IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.13066 and 12082 of 2021

Al-Ameen International Ltd.,
Milano Orchard, S.No.165/2 A & 166/2,
G.S.T.Main Road, Urapakkam,
Chennai 603 210.
Rep. by its Director, Mr.Abdullah Sarwar.
.. Petitioner in both writ petitions

Vs.

State Bank of India,
Rep. by its Assistant General Manager,
Stressed Assets Resolution Branch (SARB),
Red Cross Buildings, II Floor,
No.32, Red Cross Road, Egmore,
Chennai 600 008. .. Respondent in both writ petitions

Prayer in W.P.No.13066 of 2021 : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in the impugned Letter bearing No.SARB/SBI/2020-21/ SUB/507 dated 24.11.2020 and consequently direct the Respondent to permit the Petitioner to avail the benefit of the 'SBI one-time settlement 2020 Scheme'.

Prayer in W.P.No.12082 of 2021: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondent Bank to issue NOC for sale of flats of the Petitioner's No.1s Project.

For Petitioner : Mr.Sanya Dua
for Mr.C.Arun Kumar

For Respondent : Mr.M.L.Ganesh

COMMON ORDER

(made by SENTHILKUMAR RAMAMOORTHY, J.)

The petitioner is a defaulting borrower, whose account was admittedly classified as a non-performing asset (for short, NPA) on 28.05.2017, and to whom a one-time settlement offer was made on 19.10.2020.

2. In W.P.No.13066 of 2021, the petitioner challenges a letter from the secured creditor whereby the petitioner's request to pay a sum of Rs.2.5 crore in full and final settlement of its dues was rejected. The main bone of contention is with regard to the book outstanding as on 31.03.2020. In the original one-time settlement offer of the secured creditor dated 19.10.2020, the book outstanding (excluding notional interest from the date of NPA) as on 31.03.2020 was indicated as Rs.7,23,17,865.99. As per the one-time settlement scheme of the bank, after making further adjustments as indicated in the OTS Scheme 2020, 75 per cent of the net outstanding was to be

paid by way of one-time settlement of the dues. The principal contention of the petitioner is that the one-time settlement amount of about Rs.5.81 crore does not represent 75 per cent of the book outstanding of about Rs.7.23 crore.

3. Accordingly, at the previous hearing, we had directed the secured creditor to explain the manner in which the one-time settlement amount was arrived at and, in particular, to explain clause 1(v) of the settlement scheme which reads "waiver of notional interest from date of NPA in respect of all eligible accounts". Pursuant to such direction, the secured creditor has filed an additional affidavit. In such additional affidavit, the secured creditor has explained that a sum of about Rs.1.23 crore had inadvertently not been included in the book outstanding as on 31.03.2020 because such amount had been wrongly adjusted towards the principal instead of being adjusted towards interest. Upon such error being pointed out by the external statutory auditor of the bank in course of audit, the mistake was rectified and such amount was included in the book outstanding which accordingly was revised to about Rs.8.46 crore. The secured creditor says that 75 per cent of the net outstanding would amount to about Rs.5.81 crore.

4. The explanation of the secured creditor is that waiver of notional interest is in respect of unpaid interest accruals which are ordinarily debited to the account of the constituent, whereas once the account is declared NPA, notional interest (i.e. unpaid interest) does not continue to accrue but is instead recorded in a separate memorandum. On the other hand, when the borrower makes payment after the account is declared as NPA, such payments are required to be adjusted in accordance with applicable Reserve Bank of India norms which mandate that it should be adjusted first towards charges incurred and thereafter towards outstanding interest before being adjusted towards current interest and principal. The borrower does not dispute the fact that amounts were paid after the account was declared as NPA in May, 2017. In the light of such admitted position, the explanation offered by the bank is liable to be accepted. Once such explanation is accepted, it appears that the one-time settlement amount of Rs.5.81 crore which was offered under letter dated 19.10.2020 is not at variance with the State Bank of India one-time settlement scheme of 2020.

5. More importantly, the borrower in this case, in response to the offer, did not offer to pay the stipulated one-time settlement amount subject to any adjustment towards this differential amount of Rs.1.23 crore. Instead, the counter-offer of the borrower was to pay only a sum of Rs.2.5 Crore. This has to be viewed in the context of the fact that the total amount outstanding as on the date of declaration of the account as NPA was about Rs.14.47 crore. The secured creditor also points out that a certificate had been obtained in respect of the total amount outstanding from the jurisdictional Debts Recovery Tribunal. As against such total outstanding, the one-time settlement offer is eminently just and reasonable. As indicated above, we are fully satisfied with the explanation offered by the secured creditor with regard to the discrepancy in the book outstanding amount as indicated in the one-time settlement offer letter.

6. For the reasons set out above, we find no merit in the petitioner's challenge to the letter of rejection from the secured creditor. Consequently, W.P.No.13066 of 2021 is dismissed without any order as to costs.

7. The other writ petition, W.P.No.12082 of 2021, is for a direction to the secured creditor to issue a 'no objection certificate' (for short, NOC) for sale of flats in the project developed by the petitioner. The undisputed position is that the flats in question are the secured assets. The secured creditor says that the borrower has proceeded to sell one or more flats even without obtaining a NOC from the secured creditor. When the terms of the mortgage stipulate that the flats cannot be sold without obtaining a NOC from the secured creditor, we see no reason to direct the secured creditor to grant such NOC in a manner contrary to the terms of the agreement between the borrower and the secured creditor. As such, there is no merit in the writ petition and the grant of such NOC is a matter of contract and private negotiation between the secured creditor and the borrower. Consequently, W.P.No.12082 of 2021 is dismissed without any order as to costs.

(S.B., CJ.) (S.K.R., J.)
09.07.2021

Index : yes/no
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To:

The Assistant General Manager,
State Bank of India,
Stressed Assets Resolution Branch (SARB),
Red Cross Buildings, II Floor,
No.32, Red Cross Road, Egmore,
Chennai 600 008.

THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

(tar)

W.P.No.13066 of 2021

09.07.2021