BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.07.2019**

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)NOs.8116 and 10094 OF 2019
and
W.M.P(MD)Nos.6380 and 7856 of 2019

W.P(MD)NO.8116 OF 2019

S.R.Ratheesh,
Son of Ravindran Nair,
Proprietor,
M/s.Adhithya Aqua Industries,
22-76D1, Padmanabhapuram,
Mettukadai, Thuckalay Post,
Kanyakumari District. :Petitioner

.vs.

1.The Secretary,
Ministry of Micro, Small and Medium Enterprises,
Room No.123, Udyog Bhavan,
Rafi Marg, New Delhi - 110 011.

2.The General Manager,
Central Bank of India,
Zonal Office, No.48 and 49,
Montieth Road, Egmore,
Chennai - 600 008.

3.The Regional Manager,
Central Bank of India,
Regional Office,
Raja Muthiah Mandram,
Ist Floor, Dr.Ambedkar Road,
Madurai - 625 020.

4.The Branch Manager,
Central Bank of India,
P.W.D.Road,
Nagercoil,
Kanyakumari District. : Respondents

W.P(MD)NO.10094 OF 2019

S.R.Ratheesh,
Proprietor,
Adhithya Bharat Gas Agencies,
(LPG Distributor of Bharat Petroleum
Corporation Limited,
Padmanabhapuram,
22-76 D1, Main Road,
Opposite to Govt.Higher Secondary School,
Mettukadai, Thuckalay,
Kanyakumari District-629 175.
:Petitioner

.vs.

1.The Secretary,
Ministry of Micro, Small and Medium Enterprises,
Room No.123, Udyog Bhavan,
Rafi Marg, New Delhi – 110 011.

2.The District Collector,
Kanyakumari District,
Nagercoil.

3.The General Manager,
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Madurai – 625 020.

5.The Branch Manager,
Central Bank of India,
P.W.D.Road,
Nagercoil,
Kanyakumari District. : Respondents

PRAYER in W.P(MD)No.8116 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the fourth respondent in No.BR:NGL:RECV:2018-2019, dated 13.3.2019 and to quash the same and consequently to direct the respondents to restructure the Petitioner's MSME Term Loan under Small Enterprises Manufacturing

Account No.3622864077 and cash credit small enterprises manufacturing Account No.3565729165 on the basis of the Reserve Bank of India Notification in RBI/2018-19/100 DBR No.BP.BC.18/21.04.048/2018-19, dated 1.1.2019.

PRAYER in W.P(MD)No.10094 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the fifth respondent in No.BR:NGL:RECV:2018-19, dated 13.3.2019 and to quash the same and consequently to direct the respondents to restructure the Petitioner's Adhithya Bharat Gas Agencies Proprietorship concern in MSME Small Enterprises Account No.1490532460, 3486609959,3343093879, 3486596143,3619351424 and 3155684196 on the basis of the Reserve Bank of India Notification in RBI/2018-19/100) DBR.No.BP.BC.18/21.04.048/2018-19, dated 1.1.2019.

W.P(MD)NO.8116 OF 2019

For Petitioner :Mr.A.Rajkumar Sen

For Respondent-1 :Mrs.S.Srimathi
Special Govt.Pleader

For Respondents 2,3 and 4 :Mr.B.Rajesh Saravanan

W.P(MD)No.10094 of 2019

For Appellant :Mr.A.Rajkumar Sen
For Respondents 1 and 5 :Mr.B.Rajesh Saravanan
For Respondents 3 and 4 : Mr.N.Dilip Kumar
For Respondent-2 :Mr.M.Karuppasamy
Govt.Advocate.

COMMON ORDER
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[Order of the Court was made by **SENTHILKUMAR RAMAMOORTHY .,J.**]

These Writ Petitions are filed challenging the order of the respondents 4 and 5, dated 13.3.2019 and the Petitioner prays that the said order should be quashed and that the respondent should be consequently directed to re-structure the Petitioner's MSME Term Loan in accordance with the Reserve Bank of India Notification, dated 1.1.2019.

2.The case of the Petitioner is that it is a proprietorship concern and it availed term loans and cash credit from the respondent Bank for Small Enterprises Manufacturing Account. It is further submitted that the Petitioner is registered as a Micro Small Medium Enterprise. Accordingly, the case of the Petitioner is that the Petitioner is entitled for restructuring as per the guidelines issued by the Reserve Bank of India and that therefore, the loan account ought not to have been classified as a Non performing Asset. Consequently, the Petitioner states that no action pursuant to the classification of the account as a Non Performing Asset should have been initiated by the respondent Bank.

