IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.3925 of 2017

M/s.Southern Polypet Pvt. Ltd.,
rep., by its Managing Director,
P.Prabhuram .. Petitioner

versus

1. The Chief General Manager,
IDBI Bank Ltd.,
No.115, Anna Salai,
P.B.No.805, Saidapet,
Chennai 600 015.

2. The A.G.M., & Branch Head,
IDBI Bank Ltd.,
No.1, Car Street,
Next to Jaya Hospital,
Sriperumbudur 602 105. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in rejection of OTS in letter, dated 30.01.2017, vide it Reference No.IDBI/RBG/322/SPPL/2016-17, pertaining to the loan account of the petitioner, quash the same and direct the 2nd respondent to consider the OTS proposal, dated 09.12.2016, as per the RBI Guidelines, under the OTS Scheme, for SME Accounts.

For Petitioner : Mr.R.Krishnamurthy,
Senior Counsel
for Mr.R.Udhaya Kumar

ORDER
(Order of the Court was made by S.MANIKUMAR, J.)

Writ petition is filed seeking for a Certiorarified Mandamus, calling for the records of the Assistant General Manager and Branch Head, IDBI Bank Ltd., Sriperumbudur, 2nd respondent herein, in rejection of OTS, in letter, dated 30.01.2017, vide Reference No.IDBI/RBG/322/SPPL/ 2016-17, pertaining to the loan account of the petitioner and direct the 2nd respondent to consider the OTS proposal, dated 09.12.2016, as per the RBI Guidelines, under the OTS Scheme, for SME Accounts.

2. On 09.04.2010, the petitioner-Company has availed a term loan of Rs.17 Lakhs along with cash credit, to the tune of Rs.30 Lakhs and thereafter, during August, 2012, the loan account was transferred from the Chief General Manager, IDBI Bank Ltd., Chennai, 1st respondent herein to the Assistant General Manager and Branch Head, IDBI Bank Ltd., Sriperumbudur, 2nd respondent herein. However, there was laches and deficiencies, while sanctioning, renewing and restructuring the loan facilities sanctioned earlier. On 04.06.2013, the 2nd respondent-Bank, without considering various deficiencies, has classified the account of the petitioner, as NPA and issued demand notice, dated 13.08.2015, under Section 13(2) of the SARFAESI Act, claiming an exorbitant sum of Rs.4,11,92,435/-, which is impugned in W.P.No.3323 of 2017.

3. Summarising all the facts, the petitioner has sent a representation, dated 09.12.2016 to the 2nd respondent-Bank, opting to settle the dues, by way of One Time Settlement. Vide letter, dated 30.01.2017, the 2nd respondent-Bank, has sent a reply, stating that the bank is not agreeable to OTS proposal, as per the terms suggested by the petitioner, ie., levy of simple interest at 10%, without charging any compound interest, penal interest, waiver of FITL and entire interest on all accounts, after the date of NPA and settling the dues with payment of 25% on the date of confirmation of OTS offer and balance 75% in equal installments, along with agreed rate of interest. In the reply, the petitioner was advised to repay the entire outstanding dues, immediately. Aggrieved by the same, the petitioner has preferred the present writ petition.

4. Mr.R.Krishnamurthy, learned Senior Counsel appearing for the petitioner submitted that the 2nd respondent-Bank, in its reply, dated 30.01.2017, without considering the various laches and deficiencies, committed by them, has bluntly denied the OTS proposal, which is violative of the guidelines on One-Time Settlement scheme for SME Accounts issued on 03.09.2005, by the Reserve Bank of India and the same reads as follows:

> "The amount of settlement arrived, shall preferably be paid one lump sum. In cases where the borrowers are unable to pay the entire amount in one lump sum, atleast 25% of the amount of settlement shall be paid up upfront and the balance amount of 75% should be recovered in instalment within a period of one year together with interest at the existing prime leading rate from the date of settlement upto the date of final payment."

5. Learned Senior Counsel appearing for the petitioner further submitted that the 2nd respondent had charged exorbitant rate of interest, while restructuring the loan,

which is also violative of Para 2.3.1.3 of Master Circular - Interest Rate on Advances, dated 01.07.2011. He further submitted that the 2nd respondent, in its reply, dated 30.01.2017, has categorically admitted the commission of certain deficiencies, such as, delay in review of facilities and disbursement and also compounding of penal interest, which is against the Guidelines on Fair Practices Code for Lenders, issued by RBI in DBOD. Leg. No. BC.104 /09.07.007/2002-03, dated 05.05.2003, under Clause (iii) of head "Guidelines" and the same reads as follows:

> "Disbursement of loans including changes in terms and conditions:
>
> Lenders should ensure timely disbursement of loans sanctioned in conformity with the terms and conditions governing such sanction. Lenders should give notice of any change in the terms and conditions including interest rates, service charges etc. Lenders should also ensure that changes in interest rates and charges are effected only prospectively. "

6. Learned Senior Counsel further submitted that the 2nd respondent-Bank has failed to consider the representation of the Petitioner, to restructure their loan account, as on 08.04.2013 and thereby, claimed to have classified as NPA, as on 04.06.2013 and if the Bank had considered the request and accorded their sanction, much earlier, the account would not have been classified as NPA.

