

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.6376 of 2017
and
W.M.P.Nos.6882 and 7633 of 2017

M/s.Marg Realities Limited,
represented by its Authorised Representative,
M.Sudharshan Reddy, G.,
Registered Office at Sri Sai Subhodaya Apartments,
No.57/2B, East Coast Road,
Thiruvanmiyur, Chennai-600 041. Petitioner

-vs-

Authorised Officer,
ICICI Bank Limited,
No.1, Cenotaph Road,
Teynampet,
Chennai-600 018. ... Respondent

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration declaring the classification of "Non-performing asset" of the petitioner account by the respondent, is contrary to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the mandate under RBI Notification DBR No.BP.BC.2/21.04.048/2015-16, dated July 1, 2015 and the consequently order restoration of the petitioner's account classification to "Standard asset".

For Petitioner :: Mr.Muralikumar for
Mr.Akhil R.Bhansali

For Respondent :: Mr.E.Omprakash, Sr.Counsel
assisted by
Mr.Ilayajkumar for
M/s.Ramalingam & Associates

ORDER
(Order of the Court was made by
HULUVADI G.RAMESH, J.)

This writ petition has been filed for a issuance of a writ of Declaration declaring that the classification of the petitioner's account by the respondent as "Non-Performing Asset" by the respondent, is contrary to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the mandate under RBI Notification DBR No.BP.BC.2/21.04.048/2015-16, dated July 1, 2015 and also to order restoration of the petitioner's account classification to "Standard Asset".

2.The petitioner is a Limited Company incorporated under the Companies Act and is involved in the business of development of real estate. The respondent extended financial assistance to the petitioner to the tune of Rs.74,00,00,000/- on 22.03.2011 and also a sum of Rs.6,00,00,000/- on 13.03.2013. To guarantee repayment of the said loans, the petitioner-company had hypothecated its property in Karapakkam Village. The said property was rented to Tata Consultancy Services ("TCS" in short). The interest and the principal amount due was to be given from the rent payable by TCS. The rent amount was directly credited by TCS into the escrow account maintained by the respondent, for repayment of loan and other statutory dues. TCS was remitting the rent under three different heads, viz.rent for structure, rent for fit-outs and maintenance charges. TCS, who is liable to pay service tax on the rent paid, was directly remitting the same also to the respondent and the respondent in turn, at the request of the petitioner, would release payment to the Service Tax Department. However, from July 2015, the respondent started appropriating the entire amount without making any payment towards Service Tax and therefore the petitioner was burdened to make payment to the Service Tax Department to avoid any action being initiated. Further, the respondent, with the hidden agenda of classifying the petitioner's asset as a non-performing asset, unilaterally decided to close the term loan of Rs.6 crores abruptly from and out of the entire proceeds from August to November 2016 by internal adjustments, which has resulted in non-funding of EMI and interest for the term loan obtained. The respondent, for the sake of showing default in repayment, made some internal adjustments with no prior notice, and straightaway classified the petitioner's asset as Non-Performing Asset ("NPA" in short). It is not disputed that TCS has been remitting the rent on time, as the same has been directly credited to the Escrow account maintained by the respondent. Therefore, according to the petitioner, there is no basis for the respondent to classify the

petitioner's account as NPA. It is also stated that the respondent is planning to assign the debt of the petitioner to an Asset Reconstruction Company along with some other debts and the same is in process. The learned counsel appearing for the petitioner states that if the debt is assigned to an Asset Reconstruction Company ("ARC" in short), then the petitioner would be subjected to grave loss and hardship. When there is no real threat for the bank's due, it is not proper on the part of the bank to classify the petitioner's property as NPA. Stating so, he prayed for allowing this writ petition.

3.The learned senior counsel for the respondent-Bank, by reiterating the stand taken by the respondent bank in its counter, has submitted that the petitioner cannot have any grievance in the classification of the account as NPA as it happens as per the guidelines of the Reserve Bank of India and by automatic internal mechanism wherein, if the petitioner fails to pay the interest dues or the instalments for more than 90 days, the account is bound to be classified as NPA. He further submitted that the petitioner company had issued an irrevocable letter of instruction to TCS on 23.08.2012 to deposit the monthly rentals into the escrow account bearing A/c.No.000905023841 with ICICI Bank Limited, Nungambakkam Branch. Further, there had been defaults in payment of the said amounts into the escrow account with the bank. The allegation of the petitioner that the respondent refused to release the money received for maintenance and therefore the petitioner could not maintain the building and lost maintenance contract, has been denied. The further allegation of the petitioner regarding utilisation of rent proceeds towards closure of one of the term loan of Rs.6 crores and therefore displayed a fictional default in repayment of the other term loan, has also been denied. Finally the learned senior counsel submitted that the petitioner's overdue crossed the period of 90 days as on 30.05.2016 and unless the entire overdue amount is paid by the petitioner, there is no possibility of the account being continued without classifying the same as NPA. The account stood classified as NPA as per the guidelines of RBI and thereafter there had been irregular payments of the monthly rentals and other charges by TCS. The petitioner is fully aware of their classification and also the recall notice issued to them. Stating so, the learned senior counsel appearing for the respondent prayed for dismissal of the writ petition.

4.Heard the learned counsel on either side and perused the materials available on record.

