



W.P.No.16306 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

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

W.P.No.16306 of 2023

Hariway Lines Pvt. Ltd.
Rep. by Managing Director
Manickam Pandidurai
No.346, Periyar Nagar
Rajagopalapuram, Pudukottai
Tamilnadu 622 003.

.. Petitioner

Vs.

1. Debt Recovery Appellate Tribunal, Chennai
Rep. by its Registrar
7th Floor, Additional Building
Sastri Bhavan, Haddows Road
Chennai 600 006.

2. Jaivika Tech Services LLP
4th Floor, Raja Annamalai Building
No.72, Rukmini Lakshmi Pathy Road
Egmore, Chennai 600 008.

3. The Authorised Officer
Aditya Birla Finance Ltd.
Unit 10 & 12, 4th and 6th Floor
Oval Venkat Narayan Road, T.Nagar
Chennai 600 017.

.. Respondents



W.P.No.16306 of 2023

WEB COPY

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus calling for the records of the first respondent in AIR No.553 of 2023 dated 17.05.2023, quash the same and direct the first respondent to adjudicate the Appeal AIR No.553 of 2023 in accordance with law.

For the Petitioner : Mr.P.S.Raman
Senior Counsel
for Mr.Abishek Jenasean &
Mr.Vijayakumar

For the Respondents : R1 - Tribunal

Mr.E.Om Prakash
Senior Counsel
For Mr.T.Ravichandran
For M/s.Shree Law Services
for Respondent-2

Mr.Vijay Narayan
Senior Counsel
For Mr.C.Vigneshwaran
for Respondent-3

ORDER

(Made by the Hon'ble Chief Justice)

The petitioner has initially approached this Court as the appeal filed by the petitioner against the order passed by the Debts Recovery



W.P.No.16306 of 2023

Appellate Tribunal was not registered and returned back. Pursuant to the order of the Debts Recovery Tribunal, the Bank proceeded to conduct fresh auction.

2. On 01.06.2023, we issued notice to the respondents and also permitted the petitioner herein to participate in the auction. It was also observed by us that all further steps are subject to the decision in the present writ petition.

3. The petitioner has moved an application to amend the relief by challenging the order of the Debts Recovery Tribunal also.

4. The present third respondent had conducted auction of the writ property purportedly under the provisions of the SARFAESI Act. The present petitioner was declared as the successful bidder for an amount of Rs.20.25 crore. The present second respondent assailed the same before the Debts Recovery Tribunal. Initially, the present petitioner was not added as a party. Subsequently, the present second respondent/original applicant before the Debts Recovery Tribunal, filed



W.P.No.16306 of 2023

WEB COPY

an application to implead the present petitioner as a party. The petitioner appeared on or about 11.04.2023 in the said matter. The Presiding Officer, Debts Recovery Tribunal, posted the matter on 25.04.2023. On 25.04.2023, order is passed by the Debts Recovery Tribunal setting aside the sale in favour of the present petitioner.

5. The petitioner preferred an appeal before the DRAT. The appeal was not registered and returned back. The petitioner, thereafter, approached this Court by filing the instant writ petition. As observed above, in the instant writ petition, notice was issued on 01.06.2023 and as fresh auction was declared by the Bank, the petitioner was permitted to participate and it was further observed that the auction sale would be subject to the decision in the present writ petition.

6. We have heard Mr.P.S.Raman, learned Senior Counsel for the petitioner, Mr.E.Om Prakash, learned Senior Counsel for the second respondent and Mr.Vijay Narayan, learned Senior Counsel for the third respondent Bank.



W.P.No.16306 of 2023

WEB COPY

7. The order passed by the Debts Recovery Tribunal reads thus:

"Going by the submissions of respective senior counsels, it is observed that applicant as well as third party purchaser, both were permitted by the secured creditor to participate in the bid, but however it is their contention that they could not bid in a manner known to law and therefore had lost opportunity to increase the bid amount for acquiring the property. Applicant had conceded for interse bidding between them before the Tribunal to meet the ends of justice, with the proposed third party purchaser, however the same was refuted by the said third party purchaser.

