THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.37000 of 2018

ORDER::

The writ Petition is filed aggrieved by the action of the respondent-banks in not (*a*) providing the approved working capital as agreed in the minutes dated 16-04-2018 and 08-06-2018 and considering the resolution plan of the petitioner-company dated 07-08-2018 in a timely manner, (*b*) provide funds under the approved corrective action plan (CAP) including the terms loans and sanctioned working capital limits, (*c*) opening escrow account in timely manner as being arbitrary, illegal and in violation of Article 14 of Constitution of India and for issuance of consequential directions.

The 1st petitioner-company is public limited company, incorporated under the Companies Act,1956, stated to be carrying on the business of agricultural inputs (primarily urea), having urea manufacturing plant at Kakinada, Andhra Pradesh, registered office at 8-2-248, Nagarjuna Hills, Hyderabad–500 082. The 2nd petitioner is one of the shareholder of the 1st petitioner-company and is interested in the well-being of the company. That the petitioner invested and established ammonia urea plant in Kakinada in the year 1992 and continued expanding capacity till 2007. The manufacturing of urea is governed by the Essential Commodities Act and the industry is controlled by four Ministries *viz.,* Ministry of Finance, Ministry of Agriculture and Farmer's Welfare, Ministry of Chemicals and Fertilizers and Ministry of Petroleum and Natural Gas. Initially the revenues of the petitioner-company increased from Rs.765 crores in 2003 to Rs.5,517 crores by the end of the year 2013. Whereas during year 2003 to the year 2014, the long-term debt was reduced from Rs.1540 crores to Rs.320 crores and had the same continued, the petitioner-company would have been debt free by 2016.

That in the year 2014, due to the negligence of GAIL, with whom the petitioner-company has a escrow agreement, there was a gas pipeline accident in Tatipaka, which are maintained by GAIL and due to the said accident, the supply of gas was affected, and due to the said incident, the petitioner had a major setback which led to financial stress. That in view of substantial losses on account of GAIL incident, the petitioners approached bankers for fresh loan (working capital term loan) to shore up its net working capital and also provide the required working capital limits. Due to the delay in sanction of loans, the petitioner had again approached the respondent-banks to undertake a corrective action plan (CAP). The respondents entered into a master joint lenders forum agreement dated 18-05-2015 and formed the Joint lenders Forum (herein after referred to as JLF), under the Reserve Bank of India guideline vide RBI/2013-14/503, DBOB/BP/BC.No.97/21/04/132/2013-14, dated 26-02-2014, and approved a corrective action plan (CAP) to improve the net working capital and revive the company. But, unfortunately only a portion of the debt and working capital required for CAP was provided by the respondent-banks thereby disabling the petitioner-company from turning around. The petitioner could, therefore, not perform on the obligations without the required funds provided under the CAP. That due to the new urea policy announced by the Ministry of Chemicals and Fertilizers (MoCF) in the year 2015, the margins of the petitioner-company got reduced and with the implementation of the gas pooling policy, which imposed a huge interest burden on the petitioner-company, and not reimbursed by the Government (Department of Fertilizers). That the respondent-banks despite an approved CAP, did not provide the approved term loan and working capital either in fully or in time. That delay in opening escrow account despite repeated reminders and follow ups, forced the plant to shutdown and incurred losses and that due to failure to release the approved working capital in terms of corrective action plan (CAP), the petitioner-company could not generate sufficient cash flows and thereby it is classified as non performing asset (NPA). That the respondents are aware of their commitments, the force majeure events, the sectoral problems, the operational requirements, the respondent-banks ought to have acted in a diligent, timely and reasonable manner. That due to lack of working capital and subsidy on account of escrow opening delays, the petitioner had to shut the plant operations from 04-07-2018 till date. That the respondent-banks being a State body as defined under Article

12 of the Constitution have to discharge its functions free from arbitrariness, unreasonableness and should be non-discriminatory and hence, this writ petition for appropriate directions to the respondent-banks to extend all necessary financial support including working capital for the petitioner-company for restarting the plant operations as agreed, in the interest of justice.

Counter affidavit is filed by the 2nd respondent-ICICI bank of wherein it is stated that the petitioner company has approached the bankers for working capital loans and for a corrective action plan, a consortium of banks was formed and entered into a master joint lenders forum agreement, to sanction loans which is not in lieu of amounts receivable from subsidies, refunds, reimbursements, capital contribution from Central or State governments. That the respondents are not aware as to what factors were responsible for the gas pipeline accident at the GAIL, much less the petitioner company had its impact and setback due to such gas pipeline accident. The respondents provided working capital assistance in the form of letter of credit amounting to 156.9 million on 27–04–2018 for purchase of natural gas from GAIL. However, as the petitioner as on 08–06–2018 had dues of 342.4 millions and was declared as non-performing asset (NPA) on 31–07–2018. That the respondent bank required the petitioner company to clear the dues in June 2018 for grant of further working capital support, but the petitioner-company failed to do so. That the petitioner failed to give clarity with respect to the queries raised by the respondent-bank and therefore the respondent chose not to release any further working capital. The petitioner failed to keep its commitment and made its account as NPA. The respondent-banks have no role to play for any set back to the petitioner-company and non-grant of the remaining working capital is only because of the petitioner's account becoming NPA. That the petitioner failed to make Gail Authority of India, (GAIL), as necessary party to this writ petition from whom the petitioner claims to have not received any subsidies, though it was entitled to receive the subsidies. That the writ petition is filed to adjudicate purely contractual issues; the jurisdiction of this Court cannot be invoked in matters of contractual obligations. Counter affidavit on similar lines is also filed by the 1st respondent-IDBI Bank stating that the petitioner- company committed default in repayment of huge amounts of money to the consortium of banks. That the petitioner-company is scuttling the respondent-banks from resorting to take legal recourse for recovery of the amounts due and payable to the banks.

