THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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THE HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.5803 of 2019

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Challenging a conditional order of stay granted by the Debts Recovery Tribunal, the borrowers have come up with the above writ petition.

2. Heard Mr. B. Vijaysen Reddy, learned counsel for the petitioner and Mr. A. Satyanarayana, learned standing counsel for the respondent-bank.

3. The conditional order passed by the tribunal was to the effect that the petitioners should pay 15% of the dues within one week and another 15% of the dues within ten (10) days thereafter.

4. On 20.03.2019, when the writ petition came up for orders as to admission, we passed an interim order in IA.No.1 of 2019 to the following effect:

> "Mr. A. Satyanarayana, learned counsel takes notice for the respondents.
>
> By the order impugned in the writ petition, the Tribunal granted stay subject to the condition that the petitioner pays 15% of the demand within a week and another 15% within a period of ten (10) days thereafter.
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> The challenge before the Tribunal was to the possession notice and the order passed by the Chief Metropolitan Magistrate on an application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The stage of sale had not yet reached.

> Therefore, we think that the petitioner can be granted enlargement of time. Hence, there will be an interim stay subject to the condition that the petitioner deposits the first instalment of 15% on or before 17.04.2019/
>
> Post on 18.04.2019 for reporting compliance. If the petitioner complies with this condition, the request for any concession with regard to payment of second instalment may be considered on that date."

5. Again when the matter came up on 22.04.2019, it was reported that the first instalment of 15% had been paid. Therefore, the only question that remained was whether the second instalment should be directed to be paid as per the order of the tribunal or not.

6. But it was contended by Mr. Vijaysen Reddy, learned counsel for the petitioners that the account of the petitioners did not become Non-Performing Asset (NPA) on account of continuous defaults committed by the petitioners and that the account was classified as NPA, on a technical ground that the cash credit limit was not continued beyond a particular period. Therefore, we directed on 22.04.2019, Mr. A. Satyanarayana, learned counsel for the bank, to explain as to whether the petitioners serviced interest regularly even on the date of the second demand notice dated 17.07.2018 or not.

7. In response, Mr. A. Satyanarayana has filed a letter dated 26.04.2019 sent by the State Bank of India. The letter reads as follows:

> "To,
> The Asst. General Manager,
> State Bank of India,
> SARB, TSRTC Complex,
> Koti, Hyderabad.
>
> Date:26/04/2019
>
> No.BR/CM/2019-20/18

Dear Sir,

SME ADVANCES:
M/S YENPRO POLYMERS
REASONS FRO ACCOUNT TURNING NPA

With reference to above, we submit the following for your information.

1. Continuation of limit was sanctioned on 26.03.2017 for a period upto 06.06.2017 as the unit did not submit estimations/projections and some required papers for full fledged renewal.
2. The account turned NPA on 30.03.2018. The outstanding as on the material date was RS.170.34 lac as against sanctioned limit of RS.125.00 lac.
3. The unit did not service the interest for the months of January and February 2018. The account was classified as NPA on 30.03.2018 and thus interest unapplied but accrued for March 2018 was also pending.
4. The stock statements submitted by the unit were falsified. The then Branch Head and RMSE had visited the unit on several occasions and found barely 20% of the value submitted to be available at the site.
5. The unit was also not able to show purchase invoices as proof of the ownership of the stock.
6. The unit was doing job works for payment and there was no real turnover in the account during FY 2017-18. Credit summations in the CC account for the FY 2017-18 were Rs.5.49 lacs only.
7. The unit failed to submit the required documents for renewal of the CC limits.
8. The unit had diverted the funds meant for working capital as the unit has drawn full CC amount but did not have the stocks or receivables to cover the drawing power in the account.
9. The unit was not routing sales (if any) through the CC account.
10. The activity in the unit was very low and no credits observed in CC / CA.
11. There have been no efforts by the unit in reviving the activity viz. infusion of additional equity, infusion of any long term funds, building stock level to be commensurate to the outstandings.

Further, they did not have orders on hand to merit a full fledged renewal of limits.

12. The branch had in the past advised the unit that the Bank is ready to renew the limits with a reduction, provided they bring down the outstandings to be commensurate with the actual achievement of sales. The unit could not repay any amount and the discussions were dropped.
13. The unit's irregular limits had been put up to the CAP committee and it was resolved to call up the limits. The promoters of the unit had also appeared in front of the committee to present their case, but it was not considered favourable in light of the track record of the unit.
14. The unit had also approached the Industrial Health Clinic set up by the Govt. of Telangana. But in discussions with the then Chief Manager, they informed orally that they had declined to given funding to the unit as they found the promoters to be no genuinely interested in reviving the unit.

Yours faithfully,
Sd/-
Chief Manager.

8. From the above, it is clear that the account of the petitioners did not become NPA solely on account of non-payment of monthly instalments for a continuous period of 90 days. The account turned NPA, in view of limits not being extended beyond a particular date. In other words, the monthly payments, except for the months of January and February 2018, had been made promptly. Therefore, we are of the view that the condition imposed by the tribunal upon a person, who is a technical defaulter and not wilful defaulter, is onerous. Therefore, we think that the compliance with the first part of the condition is sufficient, for the sustenance of the stay.

Hence, the writ petition is disposed of, modifying the order of the tribunal that there will be an interim stay of further proceedings, pending disposal of SA.No.527 of 2018 in view of payment of 15% of the dues as per the condition imposed by the tribunal. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

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V. RAMASUBRAMANIAN, J

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P. KESHAVA RAO, J

April 29, 2019
DSK