

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 5120 of 2016 (O&M)
Date of Decision: 22.03.2016

M/s Ranbir Textiles and another

..Petitioners

versus

Reserve Bank of India and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Pankaj Gupta, Advocate, for the petitioners.
Mr. Ravi Kumar, Advocate, for the respondents.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioners seek a writ of certiorari to quash a letter dated 15.09.2015, by which the second respondent-Oriental Bank of Commerce rejected their application for rehabilitation on the ground that it was in violation of the guidelines dated 01.11.2012 issued by the Reserve Bank of India and for a writ of mandamus directing the respondents to rehabilitate the unit as per the said guidelines.

2. The petitioners had availed financial facilities from respondent No.2-Oriental Bank of Commerce. Its account was declared as 'NPA' on 31.12.2015. They were given an opportunity to reconstruct their loan account but had failed to do so. The petitioners contended that their unit had become potentially viable sick and therefore, they were entitled to have their loan account reconstructed under the Reserve Bank of India guidelines. The application was rejected by respondent No.2.

3. The petitioners filed Civil Writ Petition No. 25691 of 2015 challenging this decision by contending that their application could have been rejected only after obtaining prior approval from the next higher authority. The Division Bench disposed of the petition by an order and judgment dated 09.12.2015 granting the petitioners a liberty to approach the higher authority and directing the second respondent to consider and decide the representation, if filed, in accordance with law and expeditiously.

4. The petitioners approached the higher authority, namely, the Chief Manager respondent No.2 who rejected the proposal. The rejection was communicated by second respondent's letter dated 19.01.2016 which stated as follows:- Upon going through the application it was found that the petitioner's accounts were reconstructed by the second respondent on 30.06.2014 on the basis of the projections then submitted by the petitioners. The terms and conditions for reconstructing the loan were accepted by the petitioners. The petitioners, however, failed to comply with the terms and conditions and as a result thereof the petitioner's account was classified as a 'Non Performing Asset' (NPA) account on 31.03.2015 by the Statutory Auditors of the bank for the reason that the account was regularly overdrawn and there were weak operations in the account. It was only after constant follow up that the petitioner deposited the overdue amounts and the petitioner's accounts were thereafter upgraded on 30.06.2015. However, thereafter the petitioners failed to maintain the required financial discipline. On 15.07.2015, the Central Statutory Auditors of the Reserve Bank of India-respondent No.1 alongwith the bank officials visited the petitioner's factory and found that the unit was not working, adequate stock was not available as per the terms and conditions of the sanction. The Central Statutory Auditors

of the Reserve Bank of India also observed that the regular operations in the accounts were not satisfactory. Ultimately on 17.07.2015, the respondents commenced proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') by issuing a notice under section 13(2). This was followed by a notice for symbolic possession dated 13.10.2015 under section 13(4). Symbolic possession of the assets mortgaged in favour of the second respondent was taken on the same day.

For these reasons the Chief Manager, the higher authority under the circular of the RBI relied upon by the petitioners, rejected their request to change the status of their account from NPA to standard. The letter concluded by stating that the petitioners' loan accounts do not qualify for restructuring and rehabilitation.

5. Mr. Pankaj Gupta, the learned counsel appearing on behalf of the petitioners relied upon the Debts Restructuring Scheme dated 12.09.2011 (hereinafter referred to as 'the said scheme') in respect of small and medium enterprises. The relevant clauses of the scheme are as under:-

"11. TYRES OF RELIEFS/CONCESSIONS/RESTRUCTURING UNDER SME-DRS

11.1 The type of relief/concessions/restructuring to be considered would vary from case depending on individual facts and no standardized approach can be adopted. While considering the reliefs/concessions, it has to be kept in view that restructuring involves sacrifice on behalf of the bank and should be approved with prudence and based on realistic basis of achievement of projections by the borrower. The reliefs and concessions are not to be given in routine manner and have to be decided based on the commercial judgment and merits of each case.

11.2 to 11.2.9 xx xx xx xx xx

11.2.10 Sanction of additional finance at applicable rate of interest.

11.3 xx xx xx

12. DISCRETIONARY POWERS FOR SANCTIONING CASES UNDER SME-DRS

12.1 Restructuring of accounts of borrowers who are willful defaulters shall be done only with the prior approval of the Board of Directors of the Bank as advised by RBI.

12.2 Restructuring of advances under the SME-DRS could be

12.2.1 without any sacrifice and without additional funding.

12.2.2 without any sacrifice but accompanied with additional funding.

12.2.3 with sacrifice but without any additional funding.

12.2.4 with sacrifice and accompanied by additional funding.

12.3 The discretionary powers for Restructuring of advances shall be as follows:-

...emphasis supplied”.

Clause 12 thereafter inter-alia specifies the officers delegated with the authority to implement the scheme, stipulates the parameters within which the discretion is to be exercised relating to repayment and recoveries and the rates of interest including penal interest.

