Case Citation: (2026) ibclaw.in 706 DRT

IN THE DEBTS RECOVERY TRIBUNAL
VISAKHAPATNAM
Present :- SHRI KRISHNA GOPAL DWIVEDI,
PRESIDING OFFICER

Dated 29th August, 2026
S.A. No. 17 of 2020

Between
M/s Sonac Rep. by its Managing partner Koduru Neeraja, W/o. Suresh Reddy, Gouthami Nagar, Nellore

..... Applicant

And

1. Indian Bank Represented by its Authorised Officer, Trunk Road, Nellore

2. Sri Pulagam Sidhir Reddy, S/o. Butchi Reddy, 9-4-25, Hanuman Street, Sullurpet Town, Tirupathi District

..... Respondents

Ld Counsel for Applicant - Shri CVSL Raju
Ld. Counsel for Respondent Bank - Shri S.S.Sharma

ORDER

1. The applicant has filed the present SA under Section 17(1) of SARFAESI Act 2002 on 13.01.2020

2. As per neat copy of SA the applicant is a partnership firm and doing business in manufacturing of shrimps feed and further it falls under MSME sector, availed credit facilities from the respondent bank in the year 2016 and created mortgage in respect of the schedule mentioned properties in favour of the respondent bank towards security for the credit facilities sanctioned to the applicant herein. The applicant further submits that it has paid the amounts to the respondent bank regularly without any default till 2018 and subsequently due to market conditions and government policies sustained huge losses from the Indian market as such sought for additional working capital to meet out the demands from foreign countries as the applicant is having work order from Bangladesh etc but the respondent

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bank did not heed the request of the applicant herein and without intimating straight away classified the account of the applicant as NPA on 31-05-2019 and issued demand notice on 01-06-2019 for which the applicant raised objections for the same and respondent bank accepting the objections raised by the applicant herein has withdrawn the demand notice dated 01-06-2019 but without considering the request of the applicant for releasing of additional working capital again issued another demand notice dated 8-8-2019 and immediately the applicant raised objections to the said demand notice by way of letter dated 23-09-2019 to the Authorized officer of the respondent bank but the Authorized officer has not issued any reply to the said objections as required under Section 13 (3A) but got issued notice through its counsel which is not permissible under law.

As per RBI guide lines the applicant is entitle for onetime restructuring loan. The applicant approached the Respondent bank for restricting of the facilities. The Respondent bank conducted a joint meeting on 26.11.2019. Applicant accepted for 1st auction of the bank and brought the 3rd party as per direction of the Respondent bank. The Respondent bank affixed the possession notice on the factory on 08.01.2020. Applicant prayed to give one week time for producing the detailed action plan and for repayment of overdue amount. The Respondent bank has not served the demand notice on all the borrowers. The Respondent bank has also not served the possession notice on all the borrowers. The Respondent bank has not affixed the possession notice on all the properties. The Respondent bank has failed to publish the possession notice within time in two leading Newspapers. The Respondent bank did not serve Rule 8(6) and 9(1)

notice and published the auction in the Newspaper fixing the date of auction on 19.06.2024 and conducted the auction and issued sale certificate to the 2nd Respondent herein for a throw away price which is illegal and unforced under law. As per SA the Respondent bank has not taken fresh valuation report and auctioned and sold the property on throw away price which is illegal and enforceable under law. As per SA the Respondent Bank has not taken valuation report of auction of the property and the Respondent bank has sold the property on throw away price which is illegal.

3. The applicant has prayed for the following relief:

(a) To declare the Possession notice dated 8-1-2020 published on 11-1-2020 in THE INDIAN EXPRESS under rule 8 (1) of Securisation rules are illegal, Arbitrary, capricious and violative of principles of natural justice.

(b) To declare the auction conducted on 19.06.2024 by the first respondent bank in pursuance of the sale notice dt. 27.05.2024 as illegal, Capricious and violative of principles of natural justice, consequently setting aside the sale certificates issued to the second respondent vide Doc.Nos. 26509/2024 & 26510/2024

(c) To declare all the proceedings initiated by the respondent bank in pursuance of the demand notice dated 8-8-2019 are illegal, Arbitrary, capricious and violative of principles of natural justice.

(d) To direct the respondent bank to consider one time restructure (OTR) of the credit facilities as per the guide lines of Reserve Bank of India and also direct the respondent bank to adhere the option give by the respondent for restructuring of credit facilities, sanctioning of additional working capital, payment of overdue amount by allowing the third party Investor, in its letter dated 2-11-2019 with costs.

4. The applicant has filed the following documents with SA;

(a) Sanction Letter dt. 20.07.2016
(b) Demand Notice dt. 08.08.2019
© Objections to the demand notice dt. 23.09.2019
(d) Reply to the objections issued by Advocate dt. 29.09.2019
(e) Letter to the respondent dt. 06.09.2019

(f) Letter addressed by District industries centre to the Respondent Bank dt. 27.09.2019
(g) Letter addressed by District Industries centre to Commissioner of Industries dt. 13.11.2019
(h) Letter addressed by the Respondent bank to the applicant dt. 02.11.2019
(i) Letter addressed by the Respondent Bank to the applicant dt. 02.02.2020
(j) Possession Notice dt. 08.01.2020
(k) Letter addressed to the Respondent Bank dt. 10.01.2020
(l) Paper publication dt. 11.01.2020

