

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 9226 of 2020

**Capital Electronics and Appliances Ltd. and others
Vs.
Reserve Bank of India and others**

For the petitioners	:	Mr. Anirban Roy, Mr. Ranajit Chatterjee, Mr. Arijit De, Mr. Aniruddha Mitra, Ms. Deblina Banerjee
For the R.B.I	:	Ms. Suchismita Chatterjee (Ghosh), Mr. Malay Kumar Seal
For the respondent nos. 3 and 4	:	Mr. Jishnu Choudhury, Ms. Sani Ojha, Ms. Aishwarya Chatterjee
Hearing concluded on	:	22.12.2020
Judgment on	:	07.01.2021

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1 is a non-government company registered under the Companies Act, 2013. Petitioner nos. 2, 3 and 4 are its directors. The cash credit facility given to the petitioner no.1-company was classified as Non-Performing Asset (NPA) on February 28, 2020. Subsequently, the respondent-bank issued notice to the petitioners under Section 13(2) of the SARFAESI Act, 2002 on August 17, 2020, apparently followed up by proceedings under Section 13(4) of the 2002 Act, as claimed by the respondent-bank.

2. The petitioners had applied for an One-Time Settlement (OTS).
3. Learned counsel for the petitioners alleges that the bank sat tight over the OTS proposal on one hand and proceeded under the 2002 Act by rendering the company accounts NPA on the other.
4. Learned counsel submits that the OTS proposal of the petitioners comes within the purview of the RBI Master Circular, dated July 1, 2015, which grants relief to corporate entity in the pandemic situation. Placing reliance on Clause 2.1 of the Master Circular, laying down Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, learned counsel for the petitioners submits that an asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank. Clause 2.1.2 (i) stipulates that a loan or an advance where interest and/or instalment of principal remains overdue for a period of more than 90 days in respect of a term loan is treated as NPA.
5. Clause 2.1.3 provides that in case of interest payments, banks should classify an account as NPA only if the interest issued and charged during any quarter is not serviced fully within 90 days from the end of the quarter.
6. An account should be treated as 'out of order', Clause 2.2 provides, if the outstanding balance remains continuously in excess of the sanctioned limit/drawing power for 90 days.
7. Clause 2.3 defines 'overdue' to be any amount due to the bank under any credit facility if not paid on the due date fixed by the bank. By

placing particular reliance on Clause 2.1.3, learned counsel for the petitioners argues that the classification of the petitioner's account as NPA was premature.

8. Even apart from the argument that the RBI Circular-in-question as well as the subsequent RBI Circular dated March 1, 2020, issued in view of the pandemic scenario, are applicable to the OTS proposal of the petitioners, learned counsel for the petitioners contends that the classification of the petitioners' accounts as NPA as on February 28, 2020 was an afterthought to suit the purpose of the respondents. Learned counsel submits that the relevant publication on the concerned website and the correspondence of the bank shows that it was admitted even on March 16, 2020 that the account was NPA 'as on date', implying such asset classification as NPA to operate from that date itself. As such, the account of the petitioners with the respondent-bank was a Standard Account even on March 1, 2020, attracting the financial relief given by the 2020 Circular to the petitioners. By placing reliance on the statement of accounts annexed at page-96, learned counsel argues that even the bank's own accounts reveal that interest was charged on the petitioner's loan as late as on February 29, 2020, belying the bank's contention that the account was already NPA on the previous date. The bank's e-mail communication at page-106, dated March 16, 2020 reflects that the petitioners were alleged not to have cleared the overdue in the loan accounts of the company rendering the loan account NPA as on that date.

9. However, the respondent-bank communicated to the petitioners on June 29, 2020 by speed post (annexed at page-119 of the writ petition) that the company accounts had been classified as NPA 'with effect from' February 28, 2020 in the bank's books in accordance with RBI Guidelines. This, it is argued by the petitioners, is an attempt to deprive the petitioners of the RBI relief package to the petitioner by retrospectively rendering the Standard Account of the petitioner NPA *post facto*. It was beyond the authority of the bank to intimate on June 29, 2020 the apparently retrospective classification of the accounts of the petitioner no.1 as NPA with effect from February 28, 2020.
10. Learned counsel for the petitioners places further reliance on the RBI Circular dated February 11, 2020 (annexure P9 at page-190 of the writ petition) which permits an one-time restructuring of existing loans to MSMEs classified as 'standard' without a downgrade in the asset classification, subject to certain conditions.
11. Counsel next places the RBI Circular dated March 27, 2020 (at page-192 of the writ petition) which, he contends, is a continuation of the February 11 Circular. Therein, it is provided that the banks and financial institutions are permitted to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020 in respect of term loans and working capital facilities. The repayment schedule for such loans as also the residual tenor, the Circular provides, would be shifted across the Board by three months after the moratorium period. Learned counsel argues

that the petitioner's account was classified retrospectively as NPA to avoid application of the said Circular.

