IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.309 of 2016

Tahiti Resort Pvt. Ltd. through - Tripurari Prasad Singh S/o Late Ram Narayan Singh, Managing Director, Tahiti Resort Pvt. Ltd., NH-31 Singhaul District- Begusarai

.... Petitioner

Versus

1. IDBI Bank, Frazer Road Main Branch, Patna
2. Authorised Officer (SARFAESI ACT), IDBI Bank, 44, Shakespeare Sarni, Kolkata- 700017
3. Assist. Manager, Recovery NPA, IDBI Bank, 44, Shakespeare Sarni, Kolkata- 700017
4. District Magistrate, Begusarai, Distt- Begusarai

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate and Mr. Raj Dular Sah, Advocate.

For the Respondent-IDBI Bank: Mr. Jitendra Kumar Roy and Mr. Shivendra Kr. Roy, Advocates.

For the State: Mr. Rajesh Roy, AC to SC 22.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-05-2017

Heard counsel for the petitioner, counsel for the State and counsel appearing for the Bank.

This case has come up for consideration after the order passed in LPA No. 1806/2016 whereby a Division Bench of this Court while remanding the matter has passed the following order:

> "It is pointed out by Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the appellant, that neither in the letter, dated 17.02.2016, nor in the letter, dated 08.04.2016, the respondent bank mentioned any reason as to why the proposals, which had been given by the appellant-petitioner to the respondents, seeking restructuring of the dues or for one time settlement of the dues, were not acceptable

> to the respondent-bank and/or why the writ petitioner-appellant's request made, in this regard, was rejected.
>
> From perusal of the order under appeal, we notice that the learned Single Judge has not decided the legality or otherwise of the rejection by the respondent Bank so far as the proposals for restructuring of the dues or for one time settlement made by the writ petitioner-appellant are concerned. To this extent, therefore, the order, under appeal, needs re-consideration by the learned Single Judge.
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> In view of the above and in the interest of justice, we set aside the order, dated 23.08.2016, and direct the Registry to place the C.W.J.C. No. 309 of 2016, for its re-consideration in the light of the contents of I.A. No. 6681 of 2016and other materials on record.
>
> In the result and for the foregoing discussion, this appeal stands allowed partly to the extent as indicated above.
>
> Let status quo as on today shall be maintained until the writ petition is taken up by the learned Single Judge.
>
> Let the C.W.J.C. No. 309 of 2016 be placed before appropriate Bench on 20.10.2016."

Before dealing with the merits of this case, this Court has to see the order passed earlier. It appears from order dated 24.06.2016 that the petitioner has expressed his willingness to liquidate his loan account and made a prayer that he would file a re-payment schedule by way of a supplementary affidavit and upon this statement, the case was fixed for hearing on 28.06.2016. Thereafter, when the case was taken up on 23.08.2016, it has been recorded as follows:

> "Learned counsel for the petitioner has expressed the willingness of the petitioner to refund the entire amount of loan along with interest subject to any rectification that may be required in the statement of accounts.
>
> As per the statements submitted on affidavit by learned counsel for the Bank the total amount due as on 31.7.2016 along with interest comes to Rs. 3,63,47,271.60 along with a separate expenses amount of Rs. 3,89,740/- as on that date.
>
> In the above circumstances, the writ application is disposed of with the direction that the petitioner shall pay on or before 13th September, 2016 an amount of Rs. 32 lacs to the Bank and thereafter continue to pay every month on or before 13th of the said month similar amount of Rs. 32 lacs per month and in the 12th and final instalment shall pay the balance amount and the expenses of the Bank. On default to pay any of the instalments, it shall be open to the Bank to take recourse to appropriate proceedings for realization of the amount. It shall also be open to the petitioner to represent before the Bank regarding correctness of the statement of accounts as has been filed or any other prayer for grant of benefit regarding reduction of interest, etc. as may be advised, which shall be considered and disposed of by the Bank by a speaking order."

Accordingly, the writ petition was disposed of. Thereafter, Letters Patent Appeal No. 1806/2016 was filed raising a plea that the respondent Bank has not assigned any reason why the proposal for restructuring of loan amount or one-time-settlement of the dues has not been accepted.

The Division Bench is of the view that the Single Judge has not decided the liquidity or otherwise of the dues by the respondent so far as the proposal of restructuring of dues or one-time-settlement made by the writ petitioner – appellant is concerned, and on that account, for reconsideration of this issue the matter was remained back.

