8. SA 517/2023 27.07.2023

Ld. Counsel Mr. G. Chandra Mohan, is appearing for Applicants.
Ld. Counsel Mr. K. Sevugan, is appearing for Respondent Bank.

Emergent Petition in IA No.2662/2023 : This petition is allowed.

Stay Petition in IA No.2661/2023 :

Ld. Counsel for the Applicants submitted that the SA is filed challenging the E-Auction Sale Notice dated 12.07.2023, issued by the Respondent Bank and the Auction Sale is fixed on 04.08.2023.

Ld. Counsel for the Applicants further submitted that the Applicants are engaged in the business of manufacturing and processing of Sago and Starch, under the name and style of 'M/s. T.S.S. Sago Factory', and which aids the growth of the Agricultural Sector, and the 2nd Applicant is the proprietor of the 1st Applicant Company and the other Applicant is the guarantor for the credit facilities availed from the Respondent Bank, to the tune of Rs.111.47 lakhs, and mortgaged the schedule mentioned 2.27 Acres of Factory land and building and RCC residential Building properties as a collateral security for the loan. The Applicants are regular in repaying the EMIs. However, due to various adverse market conditions, viz. due to rise in the raw material costs and increase in Air freight, high interest costs and power shortage and gap in Working Capital, the Applicants business was severely affected and suffered loss and hence, there were some irregularities occurred in repaying the dues and the loan account was classified as NPA. Thereafter, the Applicants approached the Respondent Bank citing the Covid-19 pandemic situation and the frequent lockdowns and requested for extension of time/restructuring/ re-scheduling of EMI, but the Respondent Bank did not consider their request and issued Demand Notice u/s.13 (2) of the SARFAESI Act, dated 29.8.2022, by claiming a sum of Rs.1,10,40,565.00, as on 25.8.2022, and followed by that issued the Possession Notice dated 03.11.2022, and the Sale Notice dated 17.02.2023, wherein the sale was scheduled to be held on 28.3.2023, which was challenged by the Applicants in S.A.No.179/2023, before this Hon'ble Tribunal, and obtained an interim order of protection on a condition to deposit a sum of Rs.45.00 lakhs in two equal installments. However, due to severe liquidity crunch faced by the Applicants, the said conditional order granted by this Hon'ble could not be complied with. Hence, the Respondent Bank has now proceeded further with the issuance of the 2nd Sale Notice dated 12.7.2023 and the sale is fixed on 04.8.2023, which is being challenged in the present SA.

The Ld. Counsel for the Applicants further submitted that the Respondent Bank had not scrupulously followed the guidelines of RBI by charging a exorbitant rate of interest especially, without considering the fact that the Applicants concern is coming under a MSME sector and procedures mandated under the SARFAESI Act. Further, the secured property, an extent of 2.27 Acres, consisting of Factory land and building and RCC residential Building properties, having a high net worth value, is grossly undervalued and the reserve price fixed by the Respondent bank is very low and the Respondent Bank is trying to sell the secured property at a throwaway price. Hence, the Applicants are required to safeguard the secured property and, if the property is sold by the Respondent Bank, it shall be highly prejudice and cause hardship and loss to the Applicants. The Applicants are willing and ready to settle amicably the loan accounts itself, if a certain period of time is granted and also willing to deposit a reasonable amount as a pre-condition in the event of grant of an interim protection. Hence, the prayer of the Applicants may be considered favourably by this Honourable Tribunal.

Ld. Counsel for the Respondent Bank submitted that this the 2nd Sale Notice and the 1st Sale Notice having failed to materialize, and further the earlier conditional order granted by this Hon'ble Tribunal in an earlier SA No.179/2023 filed by the Applicants challenging the 1st Sale notice was also not complied by the Applicants, and hence, the Applicants have no bona fides on their part for seeking an interim relief of protection in the present SA, challenging the present Sale Notice. The Respondent Bank has to recover a sum of Rs.1,14,44,024.00, from the Applicants and there are bidders are also available for the e-auction sale fixed on 04.8.2023 and there is no violation of the rules and guidelines of RBI and all the procedures contemplated under the SARFAESI Act are scrupulously followed by the Respondent Bank. Hence, if any interim order granted, it shall prejudice the right of the Respondent Bank in recovering the Public Money. However, if any interim order is granted a substantial amount, not less than 50% of the amount claimed by the Respondent Bank, may be imposed as a pre-condition by this Hon'ble Tribunal.

This Tribunal on considering the rival submissions of the parties and without going into the merits of the case at present, and this Tribunal is the view that the Applicants need to be given a chance to prove their bona-fide and merits of the submission. Hence, this Tribunal is hereby ordered the Applicants to deposit a sum of Rs.68.00 lakhs to the Respondent Bank, out of which a sum of Rs.34.00 lakhs shall be paid on or before 24.8.2023 and another sum of Rs. 34.00 lakhs shall be paid on or before 21.9.2023 to the Respondent Bank. The Respondent Bank on receiving the sum as ordered by this Tribunal shall not confirm the sale, if any, held, on the schedule date of auction. If the Applicants are failed to deposit any part of the sum as ordered by this Tribunal, the Respondent Bank shall be at its liberty to confirm the auction sale if any, held on the schedule date of auction without any further reference to this Tribunal.

The case is adjourned to 25.08.2023. Call on 25.8.2023.

PO