APHC010431112024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3329]**
(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 21975/2024

Between:

Pujitha Industries and Others **...PETITIONER(S)**

AND

The Reserve Bank Of India and Others **...RESPONDENT(S)**

Counsel for the Petitioner(S):

1. VIMAL VARMA VASI REDDY

Counsel for the Respondent(S):

1.

The Court made the following:

INTERIM ORDER:

W.P. No: 21975/2024

Heard learned Senior Counsel for the petitioners and Smt. V. Dyumani, learned Standing Counsel for respondent-Bank.

For filing counter-affidavit, list the matter after four (04) weeks.

VENKATESWARLU NIMMAGADDA, J

I.A.No.1 of 2024

Heard learned Senior Counsel for the petitioners and Smt. V. Dyumani, learned Standing Counsel for respondent-Bank.

2. Learned Senior Counsel appearing for the petitioners submits that the petitioners' firm is a registered firm under Micro, Small and Medium Enterprises (in short MSME) and also before Registrar of Firms, Bhimavaram on 20.07.2002 bearing No.102 of 2002, which was registered under Central Excise Act bearing Registration No.AAGFP8396 QS M001. It is a registered firm with Commercial Tax Department bearing TIN No.37030138580 and it is also registered with Department of Industries and having a GST registration with GST IN No.37AAGFP 8396 Q1Z2. While so, petitioner No.1 firm availed Rs.1.50 crores from the 2nd respondent-Bank under SGNNI in the year 2014 and later the same is enhanced to an amount of Rs.2.70 crores during the year 2019-2020.

3. Learned Senior Counsel further submits that, before classifying the account of petitioner No.1 as NPA under the provisions of "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act" (hereinafter referred to as the "SARFAESI Act"), the 2nd respondent-Bank

should adhere to the procedure as contemplated pursuant to the notification dated 29.05.2015, issued by the Ministry of MSME. As per the said notification, the 2nd respondent-Bank is under obligation to comply with the procedure before declaration of the petitioner No.1 account as NPA account and shall provide an opportunity to the petitioner for restructuring the same. He further submits that, Clause 3, Clause 4 and Clause 5(4) of the said notification envisages that, the 2nd respondent-Bank shall comply with the same before classifying the petitioner's account as NPA account, once the petitioner No.1 is registered as MSME.

4. Learned Senior Counsel further submits that, it is an admitted fact that the petitioner-industry is an MSME, which is a small manufacturing sector and the same is mentioned even in the sanction letter of the 2nd respondent-Bank, dated 11.09.2019.

5. Learned Senior Counsel further complained that, dehorsing the said procedure, the 2nd respondent-Bank proceeded further with the recovery under the provisions of SARFAESI Act, which is illegal, arbitrary and contrary to the notification dated 29.05.2015, issued by the Ministry of MSME and also the ratio laid down by the Hon'ble Supreme Court in *M/s. PRO NITS VERSUS THE BOARD OF DIRECTORS OF CANARA BANK & ORS*, wherein, the relevant paragraphs are extracted hereunder:

> *"14.As transpiring from the said Instructions/Directions, the entire exercise as contained in the "Framework for Revival and Rehabilitation of MSMEs" is required to be carried out by the banking companies before the accounts of MSMEs turn into Non-Performing Asset. It is true that the security interest created in favor of any Bank or secured creditor may be enforced by such creditor in accordance with the provisions contained in Chapter-III of the SARFAESI Act, and that as per Section 35 of the SARFAESI Act, the provisions of the said Act have the effect, notwithstanding anything inconsistent therewith contained in any*

other law for the time being in force or any instrument having effect by virtue of any such law. However, pertinently the whole process of enforcement of security interest as contained in Chapter III of the SARFAESI Act, could be initiated only when the borrower makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secure creditor as non-performing asset, in view of Section 13(2) of the said Act.

15.What is contemplated in the "Framework for Revival and Rehabilitation of MSMEs" contained in the Instructions/ Directions stated hereinabove, is required to be followed prior to the classification of the borrower's account, (in the instant case MSMEs loan account), as Non-Performing Assets. The said Instructions contained in the Notification dated 29.05.2015 as part of measures taken for facilitating the promotion and development of MSMEs issued by the Central Government in exercise of powers conferred under Section 9 of the MSMED Act, followed by the Directions issued by the RBI in exercise of the powers conferred under Section 21 and 35A of the Banking Regulation Act, the Banking companies though may be 'secured creditors' as per the definition contained in Section 2(zd) of the SARFAESI Act, are bound to follow the same, before classifying the loan account of MSME as NPA.

