(2021) 10 TEL CK 0031

In the Telangana High Court

Case No : Writ Petition No. 25503 Of 2021

M/S. Ponnam Narayana Goud Constructions And 2 Others — APPELLANT

Vs

M/S. Gayatri Cooperative Urban Bank Ltd., And 2 Others — RESPONDENT

Date of Decision : 26-10-2021

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(3A), 17, 17A

Citation : (2021) 10 TEL CK 0031

Hon'ble Judges : Ujjal Bhuyan, J;Dr. C.Sumalatha, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioners.

2. Considering the order that we propose to pass, having regard to the limited nature of controversy, issuance of notice to the respondents is considered not necessary.

3. Respondents had issued notice to the petitioners on 07.08.2021 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly 'the SARFAESI Act' hereinafter). By the said notice respondent - Bank called upon the petitioners to discharge their outstanding liabilities to the tune of Rs.6,04,46,394.20 (Rupees six crores four lakhs forty six thousand, three hundred ninety four and twenty paise only) as on 31.07.2021 inclusive of interest up to 31.07.2021, within sixty days.

3.1. Petitioners submitted reply to the said demand notice on 06.09.2021. In the said reply, petitioners pointed out about the difficulties faced on account of the pandemic, which created hurdles in repayment of the loan. Therefore, request was made to the respondents to withdraw the notice issued under Section 13(2) of the SARFAESI Act, and to restructure the loan, so as to enable the petitioners to repay the same.

3.2. Grievance of the petitioners is that till date, there has been no response from the respondents.

3.3. Apprehending that coercive steps may be taken following the notice issued under Section 13(2) of the SARFAESI Act, the present writ petition has been filed.

4. Section 13 of the SARFAESI Act deals with enforcement of security interest. Sub-section (2) provides for issuance of notice by the secured creditor to the borrower for discharge of liabilities in the event of default. As per sub-section (3-A), if on receipt of notice under sub-section (2), the borrower makes any representation, or raises any objection, the secured creditor shall consider said representation or objection, and if the secured creditor comes to the conclusion that such representation or objection is not acceptable, or tenable, he shall communicate within fifteen days of receipt of such representation, or objection, the reasons for non-acceptance of the representation, or objection of the borrower.

4.1. However, as per the proviso, the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons, shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17, or to the Court of District Judge under Section 17-A.

5. A careful analysis of sub-section (3-A) of Section 13 of the SARFAESI Act would go to show that upon receipt of notice issued by the secured creditor under sub-section (2), the borrower has a right to make a representation, or raise any objection, as to the notice so issued. If the borrower exercises that right, then, it is incumbent upon the secured creditor to consider such representation or objection. The use of the word 'shall' in sub-section (3-A) is indicative of the legislative intent of considering such representation or objection, by the secured creditor mandatory. If the secured creditor is not satisfied with the representation or objection, and finds it to be unacceptable, or untenable, he shall communicate such decision within fifteen days along with the reasons to the borrower.

6. While the statute is silent as to what happens in case of a positive decision by the secured creditor on consideration of such representation or objection, it is axiomatic that once the decision is taken either way, the same has to be communicated to the borrower, notwithstanding the fact that it would not give rise to a cause of action for moving an application either under Section 17 or under Section 17(A). But the fact remains that it would be obligatory on the part of the secured creditor to consider the representation or objection of the borrower, and then take a conscious decision one way or the other, which should be communicated to the borrower within fifteen days of receipt of such representation or objection.

7. Adverting to the facts of the present case, we find that petitioners have made a request to the respondents that in view of the unprecedented situation created by the pandemic, which has affected life and business of one and all, Section 13(2) notice may be withdrawn and the loan account may be restructured. This has to be considered by the respondents by taking a reasonable and a pragmatic view, and whatever decision is taken, has to be communicated to the petitioners.

8. Let such decision be taken by the respondents within a period of fifteen days from the date of receipt of a copy of this order, and communicated to the petitioners.

9. Till such decision is taken and communicated to the petitioners, no coercive steps shall be taken by the respondents against the petitioners.

10. The writ petition is disposed of accordingly.

11. Interlocutory applications pending, if any, shall stand closed. No order as to costs.