09.07.2021
Ct. No.13
Sl. No.67
pk/akd

W.P.A. 10637 of 2021 *[via video conference]*

[Birla Tyres Limited -Vs- Reserve Bank of India & Ors.]

Mr. Sabyasachi Chowdhury
Mr. Reetobroto Mitra
Mr. Rajarshi Dutta
Mr. Vishwarup Acharyya
… … for the petitioner

Mr. Ratnanko Banerjee
Mr. Soorjya Ganguli
Ms. Pooja Chakrabarti
Ms. Radhika Mishra
Mr. Prithwish Chowdhury
Mr. Atreyo Banerjee
Mr. Kanisk Kejriwal
… … for respondent no.2

The writ petition is moved challenging a recall notice issued by the ICICI Bank on 4th May, 2021.

Learned counsel for the respondent Bank takes a preliminary objection as regards maintainability of the writ petition, inter alia, on the ground that there are disputed questions of fact in the matter which cannot be gone into by the writ court.

It is also argued that the bank has initiated proceedings under Section 7 of the Insolvency and Bankruptcy Code. It is, therefore, submitted that the writ petition should not be entertained by this court. Reference is made to a recent judgment dated 2nd July, 2021 delivered in WPA 10679 of 2021 (*Hiranmaye Energy Limited & Anr. vs. West Bengal Electricity Regulatory Commission & Ors.*).

Learned counsel appearing for the petitioner, however, has submitted that the writ court is not barred from entertaining the writ petition, in view of the following facts.

The writ petitioner was earlier a division of one Kesoram Industries Limited (KIL). Pursuant to an arrangement the writ petitioner was demerged out and a part of the liabilities of the Kesoram Industries Limited were apportioned to the writ petitioner. It is submitted that Kesoram Industries Limited may have paid off the entire debt of the petitioner. Therefore, the recall notice is thoroughly misplaced.

However, the principal thrust of argument by the learned counsel for the petitioner is based on a decision of the Hon'ble Supreme Court of India in WP (C) No. 476 of 2020 (*Small Scale Industries Manufacturing Association vs. UOI & Ors.*). It is submitted that by reason of orders passed in the said proceedings and the moratorium declared by the Supreme Court of India, the ICICI Bank could not have treated the loan accounts of the petitioner, non-performing assets. The question of recalling any advance made to the petitioner, therefore, does not and cannot arise. It is also argued that the recall is motivated. It was done to enable the ICICI Bank to wrongfully adjust and appropriate an incoming receipt of 5 lakhs US dollars.

This Court has been taken through the documents annexed to the writ application. Counsel for the parties have been heard. The entirety of the cause of action of the petitioner is against the ICICI Bank. No proceedings against the ICICI Bank can be filed under Article 226 of the Constitution of India. There are a large number of disputed questions of fact in the writ petition. A writ court under Article 226 of the Constitution of India cannot enter into such facts. The disputes between the petitioner and the respondent no.2 are private loan contracts. This Court also does not see any public element attached to the disputes between the petitioner and the respondent no.2 except to a very limited extent i.e. moratorium imposed by the Hon'ble Supreme Court of India.

This Court is, therefore, of the view that since the bank has already instituted proceedings under the Insolvency and Bankruptcy Code, 2016, the authorities and fora thereunder are better equipped to adjudicate the defence of the petitioner against any action of the ICICI Bank.

The authorities under the Insolvency and Bankruptcy Code are equally competent to assess the propriety of the decision of the Bank to treat its accounts as NPAs and recall the advances to the petitioner, in the light of the decision in the case of ***Small Scale Industries Manufacturing Association (Supra)***.

For the reasons stated hereinabove and those discussed in the ***Hiranmaye Energy Limited*** decision (***supra***), this Court is not inclined to entertain the writ application.

The writ petition shall stand dismissed with liberty however, reserved to the petitioner to take all the points urged in the instant proceeding before the fora under Insolvency and Bankruptcy Code, 2016.

There will be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)