5. The Respondent bank has filed reply on 23.01.2020. The Respondent bank has prayed to dismiss the SA with costs. The Respondent bank has denied all the allegations alleged by the applicant. As per joint meeting minutes the applicant has submitted his proposal for restructure or regularizing the account, contrary to the same the applicant failed to give any reply till 07.01.2020. Possession notice was issued again on 08.01.2020 and the same was served on Mrs. K. Rama and Mr. Vijaya Mohan Reddy and other notice were not served and return back the said covers. At request the applicant, bank sanctioned seven vehicle loans the executives of the company, out of which 6 loans were become NPA and the Managing partner Smt Neeraia taken vehicle loan of Rs 25.00 lakhs for purchase of Toyota fortuner and the same was declared as NPA on 14.05.2019. All the vehicle are not available in Nellore or with the people to whom loans were sanctioned. The applicant misused the funds granted for purchase of vehicle to the tune of Rs 83 lakhs and the said amount was utilized for purchase of machinery and paid the amount to one company by name M/s Feed Milling tech from Vadodara without obtain prior permission from the Respondent. The Applicant submitted a quotation which is not genuine and it is a fabricated receipt. The applicant has misused the funds for their personal activities, the applicant failed to submit details of margin

money for purchase of machinery. The applicant has committed fraud. The Respondent bank has followed each and every aspect before declaring the account as NPA.

6. The Respondent bank has filed the following documents with reply:

(a) Demand Notice dt. 08.08.2019

(b) Acknowledgment for demand notice

© Reply to objection for demand dt. 07.10.2019

(d) Possession Notice dt. 08.01.2020

(e) Ack for possession Notice

(f) Ack for possession Notice

(g) Return covers

(h) Paper publication of possession notice dt. 11.01.2020

(i) Affixer of possession notice dt. 08.01.2020

(j) Sanction letter dt. 20.07.2016 & 19.10.2017

(k) Reply to advocate C. Santosh Kumar dt. 09.08.2019.

7. Vide order dt. 06.02.2025, R2 is debarred from filing counter and reply.

8. I have heard the Ld. Counsel of both the parties and perused the record. After perusal of the demand notice, acknowledgment of possession notice, returned covers, paper publication of possession, affixture of possession notice, I find that the Respondent bank has rightly issued demand notice, possession notice and it is also published in the Newspapers. The Possession notice is also affixed on the schedule property. As per applicant, the applicant has sent objection dt. 23.09.2019

against which as per SA and reply the Respondent bank advocate has sent reply on 29.09.2019.

The Ld. Counsel of the applicant submitted that this reply is not as per law and refer the Judgment of Hon'ble High Court of Andhra Pradesh passed in the case of **SAMPOORNA BATTU Vs. ICICI Bank & Another** in W.P No. 28734 of 2010 in which para 7 the Hon'ble High court have held as follows:

> *"To be an authorised officer, a person has to be a Chief Manager of a public sector bank or an officer of equivalent rank. Secondly, such officer shall have to be specified by the Board of Directors of the bank to be authorised officer for the purpose of exercising powers under Chapter III of the Act. As per Rule 2(b) of the Rules, a demand notice can be issued by the secured creditor or authorised officer. Needless to mention that the secured creditor means as defined in section 2(zd) of the Act, and an authorised officer through whom the secured creditor exercises the rights (Section 13(12) of the Act) is the one who falls within the ambit of Rule 2(a) of the Rules. An advocate, even if instructed by a bank/financial institution and even if such advocate is specified by the Board of Directors, cannot be treated as an authorised officer. Even if the Board of Directors of a public sector bank specifies advocate(s) to be authorised officer, the same would be ultra vires the provisions referred to hereinabove."*

In the above case the Ld. Counsel for the Respondent has referred the Judgment of Hon'ble Supreme Court of India, passed in Civil Appeal Nos. 908, 1374, 2841,3225,3226 and 3228/06 in the case of **Transcore Vs. Union of India and Ors** and also refer the Judgment of **CELIR LLP Vs. Mr. Sumati Prasad Bafna & Ors.**

After scanning the facts I find that on the objection of the applciant the authorized officer through an advocate has sent reply to the borrower. In the period of pendency of this SA the respondent bank issued sale notice on 27.05.2024 and published the auction notice on 02.06.2024 and conducted auction on 19.06.2024 and latter issued sale certificate inrespect

of schedule property. The law has authorized the Respondent bank to auction the property, comply the provision of SARFAESI Act and Security Interest (Enforcement) Rules, 2002 and other laws. Hence it is the duty of the Respondent bank to prove that the Respondent bank has followed the provision of SARFAESI Act. In this case after special allegation the Respondent bank has not filed copies of sale notice, postal receipts, acknowledgments and photographs to prove regarding the service of sale notice and affixture of sale notice, publication of sale notice and valuation report. It is the duty of the Respondent bank to take valuation report from the approved valuer before auction the property but in this case the Respondent bank has not taken valuation report.

On the basis of above discussion I find that the Respondent bank has sold the property against the provision of law and this auction is illegal. On the basis of above discussion I find that the Respondent bank has not complied the provision of Act and Rules in conducting the auction and auction is illegal, hence setaside the auction, sale certificate.

Accordingly SA 17/2020 is hereby allowed on contest with costs. I direct the Respondent bank to return the amount of the Auction purchaser @ 7% interest pa interest within 30 days from the date of this order. All connected IAs if any are also closed.

[Dictated to the Steno, transcribed by her, corrected and pronounced by me in the open court on 29th August, 2026]

29.08.2026

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