The counsel for the petitioner submits that he has taken loan for running of his business as Tahiti Resort Private Limited at NH 31, Singhaul, District Begusarai. The total amount of term loan facility was Rs. 192/- lacs. The petitioner was to liquidate the amount by making payment from time to time as fixed by the respondent Bank. When the petitioner has failed to make payment, the accounts of the petitioner has been declared NPA whereafter SARFAESI proceedings was initiated, but in the meantime, the petitioner has filed an application for restructuring of the loan amount as well as by way of settlement on one-time-basis. The Bank did not find favour with the proposal which was given by the petitioner and the Bank issued two letters dated 17.02.2016 and 08.04.2016 (Annexures 'A' & 'A/1') to the counter affidavit. Vide letter dated 17.02.2016 (Annexure 'A') it was informed to the petitioner that after scrutinizing the proposal, restructuring of the loan amount of the petitioner was not acceptable and the Bank was constrained to give relief for restructuring of the loan amount of the petitioner, and vide letter dated 08.04.2016, the proposal for one-time-settlement was also refused. Thereafter, the petitioner filed an application under the RTI Act. By yet another letter dated 17.12.2016 issued by the respondent Bank, it was informed to the petitioner that the restructuring proposal was not in conformity with the Bank's guidelines and, therefore, the proposal was rejected.

Counsel for the petitioner further submits that the respondent Bank has to run the banking business in terms of the guidelines and the instructions issued by the R.B.I. and those guidelines and instructions are binding upon the banking company including the private banks. They cannot refuse to follow the instructions and guidelines issued by the RBI either for lending purpose or incidental purpose. It has further been submitted that the rejection of the proposal has not been dealt with by assigning any reason for refusal to grant the benefit of restructuring of the loan amounts as well as for settlement of loan amounts on one-time-basis. The counsel further submits that when such exercise has to be done as per the guidelines and instructions issued by the RBI, it should appear from the letter that the bank officials have applied their mind and after due application of mind, for reasonable ground they have refused the request of the petitioner.

It has also been submitted by the counsel for the petitioner that fairness in action, being the fundamental principle of exercise of administrative power, is a must to show transparency in dealing with refusal of granting benefit in any facet of dealing with consumer in the matter of granting benefit raised by the Bank. Now, the transparency has become a part of fairness in action of any administrative body exercising either administrative function or quasi-judicial function. In support of his submission, the counsel for the petitioner has placed reliance on two judgments of this Court – Firstly, **(2015) 4 PLJR 551 M/s Naturals Dairy Pvt. Ltd. v. The Bank of Baroda & Ors.**, and secondly, **2010 3 BBCJ 58 Murliganj Cold Storage Pvt. Ltd. v. UCO Bank**.

Per contra, counsel for the respondent Bank submits that the above two judgments have been passed in their own peculiar facts and circumstances which cannot be applied in the present case as the present petitioner is a chronic defaulter in payment of the loan amount and has further submitted that restructuring of loan amount is nothing but the novation of contract which can be done with the agreement of the parties and does not create any vested right as it violates Section 62 of the Contract Act. Counsel for the petitioner *per contra* placed reliance on the judgment of the Hon'ble Supreme Court in **ICICI Bank Ltd. v. APS Star Industrial Ltd., (2010) 10 SCC 1** (Para 39, 41, 42, 46B) and submitted that they cannot act *de hors* the guidelines of the RBI.

Counsel for the Bank submits that following of guidelines issued by the RBI would only arise when the Bank officials will exercise the power in favour of petitioner in granting benefit of restructuring the loan. It is not a vested right of the borrower to claim by right to grant the benefit of restructuring of the bank loan account.

In the present case, this Court is not deciding the issue but only disposing of the matter on the ground that while passing the order, the bank authority should have passed a reasoned order showing fairness of actions on their part. Of course, the bank has to run its business under the guidelines either for the purpose of giving loan or providing the benefit of restructuring or refusal of restructuring of the loan account. No banks can say that they are outside the scope and purview of the guidelines and instructions issued by the RBI so long it is running its banking business in shore of Indian Territory.

As the order which is under consideration has not been dealt with fairly and properly and even on the information provided under the RTI Act it has not disclosed reason which part of the proposal is not in terms of the bank guidelines. The bank guidelines should be in consonance with the guidelines or instructions issued by the RBI but it has not been divulged either in the order or in the information. In such view of the matter, this Court remands back the matter to the bank for reconsideration of the proposal which has been filed by the petitioner.

The petitioner, if so liked, should file a fresh proposal for restructuring of the loan amount with the condition attached that the petitioner must deposit Rs. 30 lacs within two weeks from today. If the petitioner deposits the said amount, the bank, after giving opportunity of hearing to the petitioner, shall take a decision in accordance with the guidelines issued by the RBI as well as its own banking rules.

It is made clear that only after depositing the aforesaid amount by the petitioner, the bank will not take any coercive steps against the petitioner till final decision is taken by the Bank. If the Bank so likes, it will allow opportunity of hearing to the petitioner. If the petitioner is so advised, he may seek for some information if there is some confusion.

With the aforesaid, the writ application stands disposed of.

(Shivaji Pandey, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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