ಕರ್ನಾಟಕ ರಾಜ್ಯ ಹಣಕಾಸು ಸಂಸ್ಥೆ
1951ರ ರಾಜ್ಯ ಹಣಕಾಸು ಸಂಸ್ಥೆಗಳ ಕಾಯಿದೆ ಅನ್ವಯ ಸ್ಥಾಪಿತ
KARNATAKA STATE FINANCIAL CORPORATION
Established under the State Financial Corporations' Act, 1951
भारतीय मानक ब्यूरो IS / ISO 9001 : 2008
मानक पथप्रदर्शक
BUREAU OF INDIAN STANDARDS QMS

ಸಂಖ್ಯೆ : ಕ.ರಾ.ಹ.ಸಂ./ಪ್ರ.ಕ./
Ref. No. KSFC/H.O./ ಕಾನಿ-1/2017-18/Legal 04

ದಿನಾಂಕ :
Date.....16-05-2017.....

INTER OFFICE NOTE

Sub: Action under SARFAESI Act.
Ref: AIR 2017 SC 1441

***

Canara Bank, Hyderabad exercised its powers to sell the secured assets under Sarfaesi Act and sold the secured assets. Sri. M. Amarender Reddy, the surety challenged the said sale before the Hon'ble Court of Hyderabad on the ground that the secured creditor must put the borrower on a separate individual notice prior to deciding on the mode of sale of the secured asset. Further such notice should be in addition to the notice of 30 days duration to be given by the secured creditor conveying its intention to put the secured asset on sale, which is mandatory. The Hon'ble High Court set aside the sale on the above said ground. The Canara Bank took up the matter before the Hon'ble Supreme Court by filing Civil Appeal No. 3411/2017. The Hon'ble Supreme Court of India, held that there is nothing in the Rules, either express or implied, to take the view that a public notice under sub-rule 6 of Rule 8 must be issued only after the expiry of 30 days from issuance of individual notice by the authorized officer to the borrower about the intention to sell the immovable secured asset. In other words, it is permissible to simultaneously issue notice to the borrower about the intention to sell the secured assets and also to issue a public notice for sale of such secured assets.

Copy of the said judgment is enclosed herewith for information and to follow the same in future while taking action under SARFAESI Act.

Contents of this ION shall be brought to the notice of all the concerned in your office/department .

Executive Director – I

All the Departmental Heads/
DGMs/AGMs/Branch Managers,
All the Internal Audit Dept/Cells
All the General Managers (Circle 1 to 4)
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Executive Director – II - for information
EA to MD for kind information

AIR 2017 SUPREME COURT 1441

(From : Hyderabad)*

DIPAK MISRA, A. M. KHANWILKAR AND MOHAN M. SHANTANAGOUDAR, JJ.

Civil Appeal No. 3411 of 2017, D/- 02-03-2017.

Canara Bank v. M. Amarender Reddy & Anr.

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), S. 13(8) — Security Interest (Enforcement) Rules, (2002) Rr. 8(6), 9 — Sale of secured immovable asset by auction — Notice to borrower — 30 days clear notice of intention to sale has to be given to borrower as per R. 8(6) — Secured creditor however need not wait for expiry of 30 days before issuance of public notice — Notice to borrower and public notice to sale secured asset can be issued simultaneously.

2016 (5) Andh LD (Hyd), Reversed. (Paras 12, 13, 14, 15)

Cases Referred : Chronological Paras

AIR 2015 SC 50 : 2014 AIR SCW 5581 5, 8, 10

Dhruv Mehta, Sr. Adv., Rajesh Kumar, Rakesh Chaurasiya, Gaurav Kumar Singh, Anant Gautam, M/s. Mitter & Mitter Co., for Appellants.

A.M. KHANWILKAR, J. :— This appeal by the appellant bank questions the view expressed by the Division Bench of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Writ Petition No.39735 of 2015 dated 11.04.2016 to the extent it has held that Rule 8 (6) read with Rule 9 of the Security Interest (Enforcement) Rules, 2002 (for short 'the said Rules') mandates that the secured creditor must put the borrower on a separate individual notice prior to deciding on the mode of sale of the secured asset. Further, such notie should be in addition to the notice of 30 days duration to be given by the secured creditor conveying its intention to put the secured asset on sale, which is mandatory. The relevant portion of the High Court decision, which is impugned in this appeal reads thus:

".....

