IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 5699 of 2016
Date of Decision: 12.04.2016

M/s N.K.Rubber Industries ..Petitioner

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.

Present : Mr. Ashish Verma, Advocate, for the petitioner.

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S.J.VAZIFDAR A.C.J. (Oral)

The petitioners seek a writ of mandamus directing respondent Nos.2 to 4-Andhra Bank and its Zonal Manager and Branch Manager to consider and decide their request/representation dated 25.01.2016 for restructuring/reconstruction of their loan in accordance with the guidelines and master circular on willful defaulters dated 01.07.2014 issued by respondent No.1-Reserve Bank of India and a writ of certiorari to set-aside an order/communication dated 06.02.2016 issued by respondent No.2 contending that the same is contrary to the said guidelines. The petitioners have also sought an order directing respondent Nos.2 to 4 not to take physical possession of their properties mortgaged by them in favour of respondent No.2.

2. We will proceed on the basis that the master circular is mandatory. The petitioners had by their letter dated 27.11.2015 made a representation for rehabilitation of their unit purportedly as per the master circular. The same was rejected by the second respondent by an order dated 01.01.2016. The petitioners challenged this by filing a writ petition which

was disposed of on 12.01.2016 by a Division Bench of this Court as withdrawn and with a direction to the second respondent to consider the representation/appeal in accordance with law. The petitioners accordingly by their letter dated 25.01.2016 made a further representation for rehabilitation of their unit purportedly as per the RBI guidelines and in terms of the order of this Court dated 12.01.2016. The petitioners set out various reasons to justify or explain the defaults in repayment of the second respondent's dues. They referred to the instances of global slow down and the fact that on two earlier occasions their account had been classified as NPA but the same was thereafter classified as a standard account upon the petitioners having paid the requisite amount. The letter also refers to the transactions between the petitioners and respondent No.2. The petitioners, however, fairly did not dispute that the amounts are due and payable by them and that they had in the past also defaulted in repaying the entire amount. They, however, contended that they are not willful defaulters.

3. This representation/appeal was dealt with in a detailed order of the second respondent's Zonal Manager dated 06.02.2016 which is impugned in this writ petition. The order inter-alia states/holds as follows:-

The petitioner's account was not covered by the master circular. The petitioner's account was classified as NPA on many occasions in the past and notices under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') were issued on 03.01.2011, 01.06.2012, 21.12.2012, 29.12.2014 and 31.07.2015, respectively. The petitioners had replied to the same and the second respondent has in turn tendered a reply under Section 13(3A) of the Act. Ultimately the proceedings were initiated under Section 13(4) of the Act.

The petitioners have, however, made no attempt to remedy the situation. The operation of the account and payment of installments was irregular. The turn over in the account was not upto the desire level. The facilities were granted by respondent No.2 in the year 2009.

It is important to note that when the second respondent refused to permit the petitioners to overdraw their account, the petitioners opened a current account with another bank without their knowledge and started routing transactions through it. The account was closed only when the second respondent discovered the same. The fact that the petitioners opened another account is admitted. An application was made to defreeze that account in order to enable the petitioners to repay the amounts. The petitioners have not achieved the projected sales turnover and production during the previous three years. The conclusion that the petitioners were lawful defaulters especially on this ground cannot, therefore, be termed as perverse or arbitrary. The order also refers to a civil suit filed by the petitioners disputing an amount of ₹ 2.39 lacs and an order passed by the learned Judge requesting the petitioners to regularize the account by depositing the overdue amount but the petitioners failed to do so. The cheque issued on behalf of the petitioners had been dishonoured.

4. This petition was heard on 28.03.2016. We permitted the same to be placed on board on 31.03.2016 as the petitioners' Advocate sought time to take instructions from the petitioners. By an order dated 31.03.2016 we recorded that in the alternative to the prayers in the petition, the petitioner sought an opportunity to pay the second respondent's dues and for that reason the matter was adjourned to 07.04.2016 at the petitioner's request. We are now informed that the petitioners do not seek such an

opportunity. There is infact no offer made which persuades us even now to request the second respondent to grant the petitioners an opportunity of regularizing the account. Learned counsel appearing on behalf of the petitioners stated that the petitioners seek the reliefs in the main petition and do not now seek an opportunity to pay the dues of the 2^{nd} respondent-bank in installments.

5. In these circumstances we are unable to find fault with the 2^{nd} respondent-bank having rejected the petitioner's request for enhancement of the limit. The petition is, therefore, dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

12.04.2016 (ARUN PALLI)
'ravinder' JUDGE