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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 732 of 2017

Sinhgad Technical Education Society ..Petitioner.

Vs

Reserve Bank of India & Ors ..Respondents.

Mr. Dinar Madan, Sr. Counsel a/with Mr. Abhijeet A. Desai & Ms. Vrushali L. Maindad for the petitioner.
Mr. R. J. Singh for State Bank of India.
Mr. Mustafa Doctor, Sr. Counsel a/with
Mr. Gaurav Mehta a/with Ms. Kathleen Lobo a/with
Ms. Shobhana Narayan a/with Ms. Aditya Goyal i/by
Khaitan & Co. for Respondent No.4.
Mr. Rakesh Singh i/by M.V.Kini & Co. for Respondent No.6.

CORAM : R.M. BORDE & A.S.GADKARI, JJ.

DATE : 28th February, 2017.

P.C. :

1) The petitioner is praying for issuance of a writ of certiorari or any other writ or order in the nature of directions thereby quashing and setting aside the decision dated 23rd December, 2015 passed by the Joint Lenders Forum formed as per the guidelines prescribed by the Reserve Bank of India, whereby, the proposal of the petitioner-Society for additional funding and restructuring of loan accounts has been rejected. The petitioner-Society has borrowed extensively from various financial institutions/banks. The total borrowings of the petitioner from financial institutions is to the tune of Rs. 419 Crores.

2) According to the petitioner, the petitioner-Society was suffering from cash crunch in the year 2012 and as such approached the concerned lender banks for restructuring of the Term Loans and accordingly the loan accounts were restructured by the lender banks. Again in July, 2015 due to continued cash deficit, the petitioner-society approached its lenders for second restructuring. The lender banks formed Joint Lenders Forum (for short, "JLF") as per the guidelines

issued by the Reserve Bank of India (for short, “RBI”). The JLF discussed the issue of restructuring of loan and additional funding under corrective action plan (CAP) and took decision to appoint BOBCAPS Ltd. (Subsidiary of Bank of Baroda) to conduct Techno Economic Viability (for short, “TEV”) study.

On 9th November, 2015 the the JLF in its meeting principally approved the option of additional funding of Rs.250 Crores. The Financial Institutions i.e. namely, Tata Capital Financial Ltd. did not participate in the programme of additional funding to the petitioner-Society. A decision was communicated to the petitioner-Society rejecting the proposal for restructuring and additional funding for various reasons set out in the communication dated 23rd December, 2015.

3) The petitioner contends that in view of the guidelines issued by the RBI since the TEV study conducted by the BOBCAPS Ltd. recommended restructuring of the loan, it was not open for the JLF to deny the proposal of restructuring of loan and to provide additional finance. It is contended by the petitioner that the guidelines issued by the RBI have statutory force and as such the proposal approved by the

BOBCAPS Ltd. ought to have been accepted. The JLF conducted a meeting on 23rd December, 2015 and considered the request made by the petitioner-Society for providing additional funding and it is recorded in the minutes of meeting of JLF that the request for additional funding (to meet the Cash Flow Gap) has been declined and it was decided to recall the credit facilities sanctioned to the Society and initiate steps for recovery of entire dues. It is also recorded in the minutes of meeting that the Society has committed breach of conditions laid down earlier. It is recorded that it is not possible for the lender banks to accept the proposal of restructuring and additional funding for the reasons:

> (i) That the petitioner society has failed to clear over due upto August, 2015 to keep the accounts performing before recommending the proposal to higher authorities. However, the account degraded in the books of the accounts of BOB and no requisite recovery is observed in the books of other JLF member banks;
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> (ii) The Society has not routed the revenue / receipts of the society through designated escrow mechanism even after constant follow up for the same in various JLF meetings;

(iii) The Society has diverted the funds to CAPEX of society which was strictly prohibited in last restructuring proposals with some of the member banks. It is apprehended that society has diverted the funds even after submission of their requests for additional finance/restructuring to the JLF; and

(iv) As per CAP/terms and conditions of restructuring package-2012, society was not supposed to support the associate/sister concern. However, the Society has diverted the sizable amount of funds to associate concern. All other major pending non-compliance of terms and conditions with individual banks e.g. creation of charges, user specific conversion of land etc.

