IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.16151/2020 & WMP.No.20138/2020

M/s.Rudra Steel Rolling Mills
rep.by its Managing Partner
Mr.P.Babu, SF.No.288/B-3
Sovampalayam, Kinathukadavu
Pollachi 642 109
Coimbatore District. ..Petitioner

Versus

Union Bank of India
represented by its Chief Manager
Asset Recovery Branch
No.816, Oppanakara Street
Pin Code 641 001. ..Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to quash the impugned letter No.OTS/CANCELLATION/03/2020-21 dated 30.09.2020 issued by the respondent and consequently direct the respondent to extend the time under OTS letter bearing No.0083/45/Rudra/356 dated 06.03.2019 in accordance with the Reserve Bank of India guidelines and judgment of this Hon'ble Court in Narmathaa Textiles V. Union Bank of India WP.No.4218 of 2011.

For Petitioner : Mr.M.S.Krishnan,Senior counsel
for Ms.Ramya Subramaniam
For Respondent : Mr.Sethuraman
Standing counsel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

(1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2)Mr.Sethuraman, learned Standing counsel accepts notice on behalf of the respondent.

(3)The petitioner is a Partnership Firm and is involved in the manufacture of TMT Rods from iron ingots and it is also classified as a Medium Enterprise under the Micro, Small and Medium Enterprises Act, 2006. The petitioner availed financial assistance for the purpose of his business and on account of vagaries of business, he could not run it profitably and therefore, the Firm's Account was classified as a ''Non Performing Asset'' [NPA] on 31.12.2016. The respondent - Bank had initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short ''SARFAESI Act''] by issuing a notice under Section 13[2] on 05.01.2017 and the petitioner submitted his response on 14.02.2017, objecting to the contents of the said Notice. The respondent - Bank sent a reply dated 06.03.2017 followed by the Possession Notice dated 22.03.2017. Thereafter, some negotiations took place for an amicable settlement and accordingly, the respondent - Bank made an offer of One Time Settlement through OTS Sanction Letter dated 06.03.2019 and it is relevant to extract the same:-

- OTS amount payable under the OTS Scheme will be Rs.6,69,15,250.00 [Rupees Six Crores Sixty Nine Lakhs Fifteen Thousand Two Hundred and Fifty Only.
- Upfront amount of Rs.33,45,762.50 paid by you will be appropriated towards your OTS amount.
- Another 15% [Rs.1,00,37,287.50] shall be paid within 10 days from the date of sanction of OTS as 1st instalment failing which the OTS sanction will be rendered infructuous.
- The balance amount shall be paid by you as under:-

Rs.5,35,32,200.00 [Rupees Five Crores Thirty Five Lakhs Thirty Two Thousand Two Hundred Only] within three months from the date of sanction of OTS failing which the OTS sanction will be rendered infructuous.

- You will be eligible for an additional incentive on the OTS amount, on making payment of the entire OTS amount as given below:-

S.No	Full Payment of OTS within	Addl. Incentive on OTS Amt.
1	Within 15 days of sanction communication	10% on OTS Amount
2	Within 30 days of sanction communication	5% on OTS Amount

Note:The above incentive is eligible only if the entire settlement amount is paid by 31.03.2019.. In other words, the OTS amounts paid after 31.03,2019 are not eligible for special incentive.

- In suit filed accounts, consent terms with default clause shall be filed before Presiding Officer of DRT/Court for obtaining Joint Consent Decree.
- You / related parties have to withdraw any cases/suits etc filed/pending against the bank/its officials.
- In the event of failure to repay the entire OTS amount within the stipulated time period as per sanction terms:-
    - The OTS sanction stands cancelled.
    - The amount paid under this OTS and adjusted to the loan account will not be refunded.
    - The action under SARFAESI Act shall ipso facto commence from the stage it has been deferred and any part payment made under the OTS shall be treated as part recovery as per the accounting practice of the Bank for appropriation.