12. The petitioners rely on an extract from the National e-Governance Portal at page-198 of the writ petition, to substantiate the argument that even as per the information published on the website as on April 30, 2020, the number of days the instalments were overdue was 32. From a CIBIL report annexed at page-201 of the writ petition, learned counsel for the petitioners contends that the account of the petitioners was first shown to be overdue in February, 2020. Thus, it was not possible for the account of the petitioners to be classified as NPA on February 28, 2020.
13. It is argued that even if the OTS proposal of the petitioners is held to fall beyond the pale of the RBI Circulars, the petitioner no.1-company is, in any event, entitled to get the benefits of the Circulars even without any OTS scheme, which has been denied by the respondents.
14. Learned counsel cites paragraph no. 22 of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvama Jayanti Mahotsav Smarak Trust and Others vs. V.R. Rudani and others* reported at (1989) 2 SCC 691 in support of the proposition that even violation of fundamental rights on the part of a private body may be amenable to the writ jurisdiction.
15. Learned counsel also relies on the unreported judgment of the Karnataka High Court in *Velankani Information Systems Limited vs. Secretary, Ministry of Home Affairs and others* to argue that the RBI Circular was issued in public interest, attracting a public law element

and permitted the grant of moratorium to all borrowers so as to keep the viable borrowers/businesses running. In the event the business of the petitioner is viable, the petitioner has a right to such moratorium without being left to the discretion of the bank. In the present case, since the account of the petitioner no. 1 was shown to be a standard account on all records, before it was retrospectively classified as NPA, the petitioner is entitled to the moratorium as a matter of right, it is argued.

16. Learned counsel for the petitioners also relies on a Division Bench judgment of this court dated October 13, 2020 rendered in *Vineet Ruia vs. Principal Secretary, Department of School Education, Government of West Bengal and others*, for the proposition that in a breakdown scenario as a result of any natural calamity or an act of God or when the subordinate judiciary is not available or a litigant has no access to any other court in an extreme case, the High Court must not forget the width of the authority available to it and its constitutional obligation to discharge its duties governed by the overarching established principles designed by what may be loosely said to be the rule of law.
17. Learned counsel for the respondents, on the other hand, argues that the account of the borrower was classified as NPA on February 28, 2020 itself since the balance outstanding therein stood continuously in excess of the sanctioned limit for more than 90 days since November 30, 2019. NPA Identification of the Axis bank, it is

submitted, is carried out in a separate system known as the CRISMAC system, which is configured to extract information and classify the account as NPA in appropriate cases. Such stamping of NPA classification in core banking system is carried out on T+2-day basis. As such, the NPA identification process for February 28, 2020 (T) was completed and sent for updation in the core banking system within 2 days. The borrower was stamped as NPA on March 1, 2020, which was the 91st day from overdue. Thus, since the entire operation was completed on March 1, 2020, interest for the month of February got charged in the account. Clause 3.4 of the RBI Master Circular relating to Prudential Norms, dated July 1, 2015, provides that on an account turning NPA, banks should reverse the interest already charged and not collected by adopting Profit and Loss Account and stop further application of interest. However, banks may continue to record such accrued interest in a Memorandum account in their books. Thus, in the petitioners' case, interest was charged on February 29, 2020 even after the account turned NPA the previous date, due to system level gaps. Such interest was reversed manually in the corresponding quarter.

- 18.** Clause 2.6 of the RBI Circular dated September 14, 2020, on Automation of Income Recognition, Asset Classification and Provisioning Processes in Banks, advises the bank that the system based asset classification shall be an ongoing exercise for both downgradation and upgradation of accounts and that banks should

ensure that the established classification status is updated as part of day end process.

19. The periodicity of updating report to CIBIL is monthly. The data for February, 2020 was thus reported in March, 2020. The regulatory guidelines contained in the Circular bearing DBR No.CID.BC.60/20.16.056/2015-15 dated January 15, 2015, it is submitted, mandate membership of Credit Information Companies (CICs). It provides that CICs and CIs shall keep the credit information, collected/maintained by them, updated regularly on a monthly basis or at such shorter intervals as may be mutually agreed upon between the CI and CIC in terms of Regulation 10 (a) (i) and (ii) of the Credit Information Companies Regulations, 2006. This creates a lag in updation of data at the CIBIL level. That apart, the Circular dated February 11, 2020 is not applicable to the borrower as the outstanding in the accounts exceeded Rs. 25 crore. The account was already overdrawn on November 30, 2019. The balance in the accounts exceeded Rs. 25 crore as on January 1, 2020. In fact, the petitioners never requested the bank for restructuring of loan, thus, waiving the benefits afforded by the RBI Circular of 2020.