4) It does appear that there are reasons set out for turning down the proposal of the petitioner-Society.

5) An affidavit in reply has been presented on behalf of Respondent No.4. In Paragraph No.9 of the reply, it is stated that upon the petitioner's request and after assessing the viability on 29th December, 2012 its loans were restructured and the petitioner was inter alia granted additional funding as

well as relaxation in its repayment obligations. There were two conditions imposed; (i) that the petitioner would take written consent from the banks before incurring any capital expense on expansion and (ii) before investing money in other institutions. The petitioner appears to have contravened both these conditions. One of the preconditions for restructuring is to clear all the outstanding dues up to August, 2015 has also not been complied with by the petitioner. Despite an opportunity provided by the respondents, including, first restructuring of the loans, the petitioner failed to comply with the terms and conditions of repayment and has misused the earlier opportunities given by the JLF. The petitioner also failed to comply with the agreed and accepted terms and conditions. The reasons for declining the proposal of additional funding are reproduced in minutes of meeting held on 23rd December, 2015.

6) An affidavit in sur-rejoinder has been presented on behalf of Respondent No.4. It is noted that the petitioner in fact needs to be branded as a wilful defaulter. There are proceedings initiated against the petitioner before the Debt

Recovery Tribunal and those are pending. In such circumstances, it is urged that the instant petition need not be entertained.

7) It has also been brought to the notice that, in fact, the petitioner has diverted funds of Rs. 510 Crores to Shree Anand Co-operative Bank Limited being the fees collected from the Warje and Vadgaon campus which has led to a mismatch of flow in the escrow account. It is also pointed out that the petitioner through its Trustees have siphoned of these amounts which ought to have been advanced to the JLF members in satisfaction of the debt due to them.

8) Considering the contentions raised in the affidavit in reply, we do not find that the discretion exercised by the JLF members in refusing the request of the petitioner-society for additional funding and for restructuring of loan is unreasonable. The decision taken by the JLF concerning financial matters need not be interfered with in extraordinary jurisdiction under Article 226 of the Constitution of India. It also needs to be mentioned that the petitioner-Society does not have any legal right to claim the relief of issuing direction to the respondent banks to lend additional funding, and, more

specifically in a case, as in the instant matter, when the petitioner himself has committed default in payment and has not adhered to the pre-conditions prescribed while granting restructuring on earlier occasions. The petitioner has not brought to our notice any provisions of law or any policy entitling him to claim directions against the JLF. The writ petition, therefore, need not be entertained.

9) In order to substantiate its contention, the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **ICICI Bank Ltd. Vs. Official Liquidator APS Star Industries Ltd.** reported in **(2010) 10 SCC 1,** contending that the directives issued by the R.B.I. has force of law and need to be observed by the banks. There cannot be any dual opinion in respect of the proposition laid down in the matter of ICICI Bank (supra). The issue which came up for consideration of the Apex Court was as to, "whether interse transfer of non performing asset (for short, "NPA")by the bank is illegal under the Banking Regulation Act, 1949 as held by the High Court of Gujarat in the impugned judgment?"

10) While dealing with the issue, the Apex Court has observed in paragraph 39 of the judgment that the guidelines

issued by RBI dated 13th May,2015 of purchase/sale of non-performing financial assets themselves authorize the banks to deal *inter se* in NPAs. Those guidelines have been issued by the regulator in exercise of the powers conferred by Section 21 and 35-A of the Banking Regulation Act,1949. They have a statutory force of law. In our considered view, the facts giving rise to the instant matter are totally different and the reliance placed on the aforesaid judgment is misplaced.

11) For the reasons recorded above, the writ petition does not deserve favourable consideration and as such stands rejected.

(A.S. GADKARI,J) **(R.M. BORDE, J.)**