The Supreme Court has clearly enunciated that a reading of sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 of the Rules together, the service of individual notice to the borrower specifying a clear 30 days time gap for effecting sale of immovable secured asset is a statutory mandate. Hence, use of the expression 'or' found in Rule 9(1) of the Rules is only appropriate to be read as 'and', as that alone would be in consonance with sub-section (8) of Section 13 of the Act.

We may also add that a notice of intended sale by providing a clear 30 days time to the borrower preceding any decision to sell away the secured asset would, in fact, be in consonance with the mandate of the provision contained in sub-section (8) of Section 13 of the Act, as it is too well known that the Rules made under a Statute are only essentially intended to secure effective implementation of the provisions contained in the Statute. In our opinion, therefore, putting the borrower on notice of 30 days duration by the secured creditor conveying the intention to put the secured asset to sale is mandatory. Such notice would be applicable even if the secured creditor later on decides to adopt any one of those four methods provided in clauses (a) to (d) of sub-rule (5) of Rule 8 of the Rules. As was already noticed supra, in cases of obtaining quotations from persons dealing with similar secured assets and also by entering into a private treaty, may not require publication of the intended sale in newspapers.

W. P. No. 39735 of 2015, D/- 11-4-2016 (Reported in 2016 (5) Andh LD 354 (Hyd).

Hence, without, first of all, putting the borrower on notice, threatening that the prospects of liquidation of the secured asset by any of the methods specified under sub-rule (5) of rule 8 of the Rules would not only subserve the object behind sub-section (8) of Section 13 of the Act, but would, in fact, enhance the efficacy of realizing/securitizing the secured asset. As was already held by us, the secured asset is liable to be sold only in the event of default persisting in liquidating the liability. In other words, only when the borrower commits a default in payment of the outstanding liability, in spite of the notice threatening with intended sale of the secured asset, the actual sale notification can follow, but not otherwise.

In the instant case, the secured creditor has put the borrower on one single notice of sale, which was also published in two newspapers, but, he has not put the borrower on a separate individual notice prior to deciding on the mode of sale of the secured asset. For this reason, we are of the opinion that the sale undertaken pursuant to the sale notification is vitiated for want of not providing the opportunity of 30 days clear time before undertaking the actual sale".

(Emphasis supplied)

2. On that reasoning, the High Court concluded that the subject sale notification issued by the appellant did not conform to the stated mandatory requirement and was thus vitiated on that count. The High Court, however, preserved the remedy of the appellant bank to proceed further, including to resort to sale of the secured asset, if the borrower has failed to clear the outstanding liability, by publishing a fresh sale notification in accordance with sub-rule (6) of Rule 8 read with Rule 9 of the Rules.

3. Briefly stated, the appellant had provided financial assistance of Rs. one crore to M/s. Eversure Aqua Solutions Pvt. Ltd. The respondent No.1 was one of the two guarantors for the said loan transaction. The respondent No.1 had offered his immovable property as security, bearing Plot No. 70, admeasuring 278 square yards situated in Survey No.66/6, Ward No. 3, Block No.7 in Mansoorabad village, Saroornagar Mandal, L.B. Nagar Municipality, which has now become part of Greater Hyderabad Municipal Corporation.

4. As the principal borrower committed default, the appellant bank issued a demand notice dated 25.01.2014 to it under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "2002 Act"). The appellant bank then issued possession notice under Section 13 (4) of 2002 Act on 24.06.2014. The possession notice was published in two leading newspapers. After taking symbolic possession of the secured asset, the upset price at Rs.69,75,000/- thereof was determined, as per the valuation report of the approved valuer. That upset price was accepted by the appellant bank. Whereafter, a notice of sale (e-auction notice) was issued on 15.10.2015. Notice in terms of Rule 8(6) was also given to the principal borrower and both the guarantors, including the respondent No.1, to give them one last and final opportunity to discharge the debt within 30 days from the date of the said notice. A copy of e-auction notice was also enclosed along with the said communication served on the borrower and the guarantors, indicating that the sale date was fixed as 21.11.2015. The respondent No.1 (guarantor), on 04.11.2015, requested the appellant bank to permit him to avail of one time settlement of dues by offering Rs.50 lacs in two installments. That offer was rejected by the appellant bank, as it was not in consonance with the RBI guidelines. As per the e-auction notice, the auction was held on 21.11.2015. The property was sold to one Sri

Jonnalagadda Rajashekher Reddy s/o Sri Venkatram Reddy who was the highest bidder, for an amount of Rs.73,25,000/-. The respondent No.1 vide letter dated 01.12.2015 requested the Bank to furnish information about the e-auction. The said letter was replied to by the appellant bank.

