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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1789/2020 & CM APPL. 6219/2020

VIKAS PROJECTS PVT. LTD. ..... Petitioner

Through: Mr. Tanmay Mehta with Mr. Abhinav Mukhi and Mr. Abhishek Agarwal, Advocates.

versus

INDIAN OVERSEAS BANK (IOB) ..... Respondent

Through: Mr. Karan Khanna, Standing counsel with Mr. Tapendra Sankhla, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 18.02.2020

CM APPL. 6218/2020 (Exemption)

1. Allowed, subject to just exceptions.

W.P.(C) 1789/2020 & CM APPL. 6219/2020

2. Mr. Mehta, who, appears on behalf of the petitioner says that the principal grievance of the petitioner is that in the communication dated 16.01.2020, the respondent bank has indicated that its account has become an NPA as on 31.12.2019.

3. Mr. Mehta points out that the petitioner had availed two facilities from the respondent bank. First, a cash credit facility of Rs. 4.25 crores, and second, a Letter of Credit amounting to Rs. 1.25 crores.

4. It is Mr. Mehta's submission that vide reply dated 05.02.2020, the petitioner had conveyed to the respondent bank that its conclusion that the cash credit account had become an NPA was untenable.

5. In particular, in respect of this communication, Mr. Mehta adverted to the following aspects as contained therein:-

> *" 1) The outstanding balance in our account was in excess of the sanctioned limit continuously for 46 days, from 31.10.2019 to 16.12.2019 and thereafter from 26.12,2019 till date.*
>
> *2) While the outstanding balance in our account was less than the sanctioned limit from 01.10.2019 to 30.10.2019, there were no credits in our account for a period of 76days, from 01.10.2019to 16.12.2019.*
>
> *3) The credit in our account for Rs. 18,91,621 on 16.12.2019 was sufficient to cover the unpaid interest charged till 16.12.2019."*

6. Mr. Mehta says that the respondent bank has via a crytic response dated 10.02.2020 rejected the petitioner's stance and, in effect, has not dealt with its contention that it was not an NPA as on 31.12.2019.

7. In support of his plea, that the petitioner's account has not been rendered an NPA as on 31.12.2019, Mr. Mehta has referred to the RBI circular dated 01.07.2009.

8. On the other hand, Mr. Karan Khanna, who, appears on advance notice on behalf of the respondent bank says that apart from the circular referred by Mr. Mehta, there is in force another circular of the RBI dated 01.07.2015.

8.1 Mr. Khanna says that although he does not have the circular presently available with him, the credit entries based on which the petitioner claims that the account was regular (i.e. not out of order) is a submission which is contrary to the provisions of the circular dated 01.07.2015.

8.2 In sum, it is Mr. Khanna's contention that the credit entries in issue are not the credit entries which can be taken note of.

9. A clue concerning this aspect is, perhaps, available in the respondent bank's letter dated 28.01.2020 wherein *inter alia* it has stated the following:-

> *" In case of your account, there is no credit since 01.10.2019 and interest is also not serviced leading to downgrading of the account to NPA. The credit of Rs.7,43914.00 related to reversal of interest charged on .30.11.2019. The other credit entry dated 16.12.2019 amounting Rs. 1894621.00 is the margin related to Letter of Credit which was to be paid on 16.12.2019 itself. As such there is no credit in the account towards servicing of interest/sale proceeds. "*

10. It is conceded by Mr. Mehta that a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short "SARFAESI Act") has not been issued as yet.

11. As a matter of fact, the letter dated 10.02.2020 only says that the account is not regular and that action under SARFAESI Act, 2002 would be initiated.

12. Given these circumstances, the writ petition is disposed of with a direction to the respondent bank to give a proper and detailed reply as to

how according to it the account of the petitioner became an NPA as on 31.12.2019.

13. For this purpose, the assertions made in the writ petition can be adverted to by the respondent bank.

14. *Dasti*.

RAJIV SHAKDHER, J

FEBRUARY 18, 2020

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