6. Mr. Gupta also relied upon clause-5 of the guidelines for “Rehabilitation of Sick Micro and Small Enterprises” contained in the first respondent’s communication dated 01.11.2012 addressed to the Chairman/Managing Director/Chief Executive Officer, of a Scheduled Commercial Banks (excluding Regional Rural Banks) which reads as under:-

“5. We need hardly emphasize that timely and adequate assistance to potentially viable MSE units which have already become sick or are likely to become sick is of the utmost importance not only from the point of view of

the financing banks but also for the improvement of the national economy, in view of the sector's contribution to the overall industrial production, exports and employment generation. The banks should, therefore, take a sympathetic attitude and strive for rehabilitation, in respect of units in the MSE sector, particularly wherever the sickness is on account of circumstances beyond the control of the entrepreneurs. However, in cases of units, which are not capable of revival, banks should try for a settlement and/or resort to other recovery measures, expeditiously."

7. Relying upon clause-5, Mr. Gupta submitted that the second respondent is bound to restructure the petitioner's account and is also bound to advance further financial facilities. He contended that the scheme and the guidelines are mandatory and binding upon the banks such as the second respondent.

8. We will presume that the banks such as the second respondent are bound to implement the scheme and the guidelines. However, neither the scheme nor the said guidelines make it mandatory from them to restructure the accounts categorized as NPA. Nor are such banks bound and liable to advance further amounts to such units. The purpose of the scheme and the guidelines is as stated in clause-5, to provide timely and adequate assistance to potentially viable MSE units which are sick and are likely to become sick. They are enjoined to take a sympathetic view and to strive for rehabilitation particularly where the sickness is on account of circumstances beyond the control of the entrepreneurs. The guidelines, however, do not make it mandatory for the banks to extend such facilities irrespective of the facts and circumstances of the units concerned. In fact the last sentence of clause-5 indicates the contrary. It clarifies, if clarification were at all needed, that the banks should try for a settlement and/or resort to other recovery measures,

expeditiously in case of units which are not capable of revival. This instruction militates against Mr. Gupta's submission that the banks must, irrespective of the fact of the case, reconstruct the accounts and extend further financial facilities.

9. Mr. Gupta's submission if accepted would result in compelling the banks to not only forgo their dues but to put their financial resources to further jeopardy by continuing to extend financial assistance to units which are not viable and which in the opinion of the banks cannot be revived and be made viable.

10. Clause 11.2.10 of the scheme does require the sanction of additional finance at the applicable rate of interest but it does not by any stretch of imagination compel the banks to sanction additional finances as an absolute rule and irrespective of the financial health and the future prospects of the units.

11. Clause 11.1 of the scheme does not support Mr. Gupta's extreme proposition either. It in fact enjoins upon the banks to approve reliefs/concessions 'with prudence and based on realistic basis of achievement of projections by the borrower'. The decision to grant or refuse reliefs/concessions, therefore, must be taken only after the bank satisfies itself about the future prospects of the unit. The doubt, if any, in this regard, is set at rest by the last sentence in clause 11.1 which expressly states that reliefs/concessions are not to be given in a routine manner and have to be decided based on the commercial judgment and merits of each case. Clause 11.1 by no stretch of imagination requires the banks to extend reliefs in every case. It requires the banks to study the commercial viability and financial feasibility of a unit and to extend facilities only if it comes to the opinion that the unit is viable or can be made viable. A view to the contrary

would lead to the absurd result of requiring the banks to extend facilities to units the substratum of which have completely eroded and are commercial insolvent and in respect whereof there is no hope of revival.

12. Assuming that the scheme and the guidelines are mandatory and to be implemented by the banks, the only question would be whether the bank concerned has assessed the proposal for reliefs/concessions/restructuring in a reasonable manner and after taking into consideration the relevant facts. If it is found that the decision of the bank has been taken after considering the relevant facts, it is not open to the Court to interfere and to substitute its view or assessment for that of the banks. These are commercial decisions which require the assessment by financial experts taking into consideration a variety of facts and factors relating to financial feasibility, the nature and quality of the unit and the equipment, the staffing pattern and the viability of the projections made. These are commercial decisions best left to the parties equipped to deal with the same. The Courts especially while exercising their extra ordinary writ jurisdiction under Article 226 of the Constitution of India ought not to substitute their judgment on such matters for that of the experts in the field. Even if we were to be so presumptuous as to assume having knowledge of the expertise to assess and judge such matters, it would not be permissible to substitute our decisions with those of the experts in the field and those concerned with the decision making process in this regard.

13. Coming to the facts of this case, we are unable to persuade ourselves that the second respondent's decision was absurd, unfair or arrived at without taking the relevant facts into consideration. As mentioned in the impugned communication dated 19.01.2016, the 2nd respondent rejected the petitioner's application for restructuring including for further funding on

relevant grounds and after taking into consideration the relevant factors. The second respondent had on an earlier occasion restructured the petitioner’s accounts on terms and conditions accepted by the petitioner. The petitioners failed to comply with the terms and conditions and their accounts were yet again classified as NPA. The decision was taken after a visit to the petitioner’s unit by the Central Statutory Auditors of the RBI alongwith officials of the second respondent. The accounts were examined and the stocks were assessed. It is only thereafter that the second respondent took steps under the SARFESI Act. Interference in such circumstances is not warranted.

14. The petitioners are always at liberty to submit fresh proposals which obviously would be decided on its own merits.

15. The petition is, therefore, dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

22.03.2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	√Yes	No.
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