.D. (LM & R/REC)
TIIC Ltd., No.692, Anna Salai,
Nandanam,
Chennai-600 035. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to calling for the entire records relating to the impugned E-auction notice issued by the 2nd Respondent in Sae. Ma.Tho.E/201/Varaikalai/2021, dated 02.02.2021 published in the Dinathanthi Newspaper dated 04.02.2021 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.K.Magesh

ORDER

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

This is a desperate attempt by a defaulting borrower to ward off the inevitable.

2. Though the petitioner seeks to found the petition on a notice of January 21, 2021 issued by the respondent secured creditor, it is evident even from such notice that the secured creditor took steps against the secured assets under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 several years earlier.

3. The impugned notice of January 21, 2021 refers to sale notices dated July 13, 2017, December 14, 2017 and March 19, 2019 having been issued for sale of the secured assets. There is no doubt that the secured creditor must have issued a prior notice under Section 13(2) of the 2002 Act and followed it up with another issued under Section 13(4) thereof before resorting to the process of auction sale. The said notice of January 21, 2021 reveals that since no bids were received earlier, the secured creditor proposed to call for a further e-action sale. Seven days' time from the date of this letter was given to the petitioner to pay off the dues. The reserve prices for both the immovable property and the machinery were indicated in such notice.

4. The secured creditor issued a subsequent notice on February 4, 2021 enclosing a publication made by the secured creditor inviting offers for sale of the secured assets. The terms and conditions for the sale were forwarded to the petitioner or the petitioner's relevant concern which was the borrower. An online auction notice of February 2, 2021 was appended to such letter of February 4, 2021.

5. The secured creditor asserts that it has taken appropriate measures under the Act of 2002.

6. It is elementary that any person aggrieved by any measure taken by a secured creditor under Section 13(4) of the Act of 2002 is entitled to proceed against such measure before the

appropriate Debts Recovery Tribunal having jurisdiction over the matter. In the present case, though there is no reference to the notice under Section 13(2) of the Act of 2002 that may have been issued to the borrower or reference to the measures taken for the first time under Section 13(4) of the Act of 2002, what is evident is that a previous sale notice was issued in the month of July, 2017. The issuance of a sale notice is more than measures being taken under Section 13(4) of the Act of 2002. Even if the writ petitioner was unaware of the previous steps, once the writ petitioner was made aware of the notice to conduct a sale of the assets issued in July, 2017, the writ petitioner ought to have approached the appropriate Debts Recovery Tribunal within the stipulated time, if the writ petitioner was aggrieved by the measures taken by the secured creditor. It appears that the writ petitioner has waited from 2017 till the most recent notices were issued before instituting the present proceedings.

7. A Writ Court will not come to the assistance of a laggard. Though there is no doubt that Article 226 of the Constitution may be invoked to prevent manifest miscarriage of justice, when there is an alternative efficacious remedy available and the party invoking the writ jurisdiction is found not to have availed of such remedy without proffering any plausible excuse in such regard, the Writ Court will not entertain such a litigant. In the instant case, the statutory remedy of the petitioner lay before the appropriate Debts Recovery Tribunal and such proceedings ought to have been instituted sometime in 2017. Upon the petitioner not having taken immediate steps in respect of the measures taken by the secured creditor under Section 13(4) of the Act of 2002, the present attempt to impede the secured creditor in completing the steps in 2021 cannot be appreciated. The earlier of the two notices that were issued by the secured creditor and which has been carried to this Court is for the purpose of re-auctioning the secured assets since the previous auctions did not fetch any buyer. The steps taken by the secured creditor do not call for any interference, particularly in the absence of the writ petitioner having taken appropriate steps at the relevant stage.

W.P.No.4451 of 2021 is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.5072 and 5073 of 2021 are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1 The Managing Director,
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TIIC Ltd., No.692, Anna Salai,
Nandanam,
Chennai-600 035.

+1cc to M/s.K.Magesh, Advocate Sr.14595

+1cc to M/s.C.Prakasam, Advocate Sr.15036

W.P.Nos.4451 of 2021

gmi[co]
srg 18/03/2021