In the circumstances, notwithstanding the contentions of respective parties and without going into the merits of the case, secured creditor is permitted to issue fresh notice of sale either by public auction or by private treaty or by interse auction through private treaty as the case may be, in accordance with law.

In view of the above finding, the sale conducted and contemplated to be concluded on 17.03.2023 is hereby set aside. Authorised Officer of respondent institution is permitted to refund the EMDs or even higher amounts received from the respective auction purchasers.



WEB COPY



W.P.No.16306 of 2023

Interim order, if any granted and subsisting till this day stands vacated and all other IAs, if any pending stand closed."

8. Though learned Senior Counsel for the parties made their submissions on merits, qua, the first auction sale assailed before the Debts Recovery Tribunal and the second auction sale also, learned Senior Counsel for the respondents were at pains to support the order of the Debts Recovery Tribunal inasmuch as the Debts Recovery Tribunal has not given any reason and has passed the order without considering the submissions made.

9. It needs to be considered that now, reasons are considered to be the third pillar of the principles of natural justice. Reasons depict the application of mind of the authority passing the order. The order bereft of reasons cannot be sustained, as, now, reasons have been brought within the contours of the principles of natural justice.



W.P.No.16306 of 2023

WEB COPY

10. One of the contentions of learned Senior Counsel for the petitioner is that if this order of the Debts Recovery Tribunal is set aside, the fresh auction sale conducted on 02.06.2023 would also be set aside as the same is made subject to the decision in the present petition.

11. As we have observed that the order of the Debts Recovery Tribunal cannot be sustained, we are inclined to set aside the order of Debts Recovery Tribunal dated 25.04.2023 and the same is hereby set aside. By setting aside the order of the Debts Recovery Tribunal, we would be relegating the parties before the Debts Recovery Tribunal. It is not that by setting aside the order of Debts Recovery Tribunal, a finality is being attached to the proceedings before the Debts Recovery Tribunal. We are relegating the parties before the Debts Recovery Tribunal for a decision in SR No.3651 of 2023 along with Diary No.807 of 2023 afresh.

12. In view of that, the order that we have passed that the fresh auction sale conducted would be subject to the decision of the writ



W.P.No.16306 of 2023

WEB COPY

petition, would now be subject to the decision of the Debts Recovery Tribunal in SR No.3651 of 2023 and Diary No.807 of 2023.

13. We would have accepted the arguments of learned Senior Counsel for the petitioner for setting aside the fresh auction sale itself, had we not relegated the parties before the Debts Recovery Tribunal. Fresh auction sale would be subject to the decision of the proceedings before the Debts Recovery Tribunal.

14. It is for the parties to consider as to whether fresh auction is to be assailed depending upon the order to be delivered in the pending proceedings to which the parties are relegated. The parties shall appear before the Debts Recovery Tribunal on 28.06.2023.

15. Considering that the matter is relegated to Debts Recovery Tribunal and it would be a second round before the Debts Recovery Tribunal, the Debts Recovery Tribunal may endeavour to dispose of the appeal expeditiously.



W.P.No.16306 of 2023

WEB COPY

16. The writ petition is disposed of accordingly. There will be no order as to costs. Consequently, WMP Nos.15692 and 15694 of 2023 are closed.

(S.V.G., CJ.)

(P.D.A., J.)

12.06.2023

Index : No
Neutral Citation : No

kpl

To

1. The Registrar
Debt Recovery Appellate Tribunal, Chennai
7th Floor, Additional Building
Sastri Bhavan, Haddows Road
Chennai 600 006.
2. The Authorised Officer
Aditya Birla Finance Ltd.
Unit 10 & 12, 4th and 6th Floor
Oval Venkat Narayan Road, T.Nagar
Chennai 600 017.



WEB COPY



W.P.No.16306 of 2023

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESEVALU, J.

(kpl)

W.P.No.16306 of 2023

12.06.2023