We therefore, advise you to accept the terms and conditions of the above sanction and arrange for payment of OTS amount as per terms mentioned above. The duplicate of this letter duly signed be sent to us indicating your acceptance of above mentioned terms and conditions of OTS.

(4) The petitioner did accept the same and however, once again had some difficulty and therefore, submitted a representation dated 04.06.2019, wherein it has been stated among other things that they had paid a sum of Rs.1,33,83,050/- and thereby, partly complied with the terms of OTS offer and they are yet to pay the balance amount of 80% which represents Rs.5,35,32,200/- as full and final settlement before 07.06.2019 in order to fulfill the terms of the OTS sanction and they are taking all-out efforts to comply with the same and also identified an investor who had shown keen interest and also expressed their inclination to settle the debt in favour of the respondent - Bank and therefore, prayed for extension of OTS offer for another 60 days and also further made an offer to pay the interest for the extended period. The respondent – Bank, vide reply communication dated 26.06.2019, was not inclined to accept the same and cancelled the OTS and informed the petitioner that in the light of cancellation, the outstanding amount of Rs.12,53,05,164.20p., as on 25.06.2019 was due and payable and that the action under the provisions of the SARFAESI Act would be initiated. The respondent – Bank proceeded further and brought the secured assets for sale through E-Auction on 18.11.2019 and it appears that the sale did not fructify.

(5) Mr.M.S.Krishnan, learned Senior counsel assisted by Ms.Ramya Subramaniam, learned counsel for the petitioner has drawn the attention of this Court to the representation submitted by the petitioner on 04.06.2019 and would submit that a third party has also evinced keen interest and he is prepared to make the payment of Rs.5,35,32,200/- with 9% interest per annum from the date of OTS offer till the date of cancellation on 26.06.2019 and prays for appropriate orders.

(6) Per contra, Mr.Sethuraman, learned Standing counsel appearing for the respondent – Bank would

submit that the petitioner may, in order to show his bona fide, be directed to deposit the amount to the credit of the respondent - Bank and it will be kept in a ''No Lien Account'' with the payment of interest and depending upon the acceptance of the offer, the amount may be appropriated or refunded. It is also pointed out by the learned Standing counsel appearing for the respondent - Bank that the petitioner, in his representation dated 25.10.2020, also made an offer to deposit a sum of Rs.3.20 Crores within a fortnight to the credit of the respondent - Bank and upon receipt of the same, the offer for extension of OTS settlement may be sympathetically considered by the respondent - Bank.

(7)This Court has considered the rival submissions and also perused the materials placed before this Court.

(8)It is not in dispute that the petitioner is an MSME Unit and in the light of the on-going crisis on account of sudden outbreak and spread of COVID-19 pandemic virus, the industrial activities have almost came to a stand-still and now, it started reviving to certain extent. The petitioner did remit a sum of Rs.1,33,83,050/- towards part payment of OTS offer made by the respondent - Bank and therefore, exhibited some bona fide.

(9)This Court, taking into consideration the rival submissions and the above facts and circumstances, directs the petitioner to deposit a sum of Rs.3,00,00,000/- [Rupees Three Crores only] to the credit of the respondent - Bank within a period of fifteen [15] days from the date of receipt of a copy of this order and it shall be kept in a ''No Lien Interest Bearing Account'' and the respondent - Bank is directed to consider the plea made by the petitioner accordingly on merits and in accordance with law and take a decision within a further period of two weeks thereafter and in the event of non-consideration of the representation made by the petitioner, the respondent - Bank shall return the deposit of Rs.3 Crores with accrued interest if any, to the petitioner and they are also at liberty to proceed further in the light of their communication dated 26.06.2019.

(10) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR(CS VII)

//TRUE COPY//

SUB ASSISTANT REGISTRAR

AP

To
The Chief Manager
Union Bank of India
Asset Recovery Branch
No.816, Oppanakara Street
Pin Code 641 001.

WP.No.16151/2020

CO(PA)
BDL/21/12/2020