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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9135/2017

SMS PARYAVARAN LTD.

..... Petitioner

Through Mr. Gagan Chhabra and Ms. Richa Narang, Advs.

versus

RESERVE BANK OF INDIA & ORS

..... Respondents

Through Mr. H.S. Parihar and Mr. Kuldeep S. Parihar, Advs. for R-1 (RBI)
Mr. Rajiv Kapur, Mr. Atul Sharma, Mr. Sugam Seth and Ms. Yamini Khurana for R-2 (SBI)
Mr. Ateev Mathur and Ms. Jagriti Ahuja, Advs. for R-3 (HDFC)
Mr. Sanjeev Sager and Mr. Naveen Arora, Advs. for SIDBI
Mr. Abhishek Agarwal, Adv. for IDBI Bank Ltd.
Mr. Punit K Bhalla, Adv. for ICICI Bank.

**CORAM:**
**HON'BLE MS. JUSTICE INDERMEET KAUR**

**O R D E R**

**% 26.10.2017**

1 The petitioner before this Court is a limited company. It had availed various financial and credit facilities from respondents No. 2 to 7 banks. These facilities were provided by the respondents banks against charge/hypothecation of the current assets/moveable and immoveable properties of the petitioner company. The petitioner

company started facing difficulties in the repayment of the loan. A restructuring program was initiated by the petitioner company in terms of the Guidelines issued by the Reserve Bank of India (respondent No. 1). Submission is that these guidelines are mandatory and binding in nature. Respondents No. 2 to 7 banks were bound to follow these guidelines issued by the RBI from time to time. The Notification of the RBI dated 26.02.2014 laying down the frame work for revitalizing distressed assets of Joint Lenders Forum (JLF) and corrective action plan have to be have to be explored by following a due procedure. In the present case, the banks (respondents No. 2 to 7) had agreed for restructuring of the accounts of the petitioner company as per the guidelines of the RBI.

2 Learned counsel for the petitioner places heavy reliance upon the minutes of the Joint Lenders Forum (under the RBI Guidelines) convened by respondents No. 2 to 7 wherein as per him the various disabilities regarding the way forward for the petitioner company had been explored and the divergent views of the minorities banks had been noted; it was however concluded that in terms of the Circular of the RBI dated 08.06.2015, the SDR (Strategic Debts Restructuring Scheme) would be explored.

3 Submission in this writ petition is that the minority banks who were in dis-agreement with the lead bank (of the Joint Lenders Forum) cannot in this background enforce recovery proceedings against the petitioner company. The prayer made in the present petition seeks a stay on the rights of the banks to recover any money

from the petitioner till the time that this SDR is under process. A writ to the said effect has accordingly been prayed for.

4 All the respondents have put in appearance. Attention has been drawn to the minutes of the meeting dated 28.07.2017 which were minutes recorded between the petitioner company and the Joint Lenders Forum (JLF-comprising of respondents No. 2 to 7) constituted under the Guidelines of respondent No. 1 (RBI).

5 A perusal of these minutes shows that a restructuring program (SDR) had been initiated by the JLF. The JLF comprised of all the banks who had lent money to the petitioner. The leading bank was IDBI. The dissent of the some of the banks was also noted. The company was advised to engage with the prospective investors and to come up with a concrete proposal. It was advised to the company that this proposal cannot be decided upfront without examining the overall package (page 4 of the minutes). Learned counsel for the petitioner points out that this was a concluded SDR qua the petitioner and respondents No. 2 to 7 pursuant to which he had started proceedings and to advance this submission he has placed reliance upon a letter dated 24.08.2017 wherein the proposal of the IDBI bank has been sought to taken forward. To the similar effect is another letter dated 05.09.2017 issued by the petitioner upon which reliance has also been placed to advance his submission that the SDR being in progress, no coercive steps can be taken against the petitioner by the other banks (respondents No. 2 to 7).

6 This position has been refuted and rightly so. The minutes of the meeting dated 28.07.2017 are definitely not a concluded contract between the JLF and the petitioner. The minutes clearly spell this out. The petitioner company has in fact been advised to engage with prospective investors and to come up with a concrete proposal; the minutes note that this matter cannot be decided upfront and without examining the overall package. The Guidelines of the RBI (dated 08.06.2015) qua the Strategic Debt Restructuring (SDR) also stipulate that the JLF must approve the SDR conversion package within 90 days from the date of deciding to undertake SDR (page 339 of the paper book). This stage has not yet reached. The initiation of proposal in terms of the minutes of the meeting dated 28.07.2017 has not been concluded within this period of 90 days. This is also not the case of the petitioner.

7 This writ petition in this background seeking a stay on the coercive steps proposed to be taken by respondents No. 2 to 7 which are statutory rights available to the respondents (in the absence of concluded SDR) cannot be taken away. This petition is nothing but the abuse of the process of the Court. It has been filed to subvert the process of justice.

8 Reliance by the learned counsel for the petitioner upon 2010 AIR (SC) 218 *Sardar Associates Vs. Punjab and Sind Bank* is misplaced. The Apex Court has recognized the fact that the Guidelines issued by the RBI are binding upon all banks and if there

is a concrete proposal which has been concluded between the JLF and a company, only in that event coercive steps cannot be taken against the borrower. This is not in the instant case.

9 Petition is malafide. It is dismissed with cost quantified at Rs.50,000/-.

**INDERMEET KAUR, J**

**OCTOBER 26, 2017**
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