

**HIGH COURT FOR THE STATE OF TELANGANA: AT HYDERABAD
(Special Original Jurisdiction)**

**THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND TWENTY TWO**

PRESENT

**THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA**

WRIT PETITION NO: 11219 OF 2022

Between:

M/s J.V. Abacus Net Comm (P) Limited, Company regd. under the Companies Act, 1956, Door No. 6-2-120, Flat No. 502, Pushpavathi Residency, New Boiguda, Secunderabad - 500003 (TS) Rep. by its Managing Director, Mr G. Jayaprakash, S/o late G. Narasimha Rao.

...PETITIONER

AND

1. The Authorised Officer, (under SARFAESI Act, 2002), Canara Bank, 3rd Floor, Circle Office Building, MCH No. 10-3-163 and 10-3-163/A, Plot No. 85, Survey No. 625, Beside Rail Nilayam, Secunderabad - 500028 (TS).
2. The Asst. General Manager, ARM Branch, Canara Bank, 3rd Floor, Circle Office Building, MCH No. 10-3-163 and 10-3-163/A, Plot No. 85, Survey No. 625, Beside Rail Nilayam, Secunderabad - 500028 (TS).

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue appropriate writ, order or direction more particularly in the nature of Writ of Mandamus to declaring the Auction Notice No. 7700-BR/2752-211/109/2021, dated 18.01.2022 of the Authorised Officer, the Respondent No. 1 in respect of the properties of the petitioner company, item No. 1 and 2 therein as bad, illegal, void and contrary to the provisions of the Securitisation and Reconstruction, etc., Act, 2002 and also to the terms of the One Time Settlement Offer (OTS) of the Bank vide reference No. HYD/ARM/211/SANC/05/2021, dated 10.05.2021 of the Chief Manager of the Respondent No. 2 Bank which were acted upon by the Bank by accepting the payment of sum of Rs.2,00,000/- made by the petitioner on 30.03.2021 towards OTS and consequently direct the Respondent

No. 2 Bank to extend the facility of consent sale of all the three properties of the petitioner which are under mortgage in favour of the Respondent No. 2 Bank so as to secure the optimum bids for sale of the same under the SARFAESI Act, 2002 to minimize the unwarranted loss to the petitioner company by postponing the proposed auction sale by three months from 04.03.2022 to enable the petitioner to undertake and complete the repair works to the three properties.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass interim orders of suspension of the operation of the impugned Auction Notice No. 7700 BR/ 2752-211/109/2021, dated 18.01.2022 of the Authorised Officer, the Respondent No. 1 in respect of the properties of the petitioner company, item No. 1 and 2 for a period of three (3) months to enable the petitioner to undertake repairs to the properties under sale and to get prospective buyers by way of consent sale to get fair and optimum price for the properties, pending disposal of the W.P.

Counsel for the Petitioner: SRI G. MALOJI RAO

Counsel for the Respondent No.2: SRI A.V.S.S.PRASAD

Counsel for the Respondent No.1: None Appeared

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA
WRIT PETITION No.11219 of 2022

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. G.Maloji Rao, learned counsel for the petitioner and Mr. A.V.S.S.Prasad, learned counsel for the 2nd respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, petitioner has challenged the legality and validity of Sale Notice dated 18.01.2022 proposing to hold auction sale of the two schedule properties on 04.03.2022.

3. Petitioner is a company incorporated under the Companies Act, 1956, and is engaged in the business of sales and services of IT equipments. For its business purpose, it had availed overdraft facility from the respondent-Canara Bank. For availing such credit facilities, petitioner had mortgaged three properties including the two schedule properties as per the Sale Notice dated 18.01.2022.

4. For default in repayment, Canara Bank classified the loan account of the petitioner as Non-Performing Asset (NPA) and thereafter invoked provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly referred to hereinafter as the 'SARFAESI Act'). In this connection, Canara Bank took over the possession of the three mortgaged properties of the petitioner in the year 2015.

5. In the meanwhile, following negotiations, petitioner's proposal for One time Settlement (OTS) was accepted by authorities of the Canara Bank. As per the OTS, the settlement was fixed at Rs.44.26 lakhs. However, petitioner could pay only Rs.2,00,000.00. In view of such default of the petitioner, respondent-Canara Bank cancelled the OTS on 29.12.2021. It was thereafter that the impugned sale notice came to be issued. As per the impugned sale notice, outstanding dues of the petitioner has been quantified at Rs.2,92,42,548.07 as on 31.12.2021.

6. Learned counsel for the petitioner submits that though the respondent-Canara Bank had taken over physical possession of the schedule property way back in the year 2015, no watch and ward personnel were deputed to look after the property. As a result, the schedule properties have suffered extensive damage. He submits that the auction sale may be kept in abeyance for a period of three months to enable the petitioner to undertake repairs of the schedule properties and to ensure that the schedule properties fetch a better price in the auction sale.

7. Learned counsel for the respondent submits that in the auction scheduled on 04.03.2022, the schedule property at Serial No.1 has got no bidders, whereas the property at Serial No.2 has one bidder as on date.

8. On a query by the Court, learned counsel for the petitioner submits that petitioner has not challenged the action of respondent-Canara Bank under the SARFAESI Act before the jurisdictional Debts Recovery Tribunal.

9. If that be the position, with no legal challenge raised as to the impugned Sale Notice, we are unable to accede to the request of the petitioner. Insofar the prayer of the petitioner for extension or revival of OTS is concerned, it is entirely between the petitioner and the secured creditor; it being a private contract. Court has hardly any role to play in the matter. In the circumstances, we decline to interfere in the matter.

10. Writ Petition is accordingly dismissed. There shall however be no order as to costs.

11. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

SD/-T.KRISHNA KUMAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to SRI G.MALLOJI RAO, Advocate [OPUC]
2. One CC to SRI A.V.S.S.PRASAD, Advocate [OPUC]
3. Two C.D. Copies.
4. One Spare Copy.

MRC
TR



HIGH COURT

DATED:03/03/2022

ORDER

WP.No.11219 of 2022



DISMISSING THE WRIT PETITION
WITHOUT COSTS

(S)
MBL
2/5/22