5. The respondent No.1 then filed Writ Petition No.39735 of 2015 before the High Court of Judicature at Hyderabad on 07.12.2015, for a declaration that the e-auction notice dated 15.10.2015 was illegal and in contravention of the provisions of the 2002 Act and Rules framed thereunder. The said writ petition was opposed by the appellant on the assertion that necessary formalities were duly complied with before the sale of the subject secured asset was undertaken by the appellant bank. The High Court, as aforesaid, took the view that a separate notice of 30 days duration ought to have been given by the appellant to the writ petitioner before the public notice fixing the date of auction/ sale was issued. Further, a thirty days notice to the borrower about intention to sell the secured asset ought to precede the actual publication of sale notification in the newspaper. Both these notices cannot be issued simultaneously. For taking that view, the High Court construed Rule 8 (6) of the Rules to mean that a notice of intended sale of the secured asset must be delinked from the actual sale notification to be published in two newspapers. Even though the appellant had relied on the dictum of this Court in the case of Mathew Varghese v. M. Amritha Kumar & others[1], the High Court took the view that it was imperative for the secured creditor to put the borrower on a notice of 30 days' duration about the intention to sell the secured asset and the mode of sale. This should precede the issuance of a public notice for sale.

1.(2014) 5 SCC 610 : *(AIR 2015 SC 50).*

6. In spite of notice, the respondent No.1 has not chosen to appear.

7. Mr. Dhruv Mehta, Learned Senior Counsel appearing for the appellant, in all fairness submitted that the auction sale conducted in the present case on 21.11.2015 has not materialized as the auction purchaser has backed out. In that sense, the appellant in any case may have to issue a fresh auction notice, in view of the liberty given by the High Court in the operative part of the impugned judgment. He submits that, however, as the observations made in the impugned judgment, as highlighted hereinbefore, may come in the way of the appellant and other banks or secured creditors, it is appropriate to examine the correctness of the view taken by the High Court. Considering the above, we thought it appropriate to examine the issue on hand.

8. The purport and interplay of the provisions of the said Rules had come up for consideration before this Court in Mathew Varghese *(AIR 2015 SC 50)* (supra). On analyzing the gamut of the provisions, this Court opined that the important feature of the provisions is that a free hand is given to the secured creditor for the purpose of enforcing any security interest created in favour of the secured creditor without the intervention of the Court or Tribunal. The only other relevant aspect was that such enforcement should be in accordance with the provisions of the 2002 Act.

9. Before we embark upon the dictum in the said decision, we deem it apposite to reproduce Rules 8 and 9 of the Rules of 2002. The same read thus:

"8. Sale of immovable secured assets. – (1) Where the secured assest is an immovable property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession

notice on the outer door or at such conspicuous place of the property.

(2) [The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading, newspapers], one in vernacular language having sufficient circulation in that locality, by the authorized officer.

(3) In the event of possession of immovable property is actually taken by the authorized officer, such property shall be kept in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorized officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods :

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction; or

(d) by private treaty.

(6) The authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,

(a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) The secured debt for recovery of which the property is to be sold;

(c) Reserve price, below which the property may not be sold;

(d) Time and place of public auction or the time after which sale by any other mode shall be completed;

(e) Depositing earnest money as may be stipulated by the secured creditor;

(f) Any other thing which the authorized officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorized officer deems if fit, put on the web-site of the secured creditor on the Internet.

(8) Sale by any method other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

9. Time of sale, issues or sale certificate and delivery of possession etc. –

(1) No sale of immovable property under these rules shall be take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

(2) The sale shall be confirmed in favour

of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorized officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of Rule 9:

Provided further that if the authorized officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent. of the amount of the sale price, to the authorized officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorized officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him:

[Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of the money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from the date of finalization of the sale.]

(8) On such deposit of money for discharge of the encumbrances, the authorized officer [shall] issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

10. Reverting to the decision in Mathew Varghese *(AIR 2015 SC 50)* (supra), in paragraphs 30, 31 and 33 *(paras 27, 28, 30, 35 and 49 of AIR)* of the said decision, the court observed thus:

"30. Therefore, by virtue of the stipulations contained under the provisions of the SARFAESI Act, in particular, Section 13(8), any sale or transfer of a secured asset, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses and any such

sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.

31. Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said Rules prescribe as to the procedure to be followed by a secured creditor while resorting to a sale after the issuance of the proceedings under Sections 13(1) to (4) of the SARFAESI Act. Under Rule 9 (1), it is prescribed that no sale of an immovable property under the Rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorized officer should serve to the borrower a notice of 30 days for the sale of the immovable secured assets. Reading sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days' time-gap for effecting any sale of immovable secured asset is a statutory mandate. It is also stipulated that no sale should be affected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8 (6) and Rule 9 (1) contemplates a clear 30 days' individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in newspaper should provide for 30 days' clear notice, since Rule 9 (1) also states that such notice of sale is to be in accordance with the proviso to sub-rule (6) of Rule 8, 30 days' clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression "or" in Rule 9(1) should be read as "and" as that alone would be in consonance with Section 13(8) of the SARFAESI Act.

32. .....

33. Such a detailed procedure while resorting to a sale of an immovable secured asset is prescribed under Rules 8 and 9(1). In our considered opinion, it has got a twin objective to be achieved:

33.1. In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1), the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time.

33.2. Secondly, when such a secured asset of an immovable property is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. Since, the proviso to sub-rule (6) also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question.

33.3. Be that as it may, the paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of the sale or trans-

fer, or ensure that the secured asset derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed."

(Emphasis supplied)

Again in paragraph No. 35:

"35. Under sub-rule (4) of Rule 8, it is further stipulated that the authorized officer should take steps for preservation and protection of secured assets and insure them if necessary till they are sold or otherwise disposed of. Sub-rule (4), governs all secured assets, movable or immovable and a further responsibility is created on the authorized officer to take steps for the preservation and protection of secured assets and for that purpose can even insure such assets, until they are sold or otherwise disposed of. Therefore, a reading of Rules 8 and 9, in particular, sub-rules (1) to (4) and (6) of Rule 8 and sub-rule (1) of Rule 9 makes it clear that simply because a secured interest in a secured asset is created by the borrower in favour of the secured creditor, the said asset in the event of the same having become a non-performing asset cannot be dealt with in a light-hearted manner by way of sale or transfer or disposed of in a casual manner or by not adhering to the prescriptions contained under the SARFAESI Act and the above said Rules mentioned by us."

(Emphasis supplied)

And again in paragraph No. 53:

"53. We, therefore, hold that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor. In the event of any such sale property notified after giving 30 days' clear notice to the borrower did not take place as scheduled for reasons which cannot be solely attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read along with Section 13 (8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effective the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. In that respect, the only other provision to be noted is sub-rule (8) of Rule 8 as per which sale by any method other than public auction or public tender can be on such terms as may be settled between the parties in writing. As far as sub-rule (8) is concerned, the parties referred to can only relate to the secured creditor and the borrower. It is, therefore, imperative that for the sale to be effected under Section 13(8), the procedure prescribed under Rule 8 read along with Rule 9(1) has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale as has been explained in detail by us in the earlier paragraphs by referring to Sections 13(1), 13(8) and 37, read along with Section 29 and Rule 15. In our considered view any other construction will be doing violence to the provisions of the SARFAESI Act, in particular Sections 13(1) and (8) of the said Act."

(Emphasis supplied)

11. In the impugned judgment, we find that the High Court has quoted or relied upon sub-rule (6) of Rule 8 as dealing with "movable" secured assets. This is incorrect. For, the correct version of Rule 8(6) refers to "immovable" secured assets and not movable, as noted by the High Court. Be that as it may, there is no difficulty in accepting the observation of the High Court that possession notice is distinct from the notice for sale of the secured asset. In that, possession notice is required to be given in terms of Rule 8(1) read with 8(2). Whereas, a notice of

intention of sale is required to be given to the borrower in terms of Rule 9(1) read with Rule 8(6) of the said Rules. This is to give intimation to the borrower about the proposed date of sale to be held after the statutory period of thirty days. Further, in case of sale of the secured assets either by inviting tenders from the public or by holding public auction being the mode permitted by sub-rule (5) of Rule 8, the secured creditor is required to give a public notice in two leading newspapers in terms of the proviso in sub-rule (6) of Rule 8. Such public notice, however, may not be necessary in case of sale of a secured asset if it is by way of the other modes specified in sub-clause (a) or (d) of sub-rule (5) of Rule 8, to wit, by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such asset; or by private treaty.

12. The secured creditor, after it decides to proceed with the sale of secured asset consequent to taking over possession (symbolic or physical as the case may be), is no doubt required to give a notice of 30 days for sale of the immovable asset as per sub-rule (6) of Rule 8. However, there is nothing in the Rules, either express or implied, to take the view that a public notice under sub-rule (6) of Rule 8 must be issued only after the expiry of 30 days from issuance of individual notice by the authorized officer to the borrower about the intention to sell the immovable secured asset. In other words, it is permissible to simultaneously issue notice to the borrower about the intention to sell the secured assets and also to issue a public notice for sale of such secured asset by inviting tenders from the public or by holding public auction. The only restriction is to give thirty days' time gap between such notice and the date of sale of the immovable secured asset.

