IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.18711 of 2021
and W.M.P.No.19974 of 2021

M/s.Mcsys Auto Ancilliaries Pvt. Ltd
Rep. by its Director, Mrs.K.Dhanalakshmi,
No.357, Mohan Ram Nagar,
Mogappair West, Chennai 600 037. .. Petitioner

Vs.

State Bank of India
Rep. by its Chief Manager, Asset Recovery
Management Branch, No.44, Eldams Road,
1st Floor, Teynampet, Chennai 600 018. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in SBI/ARMB/20-21/108 dated 22.03.2021 of the respondent bank and quash the same and consequently direct the respondent bank to extend the time for a period of 60 days from 29.07.2021 to settle the entire payment under the OTS Scheme of the respondent by its letter dated 30.11.2020 in respect of loan account No.34338725259 of the petitioner company.

For the Petitioner : Mr.K.A.Ramakrishnan

For the Respondent : Mr.M.L.Ganesh

ORDER

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

There is no doubt, as the petitioner submits, that the petitioner may not be a chronic defaulter. However, it is the indisputable position that the petitioner owes money to the respondent secured creditor; the petitioner has failed to adhere to the terms of the one-time settlement offer made by the secured creditor vide its letter dated November 30, 2020; and, the secured creditor has now issued a notice dated August 16, 2021 proposing to conduct an auction sale of the specified secured asset on September 23, 2021.

2. It is the last of the above facts which is of importance for the present purpose. It is evident that the secured creditor has taken a measure under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Once such a measure is taken, it triggers off the right for any person aggrieved thereby to approach the appropriate Debts Recovery Tribunal under Section 17 of the Act. In such circumstances, the invocation of this extraordinary jurisdiction under Article 226 of the Constitution cannot be condoned. There is no doubt that the petitioner made attempts to pay off the money in terms of the OTS; but even the payment of the first instalment was delayed, whereupon the bank appears to have notified the petitioner vide its mail dated January 4, 2021 that the OTS had failed. The petitioner went on to pay the second instalment, again delayed, which the bank accepted. The mere acceptance of the money by the bank cannot be counted against the bank since the petitioner owes money to the bank. However, when the petitioner attempted to make the subsequent payment, the petitioner was informed that the payment could not be received under the OTS scheme since that had already failed.

3. The steps taken by the bank are only consequential upon the petitioner's failure to adhere to the OTS terms. The petitioner pleads the inability on its part to mobilise funds during the lockdown period. That appears only to be an excuse since the OTS offer was made at the end of the first period of the lockdown and the default on the part of the petitioner was made when the lockdown was considerably eased and the second surge of the pandemic was yet to arrive.

4. Whatever may be the cause for the petitioner's failure to adhere to the OTS terms, the merits of the matter need not be gone into since it is for the petitioner to approach the appropriate tribunal in accordance with law.

Accordingly, W.P.No.18711 of 2021 is dismissed. W.M.P.No.19974 of 2021 is closed. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To:

The Chief Manager
State Bank of India
Asset Recovery Management Branch,
No.44, Eldams Road, 1st Floor,
Teynampet, Chennai 600 018.

W.P.No.18711 of 2021

SRA (CO)
PR (15/09/2021)