5.The petitioner has been allotted loans by the respondent bank to the tune of Rs.74 Crores. The petitioner has also been allotted a loan for a sum of Rs.6 Crores. The property in question is worth about Rs.120 Crores. A monthly instalment of

Rs.1,14,00,000/- (Rupees One Crore Fourteen Lakhs Only) is being paid by the petitioner for 120 months. The property in question is owned by the petitioner but rented to TCS, who in turn, pays the monthly rent to the escrow account of the bank directly. Thereafter, alleging default of payment for a period of more than 90 days by the petitioner, the respondent bank initiated SARFAESI proceedings and declared the petitioner as NPA. The grievance of the petitioner is that the said action of the respondent declaring the petitioner's asset as NPA is totally unwarranted. It is also the grievance of the petitioner that the amount towards service tax on the rent paid, which was directly remitted by TCS was not remitted by the bank to the Service Tax Department, from July 2015 and therefore, the petitioner was burdened to make payment to the Service Tax Department separately, to avoid any action being initiated. Further, even though the property is worth Rs.120 Crores, the respondent bank, by classifying the petitioner's asset as NPA, tries to assign the debt to an Asset Reconstruction Company for a value of Rs.50 Crores.

6.The learned senior counsel for the respondent has submitted that there is a default to the tune of Rs.56 Crores and as such, necessary proceedings have been initiated and the matter is pending before the Debts Recovery Tribunal. The learned senior counsel for the respondent has also relied upon the judgment of the Hon'ble Supreme Court in Federal Bank Limited vs. Sagar Thomas and others, reported in (2003) 10 SCC 733, in support of his contention that a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty and that a private body or a person may be amenable to writ jurisdiction only when it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it and that merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issuance of a writ under Article 226 of the Constitution of India.

7.Per contra, the learned counsel for the petitioner has submitted that the rental amount has been paid directly by TCS to the escrow account as EMI. The respondent, without granting any breathing time to the petitioner, has proceeded to take steps on the petitioner.

8.It appears that a sum of Rs.6 Crores which was paid by the petitioner towards payment of service tax had not been released by the bank to the authorities. Furthermore, in view of the default for more than 90 days and without taking into

consideration the payments being made by TCS into the escrow account to the tune of Rs.1,14,00,000/- every month, the respondent declared the petitioner's account as NPA and thereby initiated proceedings and assigned the debt of the petitioner to an Asset Reconstruction Company. Promptly, the monthly amount of Rs.1,14,00,000/- was paid by TCS to the escrow account maintained by the respondent bank. The period agreed to be paid for the said amount is 120 months, ie., 10 years.

9. So far as the stand of the respondent bank is concerned, there is a balance of Rs.56 crores and that the amount has to be paid as per the contract entered to between them, but there is a breach in contract by the petitioner.

10. Since the matter is pending before the Debts Recovery Tribunal in O.A.No.540 of 2016, the Debts Recovery Tribunal is not to straightaway deal with the matter to declare the petitioner as NPA as the value of the property is about Rs.120 crores. Hence, a reasonable time has to be provided by the Debts Recovery Tribunal allowing the petitioner to make payment of the dues, after ascertaining the actual amount by properly scrutinizing the records of the bank. The actual amount to be paid by the petitioner has to be properly ascertained. The factual position as regards the payment of EMI by the petitioner or whether any default has been committed by the petitioner, has to be ascertained by the Debts Recovery Tribunal. After ascertaining these aspects, a reasonable time of about six months has to be granted to the petitioner allowing him to make payments regularly by covering up default amount upto date to recall the NPA order. The remaining instalments have to be paid as per condition. The property of the petitioner worth Rs.120 Crores, cannot be assigned to any ARC for only Rs.50 Crores. In this regard, proper calculation has to be made and the correct value has to be obtained. Thereafter, a time of six months, as already stated above, has to be granted depending upon the factual position. The amount of Rs.1,14,00,000/- which was remitted every month by TCS has to be taken into consideration. Since the Debts Recovery Tribunal and Debts Recovery Appellate Tribunal are involved in the process of decision making, certain directions are necessary in this regard and as such, the writ petition is maintainable.

11. Further, in page-67 of the typed set of papers, an e-mail communication dated 24.02.2015, which has been sent by an ICICI Bank official to the petitioner-company is enclosed. In the said communication, it has been stated by the bank official that as per the financial statements of the petitioner-company for the financial year 2014, the total TDS yet to be refunded by the Income-tax Department was Rs.33 million and the same would increase to Rs.39 million by the financial year 2015 due to additional TDS deducted in the Financial year 2015 on account of

non-availability of TDS exemption. Hence an action plan was proposed to enable the account to be regularised for the balance tenor of the facility. This communication has also to be taken note of by the Debts Recovery Tribunal.

12. Without considering the above points, the Debts Recovery Tribunal shall not declare the asset in question as NPA or assign the debt to any ARC. Thus, the Debts Recovery Tribunal, Chennai shall consider all these aspects and pass appropriate orders. Till such order is passed by the Debts Recovery Tribunal, no coercive action be taken by the respondent-bank against the petitioner-company. It is made clear that the petitioner shall remit the EMI regularly, as agreed without any further default and also make substantial payments in lump sum at regular intervals to cover up default amount to further avoid declaring the property as NPA and to pay the EMI amount regularly.

13. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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+1 cc to M/s.Akhil R.Bhayali Advocate sr 42741
+2 cc to M/s.Ramalingam & Associates sr 42662 dt:17/07/2017
+1

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