13. We hold that the High Court has committed a manifest error in assuming that the notice of intention of sale to be given to the borrower and a public notice for sale cannot be simultaneously issued. The High Court was also not right in observing that after a notice regarding intention to sell the secured asset under sub-rule (6) of Rule 8 is given by the authorized officer to the borrower, only on expiry of 30 days therefrom can the secured creditor take a decision about the mode of sale referred to in sub-rule (5) of Rule 8 after giving notice to the borrower and then issue a public notice after expiry of further thirty days. By this interpretation, the High Court has virtually re-written the provisions and inevitably extended the time frame of 30 days specified in sub-rule (6) of Rule 8 (at least in relation to the sale of secured asset by inviting tenders from the public or by holding public auction).

14. To put it differently, the only restriction placed on the secured creditor is to serve a notice of 30 days on the borrower intimating him about its intention to sell the immovable secured asset and the mode and date fixed for sale; and also to issue a public notice in two leading newspapers, if the sale of such secured asset is effected either by inviting tenders or by holding public auction, notifying the date of sale after 30 clear days from such notice. There is no need to wait for the expiry of 30 days from issuance of notice of intention to sell the secured asset given to the borrower, for publication of a public notice for sale of such asset. Nor is there any requirement to give a separate individual notice prior to deciding on the mode of sale of the secured asset. To the above extent, the opinion of the High Court in the impugned judgment will have to be overturned.

15. In the present case, as the public auction sale held on 21.11.2015 has not materialized, the appellant may have to resort to a fresh public notice for sale of the secured

asset of the respondent No.1, if the outstanding liability is still unpaid and the sale is to be effected either by inviting tenders from the public or by holding public auction.

16. The appeal succeeds in the above terms with no order as to costs.

Appeal allowed.

* * * * * * * * *

AIR 2017 SUPREME COURT 1449

A. K. SIKRI AND

ABHAY MANOHAR SAPRE, JJ.

Civil Appeal No. 6691 of 2014, D/- 07-03-2017.

Competition Commission of India v. Co-ordination Committee of Artists and Technicians of W. B. Film and Television and Ors.

(A) Competition Act (12 of 2003), Ss. 3, 19(5) — Anti-competitive agreements — Association of TV and film artists and technicians agitated against broadcast of serial dubbed in State language — Sweep of agitation not limited to trade in broadcasting TV serials but took in its fold entire TV and Film industry — Relevant market was therefore entire TV and Film industry of State — Association, trade union — Not an "enterprise" as it had no financial activity — But acted on behalf of film producers, distributors etc. — Agitation of Association amounts to hindered competition in market creating barriers to entry of dubbed TV serials in State hit by S. 3(3)(b). (Paras 36, 37, 39, 41, 42)

(B) Competition Act (12 of 2003), S. 19 — Relevant market — Determination — Purpose is to identify competitive constraints that undertakings face while operating in market — It identifies boundaries of competition between firms.

Market definition is a tool to identify and define boundaries of competition between firms. It serves to establish framework within which competition policy is applied by Commission. Main purpose of market definition is to identify in a systematic way competitive constraints that undertakings involved face. Objective of defining a market in both its product and geographic dimension is to identify those actual competitors of undertakings involved that are capable of constraining those undertakings behaviour and of preventing them from behaving independently of effective competitive pressure. Therefore, purpose of defining 'relevant market' is to assess with identifying in a systematic way competitive constraints that undertakings face when operating in a market. This is case in particular for determining if undertakings are competitors or potential competitors and when assessing anti-competitive effects of conduct in a market. Concept of relevant market implies that there could be an effective competition between products which form part of it and this presupposes that there is a sufficient degree of interchangeability between all products forming part of same market insofar as specific use of such product is concerned. Relevant market within which to analyse market power or assess a given competition concern has both a product dimension and a geographic dimension. **(Paras 31, 33)**

(C) Competition Act (12 of 2003), S. 2(b) — Agreement — Definition is widely worded.

Not only it is inclusive, as word 'includes' therein suggests that it is not exhaustive, but also any arrangement or understanding or even action in concert is termed as 'agreement'. It is irrespective of fact that such ar-

(N. B. — (Details of case arising from, counsel's names etc. published herein, are as appearing in the Record of Proceedings uploaded on the official website of the Supreme Court — www.supremecourtofindia.nic.in).