20. The respondents contend that the guidelines contained in the Notification dated February 11, 2020 permit one-time restructuring of existing loans to MSMEs classified as 'standard' without a downgrade in the asset classification subject to the condition that the aggregate exposure, including non-fund based facilities of banks and NBFCs to

the borrower, does not exceed Rs.25 crore as on January 1, 2020. In the present case, the exposure exceeded Rs. 25 crore as on January 1, 2020, rendering the petitioner ineligible for the one-time restructuring as per such Notification.

- 21.** That apart, in the present case, steps have been taken under Sections 13(2) and 13(4) of the SARFAESI Act, 2002. Thus, as per the proposition laid down in *United Bank of India vs. Satyawati Tondon and others* [(2010) 8 SCC 110], the writ court ought not to interfere in the matter since an equally efficacious remedy is available to the petitioners before the tribunal.
- 22.** Relying on *Authorized Officer, State Bank of Travancore and Another vs. Mathew K.C*, reported at (2018) 3 SCC 85, the respondents submit that the discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. Except in cases falling within well-defined exceptions, a writ petition under Article 226 of the Constitution ought not to be entertained if alternative remedies are available.
- 23.** Hence, the respondents submit that the writ petition ought to be dismissed on merits.
- 24.** The petitioners rely on the OTS between the parties and argue that such scheme would attract the RBI Circulars issued to provide financial relief during the pandemic situation. However, in the present case, the materials on record clearly show that the proposed OTS stopped at the stage of a proposal being advanced by the petitioners to

the respondent-bank, without there being any acceptance of such proposal on the part of the bank at any point of time. Thus, the petitioners' proposal did not crystallise into an OTS 'scheme' at any point of time, in the absence of any *consensus ad idem* having been arrived at by the concerned parties, eliminating the question of the petitioners being entitled to the benefits provided by the RBI Circulars on the score of an OTS.

25. As regards the petitioners' allegation that the marking of the account of the petitioner no. 1 as NPA on February 28, 2020 was a deliberate *post facto* attempt on the part of the respondents to deprive the petitioners of the benefits envisaged by the RBI pandemic circulars, the petitioners have failed to show any mala fides or bias on the part of the bank or the other respondents in doing so. The bank has furnished sufficient justification for the technical delay in uploading the classification of account as NPA. The T+2 procedure of updation is a plausible explanation for the delay in updation. In any event, in view of the petitioners having continued to maintain overdue of above Rs. 25 crore from November 30, 2020 onwards, the 90th day from the commencement of such default was February 28, 2020. Hence, on February 28, the account was subject to automatically being marked as NPA in view of the RBI Circulars.

26. The technical delay in uploading the same can very well be attributed to cyber lag and the system of updation on a monthly basis. That apart, Clause 3.4 of the RBI Master Circular dated July 1, 2015,

pertaining to Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances clearly provides that on an account turning NPA, banks should reverse the interest already charged and not collected by adopting Profit and Loss Account and stop further application of interest. As such, interest being shown to have been charged till February 29, 2020 could not *ipso facto* be an indicator of the account of the petitioner no. 1 remaining standard even after February 28, 2020.

- 27.** In any event, the petitioners never applied for restructuring under the RBI Circular of 2020, which disentitles the petitioners' claim of being governed by the RBI Circular, even irrespective of the OTS.
- 28.** Another pertinent question which arises for consideration here is, whether Clause 2.1.2 (i) or Clause 2.1.3 of the 2015 Circular governs the account of the petitioner no.1.
- 29.** Clause 2.1.2 (i) stipulates that a Non-Performing Asset (NPA) is a loan or an advance where interest and/or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan. On the face of it, contrary to the arguments of the respondents, the account-in-question was a cash credit facility, as opposed to a term loan. Thus, Clause 2.1.2 (i) does not apply in terms to the account of the petitioner no.1.
- 30.** Clause 2.1.3, on the other hand, provides that in case of interest payments, banks should classify an account as NPA only if the interest due and charged during any quarter is not serviced fully

within 90 days from the end of the quarter. In the present case, the petitioners argue that the bank did not wait for the end of the quarter to classify the account of the petitioner no.1 as NPA. However, to appreciate the complete purport of Clause 2.1.3, certain other provisions of the Master Circular of 2015 are to be looked into.

