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

+ **W.P.(C) 4842/2018 & CM Nos. 18639-18640/2018, 20613/2018,
32140/2018, 32821/2018**

ASIAN COLOUR COATED ISPAT LIMITED Petitioner

Through: Mr Abhinav Vashisht, Sr. Advocate
with Ms Mahima Singh, Advocate.

versus

RESERVE BANK OF INDIA AND ORS. Respondents

Through: Mr Sandeep Sethi, Sr. Advocate with
Mr A. R. Chowdhary, Mr V. P. Singh,
Ms Vatsala Rai, Mr P. B. Lal, Mr
Raghav Seth and Mr A. Modi,
Advocates for R-1/RBI.
Mr Ankur Mittal, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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09.10.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the list issued by respondent no.1 (RBI) containing the names of borrowers in respect of which directions have been issued to file proceedings under the Insolvency and Bankruptcy Code, 2016 (hereafter 'IBC'), to the extent it includes the name of the petitioner. The petitioner further prays that its account be considered for a Resolution Plan under the ambit of the 'Beneficial Framework' – the framework as provided under the RBI Circular dated 12.02.2018.

2. The petitioner also impugns Clause 13 of the RBI Circular dated 12.02.2018 inasmuch as it excludes the borrower in respect of which RBI has issued specific instructions to the banks for making a reference under the IBC. The petitioner, essentially, seeks that it be excluded from the scope of the said Circular. The petitioner had availed various term loans and working capital facilities from various lenders. The petitioner claims that the majority of its exposure is towards the consortium of lenders consisting of fifteen nationalized and scheduled commercial banks. Admittedly, the petitioner has defaulted in repayment of its dues and its account is being classified as a Non-Performing Asset (NPA) by certain banks. RBI has issued a direction to respondent no.2 (hereafter 'SBI'), which has led the bankers to initiate proceedings in respect of the petitioner before the National Company Law Tribunal (NCLT) under the provisions of the IBC. The petitioner claims that the said action of RBI is discriminatory and violative of Article 14 of the Constitution of India inasmuch as it results in disabling the petitioner from pursuing the SBI and other lenders for an appropriate resolution plan. In terms of the Circular dated 12.02.2018 issued by the RBI, the bankers have been provided a period of six months to finalize and implement a resolution plan in respect of borrowers that have defaulted in meeting their commitments. This period is not available to the petitioner, as it has been excluded from the purview of the said Circular on account of RBI directing SBI to make a reference under the IBC.

3. In view of the above, the limited controversy that falls for consideration of this Court is whether the action of RBI in selecting the petitioner as one of the borrowers and issuing instructions to the banks to

make a reference under the IBC is arbitrary, unreasonable and falls foul of Article 14 of the Constitution of India.

4. Briefly stated, the relevant facts necessary to address the controversy are as under:-

4.1 During the period 2010 to 2015, the petitioner had borrowed significant sums from a consortium of lenders comprising of fifteen banks. Admittedly, the amount outstanding to the said banks has swelled up to around ₹3900 crores. The petitioner claims that it suffered losses due to the adverse economic scenario including the recession in the steel industry.

4.2 On 26.02.2014, the RBI issued a Circular titled “Framework for Revitalizing Distressed Assets in the Economy – Guidelines on Joint Lenders’ Forum (JLF) and Corrective Action Plan (CAP)”. In terms of the said Circular, the banks were required to identify incipient stress in the accounts by categorizing the same as Special Mention Accounts (SMA). The said accounts were further to be sub-categorized into three sub-categories: SMA-0 (Where principal or interest payment is not overdue for more than 30 days); SMA-1 (principal or interest payment is overdue between 31-60 days); and SMA-2 (principal or interest payment overdue between 61-90 days). If the default continued beyond a period of 90 days, it was required to be classified as an NPA. The lending banks were also directed to report information regarding stressed accounts required to report credit information to the Central Repository of Information on Large Credits in respect of borrowers, where exposure of banks was in excess of ₹50 million. In terms of the said Circular, the banks were directed to immediately form a Joint

Lenders Form (JLM) in cases where the account was reported by any of its lenders as SMA-2 and the aggregate exposure (AE) of the lenders was in excess of ₹1000 million. The JLF was required to consider various CAP for resolving the stress and to preserve the economic value of the underlying assets. The CAP would generally include either (a) Rectification (b) Restructuring or (c) Recovery.

