IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10093 of 2020
Date of decision: 30.10.2020

(Heard through Video Conferencing)

M/s Gopal Agro Engineering Works and another **..Petitioners**

Versus

Andhra Bank and others **..Respondents**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Rohit Suri, Advocate
for the petitioners.

Mr. Shailender Kashyap, Advocate
for respondent No.1.

Mr. Kushagra Mahajan, Advocate
for respondents No.2 and 3.

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Daya Chaudhary, J.

Petitioner, namely, M/s Gopal Agro Engg. Works through its proprietor Mr. Chander Pal has approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India for issuance of a direction to respondents to apply the guidelines on restructuring of the account in terms with the provisions of The Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter called as 'the MSMED Act') and the RBI guidelines and notification dated 17.03.2016 'Framework for Revival and Rehabilitation of MSME'; Master Directions for MSME dated 24.07.2017; notification dated 07.02.2018 'Relief for MSME borrowers registered under the GST'; 'Restructuring of

Advances' dated 01.01.2019 and the directions issued by the Government of India in view of COVID-19 as per 'ATMANIRBHAR BHARAT ABHIYAN' Part-1. A further prayer has also been made for issuance of direction to stay and withdraw the process initiated by the respondent-bank to classify the account as Non-Performing Asset (NPA) and the consequential process initiated under the SARFAESI Act, 2002 by quashing the demand notice dated 05.11.2019 and subsequent proceedings initiated thereafter.

As per submissions made by learned counsel for the petitioners, the petitioner-unit is entitled for the benefits available under the MSMED Act. The firm obtained a credit facility of ₹45 lacs, which was due for renewal on 01.09.2017 at the interest rate of 10.75% against the mortgaged property. Learned counsel for the petitioners further submits that the firm has been supplying the materials as per orders of supply but due to default on the part of petitioners, the demand notice claiming an amount of ₹46,78,338.50/- was issued by the bank. Learned counsel also submits that the matter be referred to the Committee, which is to be constituted under the MSMED Act and the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises and case of petitioners be considered, for renewal of the firm. Learned counsel also submits that a representation dated 07.01.2020 (Annexure P-6) was submitted in this regard, which has been rejected and the property worth ₹95 lacs has been ordered for auction on throwaway price. It is also the argument of learned counsel for the petitioners that Government of India has issued various directions during period of COVID-19 to provide relief/concession to a number of small business concerns but no benefit has been given to the petitioners in spite of filing representation. Learned counsel also submits that the respondent-bank was under an obligation to refer the petitioners' loan account to the Committee as per the RBI guidelines as there was no power with the bank to declare the loan account as Non-Performing Asset. Learned counsel also submits that the petitioner has been operating the account on the basis of sanction limit as granted by the Bank. The account was neither in default nor overdue as on 29.10.2019 but still interest has been over charged, which is contrary to MCLR rate of interest. Learned counsel also submits that the interest has been applied excessively but no restructuring of the account has been carried out in terms of MSMED Act and the bank has initiated the process by issuing demand notice. Learned counsel also submits that the action of respondent-bank is contrary to provisions of Section 13(3A) of the Act. No reasoned reply to the objections filed by the petitioners has been given. Even without serving the petitioners, the bank directly has carried out the publication of sale notice and date of auction of the property has been ordered. Learned counsel also submits that not only the petitioners has made representation dated 10.07.2020 but has also deposited an amount of ₹5 lacs only on the assurance given by the respondent-bank to regularize its account and give benefit as per Government of India policies arising subsequent to COVID-19 as available to other similarly situated firms. At the end, learned counsel for the petitioners submits that the petitioners would be satisfied in case their claim is considered by respondent-bank in view of policies of Government of India 'ATMANIRBHAR BHARAT ABHIYAN' Part-1 and the guidelines issued from time to time during the period of COVID-19 to other similarly situated business concerns.

Learned counsel for respondents No.2 and 3 has disputed the arguments raised by learned counsel for the petitioners. An objection has also been raised by learned counsel for respondents No.2 and 3 that the petitioners have remedy to file petition before the Debt Recovery Tribunal in case, they are aggrieved by the notice/order passed by respondents. Learned counsel for respondents No.2 and 3 further submits that the petitioner-firm has defaulted in making payment as per schedule and has also availed/secured over draft limit of ₹45 lacs. As per guidelines issued by the RBI, the account of the petitioners has been declared NPA as on 29.10.2019. learned counsel for respondents No.2 and 3 also submits that the claim of the petitioners can be considered afresh in case, a detailed representation is made.

Facts of the case are not disputed.

By considering the submissions made by learned counsel for the parties and also the fact that the petitioners' counsel has restricted his prayer to give liberty to the petitioners to file representation afresh with the undertaking that he will deposit some reasonable amount as they have already deposited an amount of ₹5 lacs, the present petition is disposed of with the liberty to the petitioners to move detailed representation within a period of two weeks from the date of receipt of certified copy of this order. In case, such representation is made within the stipulated period, respondents No.2 and 3 are directed to consider the same within a period of two months thereafter in accordance with RBI guidelines and notification dated 17.03.2016 (Framework for Revival and Rehabilitation of MSME);

notification dated 07.02.2018 as the same benefits have been given to other similarly situated firms/concerns during period of COVID-19. It is also ordered that in case, the presence of the petitioners is required, they be given opportunity to appear personally before taking any action.

(DAYA CHAUDHARY)
JUDGE

30.10.2020 **(MEENAKSHI I. MEHTA)**
neetu **JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	Yes