Heard Sri D. Prakash Reddy, learned senior counsel for the petitioners, Sri R.Raghunandan, learned senior counsel and Sri G. Kalyan Chakravarthy, for the respondents.

Learned senior counsel appearing for the petitioners contended that the consortium of banks have agreed to fund the petitioner-company knowing fully well that the company is regulated by Central Government and its existence, profitability and continued operations are governed and conducted as per the Government policies, reviews and guidelines and the unit is classified as public utility for the benefit of the farmers of the country and is governed by the Essential Commodities Act and under those circumstances, the respondent banks cannot seek to stop the funds on the ground that it has become non-performing asset.

On the other hand, learned senior counsel for the respondent-banks submitted that the petitioner-company is lagging and is under financial stress and became non-performing asset, it is open for the lenders i.e. respondent-banks to undertake a review and decide on the resolution as per the circular dated 0-7-06-2019 issued on the subject matter by the Reserve Bank of India. It is also stated that the matter is purely contractual nature and therefore the issues raised cannot be adjudicated in a proceeding under Article 226 of the Constitution of India.

It is to be seen that the approval of working capital by the respondent-banks as detailed in the minutes dated 16–04–2018 and 08–06–2018 considering the resolution plan of the petitioner-company dated 07–08–2018 and not providing funds under the approved corrective action plan (CAP) on the part of the respondent-banks is covered by the RBI circular dated 07-06-2019 where under a mechanism is provided for resolution of stressed assets. This Court cannot sit in appeal over the said circular issued by the RBI in that behalf and suggest a different strategy. The RBI circular dated 07-06-

2019 is not in challenge. In the circumstances, respondent-banks cannot be restrained from protecting its interest and in proceeding in accordance with law. In view of the same, I do not see any merit in the writ petition and it is accordingly dismissed. Consequently, the connected miscellaneous petitions, if any, pending are also dismissed. There shall no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 10-07-2019
NRG

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.37000 of 2018

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Dated: 10-07-2019

NRG

7. The decision of the appellate authority not adverting to any of the grounds of appeal raised by the respondent, and only reiteration of the order and reasons stated by the disciplinary authority, more particularly, as to the absence of the respondent to participate in the enquiry proceedings, not being a speaking order is in violation of principles of natural

justice. Merely on the ground of absence of the respondent to participate in the enquiry, the enquiry officer cannot hold the charges proved, but the enquiry officer has to arrive at a finding based on material available. Relying on the decision of the Supreme Court in ***ALLAHABAD BANK vs. KRISHNA NARAYAN TEWARI***[1], the learned single Judge in exercise of his discretion chose not to remand the matter for conducting proceedings afresh as the subject matter of enquiry pertains of the year 2000 and by now it is nearly 2 decades past. Such exercise of discretion by the learned single Judge not to remind the matter, at this length of time is also rational and traceable to formidable reason. In ***ROMA SONKAR vs. MADHYA PRADESH STATE PUBLIC SERVCIE COMMISSION,***[2] expressing 'serious reservation' about a Division Bench of a High Court remitting a matter to single bench for moulding relief, the Supreme Court has observed that the single Judge is not subordinate to the Division Bench. The Supreme Court at para 3 of the judgment observed thus:-

> *"We have very serious reservations whether the Division Bench in an intra court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned single Judge, as well as the Division Bench exercised the same*

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[1] 2017 (2) SCC 308
[2] 2018 SCC OnLine SC 956

jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court, but that does not mean that the single Judge is subordinate to the Division Bench."

8. The discretion exercised by the learned single Judge in exercise of jurisdiction under Article 226 of the Constitution, cannot be interfered with except in compelling circumstances and there is no reason to take a view than the view taken by the learned single Judge in the facts and circumstances of the case, and therefore, the discretion exercised cannot be unfolded in intra-Court appeal filed under Clause 15 of the Letters Patent Act. In the result, the appeal is devoid of merits and it is accordingly dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Dated: 30-01-2019

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THE HON'BLE THE CHIEF JUSTICE

SRI THOTTATHIL B. RADHAKRISHNAN

AND

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT APPEAL No.45 of 2019

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30-01-2019

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