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.No.14207 of 2021
and W.M.P.No.15089 of 2021

M/s.SS Trading Inc
Rep. by its Proprietor, E.K.N.Giri,
Old No.31, New No.51,
Veerapandy Nagar, 1st Street,
Choolaimedu, Chennai 600 094. ..Petitioner

Vs.

1. Union of India,
   Rep. by its Secretary,
   Central Secretariat,
   North Block, New Delhi 110 001.

2. Ministry of Finance,
   Rep. by its Secretary,
   Government of India,
   North Block,
   New Delhi 110 001.

3. The Governor,
   Reserve Bank of India,
   Central Office Building,
   Shahid Bhagat Singh Road,
   Mumbai 400 001.

4. Kotak Mahindra Bank Ltd.,
   Rep. by its Manager, No.27BKC,
   C27, G Block, Bandra Kurla Complex,
   Bandra (E), Mumbai 400 051.

5. Kotak Mahindra Bank Ltd.,
   Chennai Regional Branch,
   5th Floor, A wing, Samson Towers,
   402 L - Pantheon Road, Egmore,
   Chennai 600 098. ..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 4th and 5th respondents to confer the benefits of the scheme issued under the notification RBI/2021-22/32.DOR.STR.REC.12/21.04.048/2021-22 dated 05.05.2021 by restructuring the petitioner's loan account in terms of the above scheme.

For Petitioner : Mr.R.Manickavel

For Respondents : Mr.Prasath Ramasamy for RR 1 and 2

ORDER
(Made by the Hon'ble Chief Justice)

The petitioner, a borrower who has defaulted in making repayments to the respondent bank, seeks to twist an order of the Supreme Court passed on September 3, 2020 to suggest that a notice issued under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is bad as the petitioner's account could not have been treated as having become NPA on November 30, 2020.

2. The relevant part of the short order of the Supreme Court passed on September 3, 2020 needs to be noticed:

> “In view of the above, the accounts which were not declared NPA till 31.08.2020 shall not be declared NPA till further orders.”

3. The order must be seen in the appropriate context. An account is declared NPA in accordance with the guidelines issued by the Reserve Bank of India and upon certain conditions being met. The effect of an account being declared NPA is that the creditor is entitled to seek repayment, close the account and proceed to take steps to realise its dues. The benefit of the borrower is that the interest stops to run at the contractual rate.

4. What the order dated September 3, 2020 passed by the Supreme Court implied was that in the wake of the pandemic and the lockdown imposed as a result, with businesses being mostly closed, the consequences of an account being declared NPA and the secured creditor being entitled to proceed to realise the dues from the borrower should not happen.

5. It is the admitted position that the order dated September 3, 2020 no longer holds and on or about March 22, 2021 the injunction has been lifted.

6. As to when an account becomes NPA depends on the conditions indicated in the relevant guidelines by the Reserve Bank of India. Since the conditions may have been fulfilled in respect of the petitioner's account at the end of November 2020, the account was regarded as NPA from such date. However, the petitioner was not burdened with the immediate consequence of an account being declared NPA by virtue of the injunction of the Supreme Court operating at the relevant point of time. The true purport of the Supreme Court order must be seen to ensure that secured creditors did not make any claim on borrowers immediately on the accounts turning NPA. The order dated September 3, 2020 cannot be read to imply that the accounts would not turn NPA, notwithstanding the Reserve Bank of India guidelines, during the subsistence of the injunction. The order was intended to benefit the borrowers so that they did not face the double jeopardy of their businesses being closed and, simultaneously, being obliged to repay their secured creditors.

7. The ground for challenging the impugned notice dated April 23, 2021 appears to be frivolous. In any event, a notice under Section 13 (2) of the Act of 2002 is not justiciable. It is for the petitioner to respond to the notice whereupon the secured creditor is obliged to consider such response in terms of Section 13(3A) of the Act. It is only upon the secured creditor resorting to measures under Section 13 (4) of the Act that a person aggrieved thereby, including a borrower, can carry the grievance to an appropriate Debts Recovery Tribunal under Section 17 of the Act.

8. As to the other part of the petitioner's prayer for a mandamus to be issued to the secured creditor to restructure the debt claimed to be due from the petitioner, it must be said that it is a matter of contract between the borrower and the creditor and the Court cannot force the creditor to restructure the debt unless there is a statutory scheme in such regard and the petitioner fulfills the conditions of such scheme. The petitioner has failed to establish that it satisfies the requirements of any statutory scheme.

9. W.P.No.14207 of 2021 is dismissed. There will be no order as to costs. Consequently, W.M.P.No.15089 of 2021 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To:

1. The Secretary to Union of India,
   Central Secretariat,
   North Block,
   New Delhi 110 001.

2. The Secretary,
   Ministry of Finance,
   Government of India,
   North Block,
   New Delhi 110 001.

3. The Governor,
   Reserve Bank of India,
   Central Office Building,
   Shahid Bhagat Singh Road,
   Mumbai 400 001.

+1cc to M/s.R.Manickavel, Advocate, S.R.No.32295

W.P.No.14207 of 2021

SSN(CO)
RGA(23/07/2021)