3.On the contrary, the case of the respondent/ Bank is that the loan account of the Petitioner was classified as a Non Performing Asset on 29.5.2018 itself and that even otherwise, the loan account of the Petitioner did not fulfil the requirements of the relevant Reserve Bank of India guidelines. Therefore, it is submitted by the respondents that the Petitioner is not entitled for restructuring of its accounts and the respondent/Bank is entitled to proceed further as per the SARFAESI Act.

4.The learned counsel for the Petitioner reiterated the statements made in the affidavit filed in support of the Writ Petitions. In specific, the learned counsel referred to the Reserve Bank of India guidelines at Page No.37 of the typed-set of papers. The said RBI Circular, dated 7.2.2018 specifies the conditions subject to which, the loan account of the Micro Small and Medium Enterprises shall be continued to be classified as a standard asset in the books of the Bank. The said conditions are under:

''The borrower is registered under the GST regime as on January 31,2018.

The aggregate exposure, including non fund based facilities, of banks and NBFCS, to the borrower does not exceed Rs.250 million as on January 31, 2018.

The borrower's account was standard as on August 31, 2017.

The amount from the borrower overdue as on September 1 2017 and payments from the borrower due between September 1, 2017 and January 31, 2018 are paid not later than 180 days from their respective original due dates.

A provision of 5% shall be made by the banks/NBFCs against the exposures not classified as NPA in terms of this circular. The provision in respect of the account may be reversed as and when no amount is overdue beyond the 90/120 days norm, as the case may be.

The additional time is being provided for the purpose of asset classification only and not for income recognition, I.e., if the interest from the borrower *is overdue for more than 90/120 days, the same shall not be recognise on accrual basis.''*

5.By relying on the aforesaid circular, the learned counsel for the Petitioner submitted that the Petitioner satisfies all the requirements of the said circular and that therefore the Petitioner is entitled to restructuring of accounts in accordance with the said circular. More importantly, it is submitted that therefore the bank should not have classified the account as Non Performing Asset and taken further action pursuant to the said classification.

6.In response, the learned counsel for the respondent/Bank submitted that it is incorrect to state that the Petitioner satisfies the requirements of either the Reserve Bank of India Circular dated 7.2.2018 or the subsequent Reserve Bank of India Circular dated 1.1.2019. In particular, it was submitted that the loan account should have been classified as a standard asset as on 1.7.2017 and should continue to be classified as standard asset till the date of implementation of the restructuring. As against the said requirement, it was submitted that the Petitioner's loan account had been classified as a Non-Performing Asset on 29.5.2018 itself. In addition, it was submitted that as per the Reserve Bank of of India Circular, dated 7.2.2018, the loan overdue from the borrower as on 1.9.2017 and the payments from the borrower due between 1.9.2017 and 31.1.2018 should have been paid not later than 180 days from the respective original due dates. On the contrary, the learned counsel for the respondent submits that the said conditions was not satisfied and, in order to substantiate the submission, he referred to the statement of Account of the Petitioner and contended that no payments were made after September 2017 and that therefore said condition in the circular dated 7.2.2018 also is not satisfied. He further submitted that in aggregate, a sum of Rs.8 crores is due from the Petitioner to the respondent/Bank.

7.We carefully considered the pleadings, documents and oral submissions of both sides.

8.It is evident on a perusal of the two Reserve Bank Of India Circulars that the borrowers account should have been classified as a standard asset and not as a Non Performing Asset in order to avail the benefit of the Reserve Bank of India Circular. The respondent bank has categorically stated in its counter affidavit that the account bank was classified as a Non Performing Asset on 29.5.2018 itself. It is also evident from the reply, dated 13.3.2019 of the Bank that SARFAESI Proceedings were initiated after classifying the account as Non Performing Asset and the secured assets were brought for auction on 19.12.2018. It is also clear from the Statement of Accounts that the Petitioner has not complied with the condition with regard to the payment of outstanding as per the Reserve Bank of India Circulars.

9.In view of the aforesaid facts and on considering the submissions of both sides carefully, We are of the view that the relief sought for by the Petitioner in these Writ Petitions cannot be granted because the Petitioner is not entitled to such restructuring and consequently, cannot pray for a certiorarified mandamus for restructuring.

10.In the result, these Writ Petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary,
Ministry of Micro, Small and Medium Enterprises,
Room No.123, Udyog Bhavan,
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2.The District Collector,
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3.The General Manager,
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5.The Branch Manager,
Central Bank of India,
P.W.D.Road,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-73348[F] dated 04/07/2019)

+1 cc to Mr.N.Dilip Kumar , Advocate SR.No.73447

+1 cc to The Special Government Pleader Sr.No.73462

vsn

COMMON 0RDER MADE IN
W.P(MD)NOs.8116 and 10094 OF 2019
and
W.M.P(MD)Nos.6380 and 7856 of 2019
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