4.3 Concededly, the petitioner's action was categorized as SMA-2 in October, 2015. In terms of the Circulars issued by the RBI, the JLF held its first meeting on 23.11.2015. Admittedly, the JLF approved CAP involving debt restructuring. A Debt Restructuring Agreement was also entered into by the petitioner and the lenders on 28.06.2016. The petitioner states that the said CAP was also approved by Independent Evaluation Committee (IEC). Admittedly, the said CAP failed and the petitioner alleges that the same was on account of inaction and lack of decision making by the members of the consortium of lenders.

4.4 The RBI issued another Circular dated 13.06.2016 titled "Scheme for Sustainable Structuring of Stressed Assets" (referred to as 'S4A'). The said Circular provided for resolution of large borrower accounts which satisfied the eligibility conditions, therein. At a meeting of the JLF held on 04.08.2016, it was decided to explore the possibility of restructuring the petitioner's debt in terms of the aforementioned Circular dated 13.06.2016. Apparently, efforts were made for resolution of the petitioner's account. However, the same remained inconclusive.

4.5 The RBI issued a Circular dated 12.02.2018 withdrawing the

specified Circulars issued earlier. All CAPs that were implemented under the earlier Circulars remained unaffected.

4.6 In terms of Paragraph 8 of the said Circular dated 12.02.2018, all resolution plans were required to be implemented within a period of 180 days from the date of reference if the borrower had defaulted prior to the reference date i.e. 01.03.2018, and within a period of 180 days from the first default in case, the said default occurred after the reference date. The petitioner claims that it was in the process of implementing a resolution plan and given the time as specified in Paragraph 8 of the Circular dated 12.02.2018, it would have been possible for the lenders to evolve an appropriate resolution plan. It was also emphatically contended by Mr. Abhinav Vashisht, learned Senior Counsel who appeared for the petitioner that part of the debts that had already been signed by the existing lenders to a Non-banking Financial Company (NBFC). In the meanwhile, Sections 35AA and 35AB of the Banking Regulation Act, 1949 were introduced by the Banking Regulation (Amendment) Ordinance, 2017 which was issued on 04.05.2017. In terms of Section 35AB of the Banking Regulation Act, the RBI was authorized to issue directions to banks for resolution of stressed assets. Subsequently, the said Ordinance was replaced by the Banking Regulation (Amendment) Act, 2017, which came into effect on 25.08.2017. Section 35AA and 35AB of the Banking Regulation Act, 1949 as introduced by the aforementioned enactment, reads as under:-

“ 35AA The Central Government may, by order, authorise the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default,

under the provisions of the Insolvency and Bankruptcy Code, 2016. *Explanation.*—For the purposes of this section, “default” has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.

Explanation.— For the purposes of this section, “default” has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.

35AB. (1) Without prejudice to the provisions of section 35A, the Reserve Bank of may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets.

(2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets.”

4.7 On 05.05.2017, the Central Government issued a notification in exercise of its powers conferred under Section 35AA of the Banking Regulation Act, 1949 authorizing the RBI to issue directions to any banking company, which may be considered necessary to initiate insolvency resolution process under the provisions of the IBC.

5. The RBI has filed the counter affidavit indicating the steps taken to resolve the stressed assets in NPAs in the Indian Banking System. The RBI said counter affidavit indicates that the RBI took an earlier resolution in terms of Section 35AA and 35AB of the Banking Regulation Act, 1949 to initiate steps in order to address the burgeoning stressed on the Indian Banking System. The steps taken by the RBI, as indicated in its counter

affidavit, are set out below:-

- a. The Answering Respondent constituted an Internal Advisory Committee (hereinafter the “IAC”) comprising majorly of independent directors on the Board of the RBI to advise it on identifying cases for reference to the IBC and to evolve an objective and consistent framework in this regard towards the same.
- b. The IAC decided to consider the top 500 exposures of the banking system as on 31.03.2017. This set of 500 accounts was arrived at as per the statement generated from the CRILC database.
- c. Of the said top 500 exposures, it was noted that 71 accounts had been partly or wholly classified as NPAs while the other 429 were not classified as NPA by any bank. Four of these 71 accounts were overseas registered companies and hence, could not be considered for reference to IBC. Thus, the IAC considered 67 borrower entities registered in India, which were partly or wholly classified as NPAs, for resolution. It was also noted that these 67 accounts accounted for INR 491,408 crores of fund and non-fund based outstanding in the Indian banking system as on 31.03.2017.
- d. In view of various factors (including focusing on large assets for quick minimization of economic losses; the necessity of not overloading the nascent mechanism of the IBC; attempting the resolution of a significant portion of the NPAs) the IAC decided to refer accounts for resolution in a phased manner. Therefore, as an immediate step, the IAC recommended an initial set of large, materially stressed accounts to be referred to the resolution mechanism under the IBC. For the purpose of this short listing, the following criteria was applied:

