IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 18-11-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.9238 OF 2019

M/s.Saptagiri Milk Products Ltd. ... Petitioner

-vs-

1. Union of India,
   represented by its Secretary,
   Ministry of Finance,
   Department of Banking,
   Sanmadmurg, New Delhi.

2. Reserve Bank of India,
   Central Office Building,
   18th Floor, Shahid Bhagat Singh Road,
   Mumbai-400 001.

3. Indian Bank Asset Recovery Management Branch,
   represented by the Chief Manager,
   No.31, Variety Hall Road,
   Coimbatore-641 001. ... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the third respondent to consider and extend the One Time Settlement Scheme of the Reserve Bank of India for the loan account of the petitioner by applying the statutory and non-statutory guidelines as well as the Circular issued by the Reserve Bank of India by considering the revised One Time Settlement proposal given vide representation, dated 18.02.2019, and thereby give life to the earlier One Time Settlement, dated 26.12.2016, bearing Ref:ARMB Saptagiri Milk OTS 246 - 2016-17 issued by the third respondent herein in favour of the petitioner herein and thereby allow the petitioner to avail the One Time Settlement Scheme as per the guidelines of the Reserve Bank of India and pass appropriate orders with respect to the representation made by the petitioner.

For Petitioner : Mr.R.Thiagarajan

For Respondent 3 : Mr.Jayesh B.Dolia

ORDER
(By Dr.Vineet Kothari,J.)

This Writ Petition has been filed by Mr.Saptagiri Milk Products Limited, through its Joint Managing Director - Mr.G.K.Govindaraj, Erode, seeking a mandamus to the third respondent-Indian Bank, Coimbatore, to consider the OTS proposal of the petitioner, given vide letter, dated 18.02.2019.

2. Mr.R.Thiarajan, learned counsel for the petitioner, has urged before us that the gap between the amount offered for One Time Settlement at Rs.1.80 crores and the actual loan amount is not much, as the third respondent-Bank had indicated to the petitioner to settle the loan account at Rs.2.25 crores and, therefore, a mandamus may be issued to the third respondent-Bank to consider the OTS proposal of the petitioner fairly and sympathetically, as one of the Directors of the petitioner-company has committed suicide in the recent past.

3. As against the above submission, Mr.Jayesh B.Dolia, learned counsel for the third respondent-Bank, has submitted that the amount due as per Section 13 (2) Notice of the SARFAESI Act given to the petitioner is Rs.22,02,41,035/- as stated by the petitioner in para 13 of the Writ Petition itself and, therefore, the third respondent-Bank could not agree to such a low proposal for OTS given by the petitioner company. However, he submitted that the third respondent-Bank is always open to consider the OTS proposal of the petitioner fairly and in accordance with law, even without there being any mandamus from this Court.

4. Mr.Jayesh B.Dolia further submitted the DRT proceedings in O.A. have ended in favour of the respondent-Bank, whereas, the auction initiated by the third respondent-Bank has been challenged by way of an application filed by the petitioner-borrower under the provisions of the SARFAESI Act. He also submitted that though the third respondent-Bank, vide its letter, dated 26.12.2016, to the petitioner has agreed for a sum of Rs.4.20 lakhs in full and final settlement of the liability subject to certain conditions, that amount, at this stage, cannot be accepted and, therefore, the very purpose of filing this Writ Petition by the borrower to proceed on the basis of the said settlement amount is misconceived.

5. Having heard the learned counsel for the parties, we are of the opinion that no such mandamus, as prayed for in the present Writ Petition to direct the third respondent-Bank to enter into any One Time Settlement with the petitioner-borrower, can be granted. In our opinion, the third respondent-Bank cannot be mandated to enter into any compromise or settlement under OTS and it is for the two parties and in their discretion, upon mutual negotiations, to arrive at any mutual settlement in the matter.

6. This Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, cannot either direct or issue any such mandamus to the third respondent-Bank to enter into a settlement nor can it fix any amount towards settlement, as prayed for.

7. We do not find any justification even for directing the third respondent-Bank to proceed on the basis of the settlement amount of Rs.4.20 crores, which was in the year 2016, indicated to the petitioner, vide letter of the third respondent-Bank, dated 26.12.2016.

8. Accordingly, we dispose of this Writ Petition, leaving the parties free to enter into mutual settlement and arrive at an amount, if possible, as expeditiously as possible, to avoid any litigation. However, if the parties are not in a position to arrive at such a mutual settlement, they are also free to agitate their issues before the DRT/DRAT in accordance with law. No costs. Consequently, the connected W.M.P.No.9776 of 2019 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dixit

To

1. The Secretary,
   Union of India,
   Ministry of Finance,
   Department of Banking,
   Sanmadmurg,
   New Delhi.

2. Reserve Bank of India,
   Central Office Building,
   18th Floor, Shahid Bhagat Singh Road,
   Mumbai-400 001.

3. The Chief Manager,
   Indian Bank Asset Recovery Management Branch,
   No.31, Variety Hall Road,
   Coimbatore-641 001.

+1cc to M/S.Aiyar & Dolia, Advocate, S.R.No.95931
+2ccs to Mr.R.Thiagarajan, Advocate, S.R.No.95809

W.P.No.9238 OF 2019

PVS(CO)
CS/26/12/2019