ORDER SHEET
WPO NO. 28 OF 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S. PLAUDIT TECHNO INDIA PRIVATE LIMITED
Versus
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 18th February, 2021

Appearance :
Mr. Aditya Dutta,
Mr. Akash Dutta, Advs.,
for the petitioner.

Mr. Tutul Das Singh,
Mr. Amar Singh,
Ms. Pooja Sett, Advs.,
for the respondent no.4.

The Court : The petitioner challenges an order passed by the Banking Ombudsman, whereby the ombudsman rejected the petitioner's challenge against alleged refusal of the respondent-bank to restructure the loan of the petitioner pursuant to the relevant RBI guidelines. Learned Counsel submits that the complaint of the petitioner was rejected by the impugned order dated December 15, 2020 under clause 13(a) of the Banking Ombudsman Scheme, 2006, which stipulates that the banking ombudsman may reject a complaint at any stage if it appears to him that the complaint made is not on the grounds of complaint referred to in clause 8 or otherwise not in accordance with sub-clause (3) of clause 9.

However, learned Counsel submits that the scope of complaint of the petitioner, made before the ombudsman, is covered by Section 8(1)(u).

Learned Counsel appearing for the respondent authorities takes a preliminary objection as to non-joinder of the ombudsman as a party to the writ petition and submits that the writ petition ought to be dismissed for such non-joinder alone.

That apart, learned Counsel argues that the petitioner is not an MSME entity; as such, the petitioner is not covered by the RBI guidelines which pertain only to MSMEs.

Learned Counsel for the respondents also contends that the petitioner's request of restructuring of loan could not be allowed on several other grounds as well.

However, a perusal of the impugned order dated December 15, 2020 reveals that the complaint was rejected merely on the ground of maintainability under Section 13(a) of the 2006 Scheme. The ombudsman commented in the impugned order that the loan restructuring is the commercial decision of the bank and is beyond the scope of the Banking Ombudsman Scheme, 2006. The ombudsman concluded on the basis of the above observation that the bank cannot be held responsible in the case of deficiency of service. As such, the complaint was closed under clause 13(a) of the 2006 Scheme.

Clause 13 of the 2006 Scheme pertains to rejection of complaint and clearly stipulates that the banking ombudsman may reject a complaint at any stage if it appears to him that the complaint is covered by any of the conditions given thereinbelow. Clause 13(a) stipulates that such rejection may occur if the grounds of complaint do not tally with clause 8 or are not in accordance with sub-clause (3) of clause 9.

Clause 8 pertains to grounds of complaint. Sub-clause (1) thereof provides that any person may file a complaint with the banking ombudsman having jurisdiction on the grounds following thereafter, alleging deficiency in banking, including internet banking or other services. Clause (8)(1)(u) stipulates that the scope of the grounds alleging deficiency also includes any other matter than stipulated thereinabove, relating to the violation of the directives issued by the Reserve Bank in relation to banking or other services.

The complaint of the petitioner, annexed to the writ petition, reveals that the same was made under clause 8(2)(f) of the 2006 Scheme and related to restructuring or reducing the EMI amount on the petitioner's loan. Intervention of the RBI was also sought in that regard by the petitioner.

Clause (2)(f) of clause 8 of the 2006 Scheme, referred to in the petitioner's complaint, provides that a complaint may be made on the ground of alleged deficiency of non-observance of any other direction or instruction, than stipulated thereinabove, of the Reserve Bank as may be specified by the Reserve Bank for this purpose from time to time.

What is to be seen in the present case is whether the ombudsman could shut out the petitioner at the inception under clause 13(a) of the 2006 Scheme. The said sub-clause provides that the grounds of complaint have to refer to clause 8 of the Scheme. Not only clause 8(2)(f) but also clause 8(1)(u) of the Scheme squarely relate to violation of directives issued by the Reserve Bank in relation to banking or other services and non-observance of directions or instructions of the Reserve Bank specified for this purpose from time to time. Since the complaint of the petitioner comes within the purview of the said sub-clauses of clause 8 of the 2006 Scheme, the ombudsman refused to exercise jurisdiction vested in him by law in rejecting the petitioner's complaint at the outset without going into the merits of the same.

Whatever may be the case of the respondent-bank on merits, it was for the ombudsman to decide the rival contentions of the parties and to adjudicate upon the same on merits within the purview of the 2006 Scheme. It was, however, patently illegal and *de hors* the Scheme to shut out the petitioner at the outset.

Accordingly, WPO 28 of 2021 is allowed, thereby setting aside the impugned order dated December 15, 2020 (Annexure P-9 at page 32 of the writ petition) passed by the Banking Ombudsman. The Banking Ombudsman shall, as expeditiously as possible from the date of communication of this order, re-hear the parties to the complaint-in-question and decide upon the same on merits in accordance with law.

It is made clear that the merits of the rival contentions of the parties have not been gone into by this Court and the ombudsman will be free to proceed with the adjudication on the same without being prejudiced in any manner by any of the observations made herein.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

S.Das
AR[CR]