- Accounts where the funded plus non-funded outstanding was more than INR 5000 crore;
 - Accounts where more than 60% of the total outstanding by value was NPA as on March 31, 2016.
- e. Consequently, the IAC identified 12 accounts which were referred for resolution under the IBC (hereinafter the “**First List**”). It is pertinent to note that the accounts in the First List constituted around 25% of the NPAs in the system and the cumulative fund based and non-fund based outstanding therein amounted to INR 197,769 crores.
- f. On 13.06.2017, the Answering Respondent issued the June Press Release, whereby it informed the public and the banks of the policy decision regarding referral of certain accounts to the IBC for resolution. The said press release also informed the various stakeholders of the process set in motion by the Answering Respondent in that regard. A copy of the June Press Release is annexed to the Petition and marked as Annexure P/9.
- g. As regards the other accounts that did not qualify under the above criteria, the IAC recommended that banks may be given six months to finalise a resolution plan. In cases where a viable resolution plan is not agreed upon within six months, banks should be required to file for insolvency proceedings under the IBC.
- h. The IAC subsequently met again and decided that out of the 55 remaining NPA accounts, accounts which are materially NPA (i.e., where 60% of the total outstanding has become NPA by June 30, 2017) may be given time till December 13, 2017 for resolution. If the banks fail to finalise and

implement a viable resolution plan by the said date, banks will be required to file insolvency applications under IBC before December 31, 2017. The IAC noted that applying this criterion will cover 29 NPA accounts, with total outstanding of INR 135,846 crore and total fund-based NPAs of INR 111,848 crore as on June 30, 2017.

- i. As regards the residual 26 accounts out of the initially identified 67 NPA accounts, the IAC recommended that a generic framework for resolution in a time bound manner be evolved and failing such resolution the accounts be referred to for resolution under the IBC.
- j. Thus, the IAC applied the following criteria for dealing with the remaining 55 accounts;
 - 29 accounts, that were materially NPA as on 30.06.2017, i.e. where more than 60% of the total outstanding by value was NPA as on 30.06.2017 may be given time till December 13, 2017 for resolution, failing which these should be referred under IBC by the banks concerned. It is pertinent to note that these 29 accounts comprised the accounts in the Second List.
 - 26 accounts, which were not materially NPA as on June 30, 2017, i.e., where less than 60 percent of the banks' funded and non-funded outstanding were classified as NPA as on June 30, 2017, may be addressed as part of a generic framework for resolution of stressed assets."

6. There is no dispute that the petitioner again qualifies the objective criteria as adopted by the RBI for short listing the account, namely (i) with its one of the NPA accounts out of the 500 NPA accounts with the highest exposure to the Indian Banking System as on 31.03.2017; and (ii) 60% of

the total outstanding of the included account become NPA by 30.06.2017.

7. This Court is not called upon to evaluate the criteria adopted by the RBI on merits. The scope of judicial review is limited and unless it is established that the same is arbitrary, unreasonable, capricious or mala fide, no interference by this Court would be warranted. Clearly, none of the aforesaid grounds are established.

8. It is apparent that the criteria adopted by the RBI is based on expert advice and within the scope of their powers. In view of the above, no interference with the direction of the RBI is warranted. It is also apparent that the criteria adopted by RBI, for selecting the accounts to be referred for resolution under the IBC, is an objective criteria based on rational basis. The petitioner's contention that inclusion of its name in the second list is arbitrary, is wholly unsustainable.

9. Mr Vashishth has also contended that there were several other accounts meeting the same criteria, but had not been included in the list of accounts to be referred under the IBC. This contention is seriously disputed by RBI. However, even if it is accepted that there are other accounts qualifying the criteria as adopted by the RBI but have not been included in the list, no interference in these proceedings would be warranted. Clearly, all accounts cannot be referred to the IBC in one trench, as that would tend to clog the docket of NCLT. The RBI retains full discretion as to which account is to be included in which trench and this Court finds no reason to interfere with the exercise of such discretion.

10. In view of the above, the present petition is dismissed. All pending

applications are disposed of.

VIBHU BAKHRU, J

OCTOBER 09, 2018

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