- 31.** Clause 2.1.4 provides that an account may also be classified as NPA in terms of paragraph 4.2.4 of the Master Circular.
- 32.** Sub-clause (i) of Clause 4.2.4 provides that, considering the difficulties of large borrowers, stock statements relied upon by the banks for determining drawing power should not be older than three months. The outstanding in the account based on drawing power calculated from stock statements older than three months would be deemed as irregular. A working capital borrowal account will become NPA if such irregular drawings are permitted in the account for a continuous period of 90 days even though the unit may be working or the borrower's financial position is satisfactory.
- 33.** Clause 4.2.5 provides for upgradation of loan accounts classified as NPAs. As per the said Clause, if arrears of interest and principal are paid by the borrower in the case of loan accounts classified as NPAs, the account should no longer be treated as non-performing and may be classified as a 'standard' account.
- 34.** In the present case, the petitioners did not make any attempt at such repayment.

35. Clause 2.3 of the Master Circular of 2015 stipulates that any amount due to the bank under any credit facility is 'overdue' if it is not paid on the due date fixed by the bank.
36. Upon a conjoint reading of the aforesaid provisions, it is clear that the concerned bank has a discretion with regard to marking an account as NPA upon the account running overdue for 90 days. Clause 2.1.3 has to be read with the other provisions of the Master Circular as discussed above.
37. The RBI Circular bearing DOR No. BP.BC.34/21.04.048/2019-20 dated February 11, 2020 provides for restructuring of advances in the MSME (Micro, Small and Medium Enterprises) sector. Such provision for one-time restructuring of existing loans to MSMEs only pertain to those classified as 'standard', which the account of the petitioner no.1 ceased to be from February 29, 2020 onwards. Moreover, Clause (i) thereof provides that the aggregate exposure, including non-fund based facilities, of banks and NBFCs to the borrower cannot exceed Rs. 25 crore as on January 1, 2020 for an MSME to be eligible for such restructuring. The petitioners, as per the annexures of the writ petition itself, had exceeded the Rs. 25 crore limit on November 30, 2019 itself, thus, rendering the petitioners ineligible for getting the benefit of the scheme contemplated by the aforementioned Circular.
38. The general ratio laid down by the Division Bench in *Vineet Ruia (supra)*, that a High Court must not forget the width of the authority available to it and its constitutional obligation to discharge its duties

governed by the overarching established principles designed by the rule of law in breakdown scenarios, is beyond dispute. However, the scope of interference by this court is also circumscribed by certain self-imposed fetters. The court has to be vigilant as to whether there has been any gross act of arbitrariness or violation of any fundamental/statutory right to justify interference with administrative functioning.

39. As far as the ratio contained in *Velankani Information (supra)* is concerned, the said report lays down that the exercise of discretionary power by the bank or lending institution, vis-à-vis the RBI Circular of 2020, is predicated on ensuring the continuity of the business of a borrower. The decision of the bank, if falls foul of this intention, the same would be contrary to the Policy as also the Circular.
40. However, such general propositions cannot help the petitioners in the present case, since the petitioners have failed to prove any mala fides or arbitrariness on the part the respondents. As discussed above, the RBI Circulars cited by the petitioners are not attracted, since the account of the petitioner no.1 lost its status as a 'standard' account after February 28, 2020, when the same was classified as NPA. That apart, such classification on February 28, 2020 could not be said to be an arbitrary exercise beyond the pale of discretion of the bank and the respondent-authorities. Thus, there is no scope of finding fault with the legitimate exercise of discretion on the part of the respondents in the present case. Keeping an eye on *United Bank of*

India vs. Satyawati Tondon (supra), it is evident that the rule of self-imposed restraint in the exercise of power under Article 226 of the Constitution is applicable to the present case. Since proceedings have already been initiated under Sections 13(2) and 13(4) of the SARFAESI Act, it would be interdicting with the jurisdiction of the tribunal to pass any order on merits as regards the claim of the respondents against the petitioners. In any event, upon a consideration of the conspectus of the present writ petition, the said principle is irrelevant in the present case, since the petitioner has sought to invoke the benefits under the RBI Circulars cited by the petitioners and have not challenged the bank's claims against the petitioners on merit.

- 41.** The same principle as in *Satyawati Tondon (supra)* was reiterated in *Mathew K.C. (supra)*, wherein it was held that discretionary jurisdiction under Article 226 is not absolute but has to be exercised judicially in a given facts of a case and in accordance with law and that normally a writ petition ought not to be entertained if alternative statutory remedies are available.
- 42.** Be that as it may, against the backdrop of the aforesaid discussions, the acts/omissions complained of in the writ petition do not merit interference by the writ court.
- 43.** Accordingly, W.P.A. No. 9226 of 2020 is dismissed. Connected application, if any, also stands disposed of accordingly.
- 44.** There will be no order as to costs.

45. Urgent certified website copies of the order shall be provided to the parties upon due compliance of all the requisite formalities.

(**Sabyasachi Bhattacharyya, J.**)