THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE K.LAKSHMAN

WRIT PETITION No.26330 of 2019

ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

Heard the counsel for the petitioner and Sri P.A.V. Bala Prasad, learned counsel for the 2nd respondent.

2. The petitioner is a MSME covered by the Micro Small and Medium Enterprise Development Act, 2006. The petitioner has a GST registration. After coming into force the GST regime in 2017, the petitioner was afforded Cash Credit facility by the 2nd respondent bank and also term loan facility by the said bank. Proceedings under Section 13 (2) and 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SERFAESI Act') were initiated against the petitioner by classifying the petitioner as Non Performing Asset (NPA) on 06.02.2019.

3. Petitioner's contention is that the petitioner cannot be classified as NPA having regard to the circulars issued by the Reserve Bank of India on 07.02.2018 and on 06.06.2018, and the entire action of the 2nd respondent in initiating proceedings under the said statute and in issuing sale notice for sale of immovable properties of the petitioner on 16.12.2019 and dispossessing the petitioner on 13.11.2019, have to be set aside.

4. According to the learned counsel for the petitioner, circulars were being issued by time to time by the Reserve Bank of India, which are binding on the 2nd respondent bank, granting relief to MSME borrowers, who are registered under the GST Act. Initially on 07.02.2018 a circular was issued enhancing the period of delinquency by borrower/MSME from 90/120 days to classify the loan account as NPA, but the said period was modified on 06.06.2018 by increasing the period to 180 days. According to the petitioner, if a payment falls due between 01.09.2017 and 31.12.2018, the time permitted would be 180 days and the Unit cannot be classified as NPA within the said period.

5. Counter affidavit is filed by the 2nd respondent contending that the petitioner did not pay regular installments of the term loan and did not service the interest in the working capital, hence both loans were classified as NPA on 31.12.2018. Though reference is made in the counter affidavit to Circular dt.07.02.2018, there is no reference therein to the subsequent circular dated 06.06.2018. The action of the 2nd respondent in classifying the petitioner's loan account as NPA is justified. In the additional counter affidavit, it is stated that after the loan accounts of the petitioner were classified as NPA on 13.09.2018, the petitioner did pay Rs.60,000/- on 24.10.2018 and the loan accounts were regularized, but the petitioner's accounts were again classified as NPA on 31.12.2018 since the petitioner did not service the interest charged for the quarter i.e. between 01.10.2018 to 31.12.2018 and it has paid only Rs.12,000/- during that quarter.

6. With regard to circular dt.06.06.2018, there is a reference in paragraph-6 of the additional counter, but it is stated that the said circular only provided for a clarification and that the last line of the circular reiterated the terms and conditions of the circular dt.07.02.2018 which would remain unchanged.

7. Unfortunately, the 2nd respondent does not appear to have noticed the word 'other' occurring in the last line of the circular dt.06.06.2018 and proceeded to rely upon the Circular No.1903, dt.06.06.2018 issued by the Head Office of the 2nd respondent which made no reference to the Reserve Bank of India Circular dt.06.06.2018 which changed the duration to 180 days. The material on record indicates that only on the basis of the Head Office's circular No.1903, dt.06.06.2018, the 2nd respondent had classified the petitioner's loan account as NPA, on the ground that the petitioner did not service interest for the quarter between 01.10.2018 and 31.12.2018.

8. Thus, the 2nd respondent has clearly applied 90 days norm and not the 180 days norm, which it ought to have applied for the circular dt.06.06.2018 of the RBI.

9. In our opinion, this application of wrong norm to classify the petitioner, a MSME, by the 2nd respondent as NPA by ignoring Reserve Bank of India circular dt.06.06.2018 and applying the circular No.1903, dt.06.06.2018 issued by the Head Office of the 2nd respondent cannot be countenanced, and the 2nd respondent committed grave error in classifying the petitioner's loan accounts as NPA without affording the

petitioner 180 days grace period which was allowed in the Circular dt.06.06.2018.

10. Therefore, the Writ Petition is allowed and the action of the 2nd respondent in classifying the Cash Credit account No.3639495939 and the term loan account No.3639490736 of the petitioner as NPA is declared to be illegal, arbitrary and violative of Article 14 of the Constitution of India and the circular dated 06.06.2018 issued by the Reserve Bank of India; all the actions taken by the 2nd respondent under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, including dispossession of the petitioner, are set aside; and the 2nd respondent is directed to forthwith restore the possession of the property of the petitioner to the petitioner.

No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

January 09, 2020.
KTL