7. Learned Senior Counsel appearing for the petitioner further submitted that the Bank had violated the Guidelines issued by the RBI under the Master Circular - Lending to MSME, wherein, it has been mentioned that the Banks are duty bound to assess the viability of the units, within three months of classifying of the account as NPA. But the Bank had not submitted any papers to show that they have assessed the viability and it is only on the further request sent by the petitioner, vide their letter, dated 11.07.2013, the Bank has restructured with additional funding on October' 2013. According to him, the above action of the respondent is not in terms of Clause 5 of the Reserve Bank of India (Interest Rate on Advances) Directions, 2016 and the said clause is extracted hereunder:

> "Banks shall formulate a Board approved policy for charging penal interest on advances which shall be fair and transparent. The rate of penal interest shall be decided after taking into account incentive to service the debt and due regard to genuine difficulties of customers".

Heard the learned counsel appearing for the parties and perused the materials available on record.

8. In M/s.Digivision Electronics Ltd., Retistered Office at No.A5 & 6, Industrial Estate, Guindy, Chennai - 32 v. Indian Bank, rep. by its Deputy General Manager, Head Office, 31, Rajaji Salai, Chennai-1 and another, reported in 2005 (3) LW 269, at paragraph No.42, a Hon'ble Division Bench of this Court held as follows:

> "42. Some of the learned counsel submitted that the Court should direct one time settlement or fixing of installment or rescheduling the loan. In Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, 2004 (5) CTC 689, it has been held that this Court cannot pass any such order in writ jurisdiction, since directing one time settlement or granting installments is really re-scheduling the loan, which can only be done by the bank or financial institution which granted the loan. This Court under Article 226 of the Constitution cannot reschedule a loan. A writ is issued when there is violation of law or error of law apparent on the face of the record, and not for rescheduling loans. The Court must exercise restraint in such matters, and not depart from well settled legal principles".

At paragraph No.46 of M/s.Digivision Electronics' case (cited supra), a Hon'ble Division Bench further held as follows:

> "46. Writ is a discretionary remedy, and hence this Court under Article 226 is not bound to interfere even if there is a technical violation of law, vide R.Nanjappan Vs. The District Collector, Coimbatore, 2005 WLR 47, Chandra Singh Vs. State of Rajasthan, JT 2003 (6) SC 20. The Managing Director, Tamil Nadu State Transport Corporation (Madurai Division-IV) Ltd., Dindigul Vs. P.Ellappan, 2005 (1) MLJ 639, Ramniklal N.Bhutta and Another Vs. State of Maharashtra, 1997 (1) SCC 134, etc."

9. Earlier, after considering a catena of decisions on the legal right of a person to seek for a writ of mandamus, a Hon'ble Division Bench of this Court in Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited reported in 2004 (5) CTC 689, at Paragraph Nos.7,8,16 and 18, held as follows:

> "7.In our considered opinion it is not proper for the Court to interfere in such matters relating to recovery of loans. Such matters are contractual in nature and writ jurisdiction is not the proper remedy for this. A writ lies when there is an error of law apparent on the face of the record, or there is violation of law. No writ lies merely for directing one time settlement or for directing re-scheduling of the loan or for fixing instalments in connection with the loan. It is only the bank or the financial institution which granted the loan which can re-schedule it or

fix one time settlement or grant instalments. The Court has no right under Article 226 of the Constitution to direct grant of one time settlement or for re-scheduling of the loan, or to fix instalments.

8. No doubt Article 226 on its plain language states that a writ can be used by the High Court for enforcing a fundamental right or for 'any other purpose'. However, by judician interpretation the words 'any other purpose' have been interpreted to mean the enforcement of any legal right or performance of any legal duty, vide Calcutta Gas Co. v. State of West Bengal, AIR 1963 SC 1044. In the present case, the writ petitioner has really prayed for a Mandamus to the Corporation to grant it a one time settlement, but no violation of any law has been pointed out. In our opinion, no such mandamus can be issued in this case, and hence the writ petition should not have been entertained. A mandamus is issued only when the petitioner can show that he has a legal right to the performance of a public duty by the party against whom the mandamus is sought.

16. A loan is granted in terms of the contract, and grant of one time settlement or re-scheduling of the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties, vide Section 62 of the Contract Act, 1872. The Court cannot alter the terms of the contract.

18. Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held up by Court orders under Article 226 proceedings which were really unwarranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not a mere sympathy or compassion. No doubt, there be hardship to a party, but unless violation of law is shown the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons. The Courts must keep these considerations in mind."

10. Therefore, as per the decisions of this Court in Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, reported in 2004 (5) CTC 689 and M/s.Digivision Electonics Ltd., Retistered Office at No.A5 & 6, Industrial Estate, Guindy, Chennai - 32 Vs. Indian Bank, rep. by its Deputy General Manager, Head Office, 31, Rajaji Salai, Chennai-1 and another, reported in 2005 (3) LW

269, this Court cannot compel the bank for any rephasement or One Time Settlement. Decisions cited by us, decide the principles of law to be followed, in the matter of rephasement and settlement of dues.

11. In the light of the above decisions, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

skm

+ 1 cc to M/s. R. Udhayakumar, Advocate SR.11204

W.P.No.3925 of 2017

RR(CO)
EU(23/10/2017)