IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2019

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.32613 of 2018
and W.M.P.Nos.37813 and 37815 of 2018

M/s.Al-Ameen International Ltd.,
rep. by its Chairman & Managing Director
Mr.Abdullah Sarwar,
166/2, G.S.T. Main Road,
Urapakkam, Chennai-603 210. .. Petitioner

Vs.

1. State Bank of India,
   Stressed Assets Management Branch,
   rep. by its Deputy General Manager,
   32, Red Cross Road, Egmore,
   Chennai-8.

2. State Bank of India,
   Urapakkam Branch,
   rep. by its Branch Manager,
   No.4, G.S.T. Main Road,
   Urapakkam,
   Chennai-603 210. .. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records pertaining to Letter No.SAMB/CHE/CLO-1/1324, dated 22.11.2018 and quash the same and to further direct the respondents to lift the freezing of current account No.65180098709 maintained with the second respondent Branch and to permit the petitioner to operate the same.

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For Petitioner : Mr.S.Parthasarathy, Senior Counsel
for Mr.S.Rajmakesh

For Respondents : Mr.M.L.Ganesh

O R D E R

The writ petition is filed by a principal debtor to the respondents Bank challenging the action of the respondents bank classifying the loan account of the petitioner as Non-Performing Asset and freezing the current account.

2. The petitioner company is into the business of construction of residential and commercial apartments in Chennai. It had taken up a project in October, 2013 and opened a current account in the respondent Bank in Peters Road Branch, Chennai. The project was also commenced in the year 2013. In order to raise working capital for completing the above said project, State Bank of Patiala, Peters Road Branch was approached and a sum of Rs.13.50 Crores were sanctioned on a Fund Based Working Capital facility on 14.02.2015. The petitioner had to repay the same in six quarterly installments. The said loan was also secured by equitable mortgage over the Undivided Share (UDS) in the land by depositing the title deeds on 16.04.2015. The said mortgage was also registered as Document No.5114/2015.

3. It is stated by the petitioner that due to the natural calamity, namely, deluge rains in December 2015 and also the cyclone Vardha in December 2016, the project was considerably delayed. The respondent Bank was requested for re-scheduling of the repayment as per RBI Guidelines. In the meanwhile, it is alleged that the sanctioned limit of Rs.13.50 Crores was reduced to Rs.9.50 Crores without notice and information to the petitioner company. Despite rescheduling the repayment, the petitioner company was unable to keep up the time in repayment.

4. In the meanwhile, the State Bank of Patiala was merged with the State Bank of India, thereby, the petitioner company's fund based working capital loan account was transferred to SBI Stressed Assets Management Branch, and thereafter, the petitioner's current account was transferred to the second respondent branch, i.e., Urapakkam Branch.

5. Immediately after taking over the account, O.A.No.331 of 2017 was filed by the first respondent before the Debts Recovery Tribunal (in short, "DRT")-I, for recovering the alleged dues. The said application was allowed and Recovery Certificate was issued on 15.09.2018. It is also stated that an appeal against the same is filed, but not yet numbered. In the meanwhile, pursuant to the directions of the DRT-I, the cut back arrangement was entered into as per which, 75% of the cost of the flats should be credited into the loan account and the balance 25% should be utilised for completing the pending work in the project and this arrangement was to continue for three months, i.e., upto 07.01.2019. It was also agreed by the bank that during the period of cut back arrangement, no legal action would be continued.

6. It is alleged that while so, the Bank had frozen the current account No.65180098709 with substantial credit balance, since it had become Non Performing Asset (NPA). The said action of the respondents Bank had crippled the business of the

petitioner. Therefore, the petitioner, by letter dated 05.11.2018, requested the Bank to defreeze the said account. As the Bank had given a cryptic reply that the account had been put to hold by the first respondent and till such time any clarification is received from the first respondent, the second respondent could not defreeze the account. Aggrieved by the said action, the instant writ petition is filed.

7. The only point addressed by the learned Senior Counsel for the petitioner is that there is no provision of law/notification/circular/ guidelines/regulations/directives etc. issued by the Reserve Bank of India empowering or permitting the respondents or any Bank to freeze and prevent the operation of an saving bank account or current account, like that of the petitioners, once they are declared as NPA.

8. The writ petition is resisted by the respondents contending that the cut back arrangement itself was pursuant to the order of the DRT on certain conditions. As per the said condition, all the transactions should be rooted through the current account maintained with the SBI, Urappakkam Branch/the second respondent. Non-compliance of the conditions in the cut back arrangement would entitle the Bank to initiate recovery action by continuing the legal proceedings. Even though the respondents had obtained recovery certificate, they had not proceeded with the same enabling the petitioner to continue its business.

9. It is submitted that contrary to the conditions agreed in the cut back arrangement, the petitioner, instead of crediting the sale proceeds of the project into the loan account, has been transferring funds to other purposes. This has been clearly demonstrated by the Bank and pointed out to the petitioner. As there is a violation of conditions, the Bank has got every right to freeze the account, in terms of the loan account.

10. The respondents also submitted that the petitioner had been delaying the process of recovery at every stage. Even before the DRT, the petitioner had considerably delayed the proceedings. The interim application filed by the petitioner to reopen the original application was also dismissed by the DRT. Since the application is allowed by the DRT, the respondents have got legal right to enforce the same in addition to the proceedings under the provisions of the SARFAESI Act. Hence, the demand of the petitioner to extend the cut back arrangement is not possible.

11. As already the petitioner has filed an appeal before the DRAT, it is open to it to proceed with the same and take appropriate remedial measures. This Court cannot grant any equitable order, when the matter is pending before the DRAT.

12. In the result, this writ petition fails and the same is dismissed with no costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy General Manager,
   State Bank of India,
   Stressed Assets Management Branch,
   32, Red Cross Road, Egmore,
   Chennai-8.

2. The Branch Manager
   State Bank of India,
   Urapakkam Branch,
   No.4, G.S.T. Main Road,
   Urapakkam, Chennai-603 210.

+1cc to Mr.S.Rajmakesh, Advocate, S.R.No.5391
+1cc to Mr.M.L.Ganesh, Advocate, S.R.No.5712

W.P.No.32613 of 2018

PM(CO)

rrs 21/02/2019