16. We may hasten to add that under the "Framework for Revival and Rehabilitation of MSMEs", the banks or creditors are required to identify the incipient stress in the account of the Micro, Small and Medium Enterprises, before their accounts turn into non-performing assets, by creating three sub-categories under the "Special Mention Account" Category, however, while creating such sub-categories, the Banks must have some authenticated and verifiable material with them as produced by the concerned MSME to show that loan account is of a Micro, Small and Medium Enterprise, classified and registered as such under the MSMED

Act. The said Framework also enables the Micro, Small or Medium Enterprise to voluntarily initiate the proceedings under the said Framework, by filing an application along with the affidavit of an authorized person. Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorization under the Special Mention Account category, before the loan account of MSME turns into NPA is a very crucial stage, and therefore it would be incumbent on the part of the concerned MSME also to produce authenticated and verifiable doucments/material for substantiating its claim of being MSME, before its account is classified as NPA. If that is not done, and once the account is classified as NPA, the banks i.e. secured creditors would be entitled to take the recourse to Chapter III of the SARFAESI Act for the enforcement of the security interest.

17.It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the Defaulters-Borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as NPA, the borrower does not bring to the notice of the concerned bank/creditor that it is a Micro, Small or Medium Enterprise under the MSMED Act and if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the concerned bank/creditor in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage. <u>Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework for Revival and Rehabilitation of MSMEs, it would be equally incumbent on the part of the concerned MSMEs to be vigilant enough to follow</u>

the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework.

18. In that view of the matter, we are of the opinion that the findings recorded by the High Court in the impugned order that the Banks are not obliged to adopt the restructuring process on its own or that the Framework contained in the Notification dated 29.05.2015, as revised from time to time could not be said to be mandatory in nature, are highly erroneous and cannot be countenanced. The Instructions/Directions issued by the Central Government under Section 9 of the MSMED Act and by the RBI under Section 21 and Section 35A have statutory force and are binding to all the Banking companies."

6. Learned Senior Counsel further submits that, in view of the settled proposition of law, the action of the respondents impugned is liable to be suspended and further prayed that, the petitioner No.1 is entitled for an interim direction as prayed for.

7. On the other hand, Smt. V. Dyumani, learned Standing Counsel appearing for the 2nd respondent submits that, the petitioner No.1 itself has not invoked the procedure as contemplated under the notification issued by the Ministry of MSME, dated 29.05.2015 by submitting any application/ objections/ representations before the classification of the account of the petitioner as NPA account.

8. Learned Standing Counsel further submits that, the 2nd respondent issued notice under Section 13 of the SARFAESI Act, in the year 2021 and thereafter proceeded further and some of the properties of the petitioner No.1 were already sold away in accordance with SARFAESI Act. After a lapse of three (03) years, now the petitioner No.1 is invoking the astonished jurisdiction of this Hon'ble Court, having availed the alternative remedy under the provisions of the SARFAESI Act before the Debts Recovery Tribunal by way of filing security appeals. Therefore, the action of the petitioner No.1 is nothing but, dragging the recovery proceedings of the 2nd respondent.

9. Having regard to the submissions made by learned Senior Counsel for the petitioners and learned Standing Counsel for the 2nd respondent, this Court opines that, the 2nd respondent proceeded further under the provisions of SARFAESI Act, ignoring the notification and mandatory compliance of the procedure as envisaged under notification dated 29.05.2015, in respect of MSME's and pursuant to the ratio laid down by the Hon'ble Supreme Court. As such, the 2nd respondent being a statutory public authority, cannot bulldoze the requirement of compliance of law which is mandatory. Therefore, a *prima-facie* case was made out by the petitioners. Accordingly, there shall be an interim stay of all further proceedings prospectively i.e., from today onwards, recovery proceedings initiated by the respondent No.2 arising out of NPA declaration, dated 31.01.2021 (Mentioned in Demand Notice, dated 05.04.2021) of the petitioner's loan account Nos.055013100037889, 055030100142756 and 055030100205815.

VENKATESWARLU NIMMAGADDA, J

01.10.2024
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