

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.17429 of 2020
and W.M.P.No.21614 of 2020

Kiran Global Chems Limited,
rep.by its Director Mr.Charles Navis Rufus
42, New Avadi Road,
Kilpauk, Chennai 600 042. ..Petitioner

Versus

State Bank of India
rep.by its Authorised Officer,
Stressed Assets Recovery Branch,
Red Cross Buildings,
IInd Floor, No.32, Montieth Road,
Chennai 600 008. ..Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondent to consider the representation given by the petitioner dated 19.10.2020 and to direct the respondent Bank to permit the petitioner to avail the SBI Scheme for One Time Settlement of NPA's & AUCA's (SBI OTS 2020) for its loan A/C No.00000010397624625 maintained at SAM Branch, SBI, Chennai 600 008.

For Petitioner : Mr.P.Wilson, Senior Counsel
assisted by Mr.Richardson Wilson

For Respondents: Mr.B.Raghavalu Naidu
standing counsel for SBI

ORDER

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

The petitioner claims to be an MSME Unit and it had availed financial assistance from the respondent Bank and due to vagaries of weather, it ran into rough weather and faced series of litigations before the National Companies Law Tribunal, Chennai Bench.

2. Mr.R.Wilson, learned Senior Counsel assisted by Mr.Richardson Wilson, learned counsel appearing for the petitioner has drawn the attention of this Court to the SBI Scheme for One Time Settlement for NPS and AUCAS (SBI OTS 2020) with outstanding of above Rs.20 Lakhs and upto Rs.50 Crores as on 31.03.2020 and would submit that since the petitioner is eligible to be covered under the said OTS Scheme, he had submitted a representation dated 19.10.2020 to the respondent, followed by another representation dated 04.11.2020 to the Corporate Office of the respondent and despite that no response is forthcoming.

3. The matter was listed for admission on 27.11.2020 and Mr.B.Ragahavalu Naidu, learned standing counsel accepted notice on behalf of the respondent Bank and he would submit that in the light of the e-mail communication dated 23.11.2020, sent to the petitioner's request for OTS scheme, which came to be rejected and the remedy, if any, open to the petitioner is to avail the same in the manner known to law before the competent forum.

4. In response to the same, learned counsel appearing for the petitioner would submit that in respect of proceedings initiated under the Insolvency and Bankruptcy Code, the Guarantor made a challenge to the order dated 04.09.2019 in IBA No.130/2019, filed Company Appeal (AT) (Ins) 952 of 2019 before the National Company Law Appellate Tribunal (NCLAT) and the Appellate Tribunal, vide final order dated 11.12.2019, has set aside the order passed by the NCLT, with a further direction directing to restore the management to the petitioner's Company along with their records. It is the primordial submission of the learned counsel appearing for the petitioner that in terms of Clause 2.1 of the said OTS, any case admitted in NCLT will not be eligible and admittedly, no cases are pending in the light of the fact that IBA 81/2020, filed by one AFCO Energy Pvt Ltd., orders have been reserved by NCLT, Chennai and insofar as IBA 45/2020, which is not even been admitted and as such the respondent Bank is bound to consider the representation submitted by the petitioner for considering their claim under the above cited OTS scheme and prays for appropriate order.

5. Per contra, the learned standing counsel appearing for the respondent Bank would submit that if the case of the petitioner falls within the required parameters under the said OTS scheme, the respondent Bank themselves will send a communication and since it is not so, the e-mail communication dated 23.11.2020 has been sent and on instructions would further add that it is an order of rejection, rejecting the request made by the petitioner for considering their claim under OTS scheme.

6. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner would submit that since the scheme is a beneficial one, operates in favour of debtors like the petitioner, reason should be disclosed and as and when the reasons are disclosed, the petitioner, subject to legal advice would make a challenge in accordance with law before the competent forum.

7. This Court has considered the rival submissions and also perused the materials placed before it.

8. It is relevant to extract the e-mail communication dated 23.11.2020:

M/s.Kiran Global Chem Limited
Clo5samb Che<clo5samb.che@sbi.co.in>
Mon 23.11.2020 16:45
To:Ms Jain Chairman-HO <msjain@kiranglobal.com>
without prejudice

Dear Sir,
We refer to you various emails, letters, personal meetings held with ypur Directors and also your meeting with out top management at Corporate Center, Mumbai with regard to SBI OTS 2020.

2.You have been categorically conveyed that only eligible borrowers would be given notices seeking acceptance under the SBI OTS 2020 Scheme. There is no discrimination in any account and all the eligible accounts have been served notices.

3.Once again we reiterate you to submit the required details to the Forensic Auditor for completion of the forensic audit exercise at the earliest and take steps to repay the Bank's dues without further loss of time.

With Regards,
Case Lead officer-V,
Stressed Assets Management Branch,
No.32, Red Cross Building, 2nd Floor,
Red Cross Road, Egmore,
Chennai 600 008.
044-2888 1006

This information in this mail is confidential and is intended solely for addressee. Access to this mail by anyone else is unauthorised. Copying or further distribution beyond the original recipient may be unlawful. Any opinion expressed in this mail is that of sender and does not necessarily reflect that of State Bank Group.

9. It is to be noted at this juncture that the Scheme formulated by the respondent Bank dated 12.10.2020 for OTS, is for the benefit of the debtors and a perusal of the e-mail communication would disclose that the exact reasons for rejection have not been indicated. The learned standing counsel

appearing for the respondent Bank would submit that necessary instructions would be given to the respondent Bank to send yet another communication, containing the reasons for rejection and the said exercise will be done within a period of two weeks from the date of receipt of a copy of this order.

10. In the light of the above facts and circumstances, this Court directs the respondent Bank to send fresh communication containing the reasons for rejection of the petitioner's representation, for considering their claim under the OTS scheme dated 12.10.2020, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, it is open to the petitioner to workout his further remedy in accordance with law.

10. The Writ Petition stands disposed of, accordingly. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Authorised Officer,
State Bank of India
Stressed Assets Recovery Branch,
Red Cross Buildings,
IInd Floor, No.32, Montieth Road,
Chennai 600 008.

+1cc to Mr.Richardson Wilson, Advocate, S.R.No.39348

W.P.No.17429 of 2020

NMI (CO)
RV(06/01/2021)

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