IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.03.2021
CORAM :

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

W.P.No.17864 of 2020

Anoushkha Commodities (P) Ltd.
rep. by its Director Mamta Daga
281/4, 16th KM Milestone, Thanipoondi
Gummudipoondi Taluk
Thriuvallur 601 202. ... Petitioner

Vs.

Catholic Syrian Bank
Mount Road Branch
rep. by its Assistant General Manager
No.826, Tarapore Towers
Anna Salai, Chennai 600 002. ... Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records of the respondent bank bearing No.LC/30/99/2020-2021 dated 01.07.2020 and quash the same as illegal and direct the respondent Bank to include the petitioner under the Distressed Assets Fund - Subordinate debt for Stressed MSMEs and Credit Guarantee Scheme for subordinate debt.

For Petitioner : Mr.SriGanesh for
Mr.P.J.Rishikesh

For Respondent : Mrs.S.R.Sumathy

ORDER
(Made by the Hon'ble Chief Justice)

This petition is nothing but a diversion by a defaulter to keep the secured creditor at bay. Instead of the usual forthright writ petition challenging the measures taken under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the writ petitioner here has resorted to the subterfuge of certain guidelines issued by the Government of India pertaining to Micro, Small and Medium Enterprises.

2. The Credit Guarantee Scheme for Subordinate debt as floated by the Government of India on June 24, 2020 was for the purpose of providing loans through banks to promoters of Stressed MSMEs for infusion as equity/quasi equity in the businesses eligible for re-structuring. In the relevant scheme, Clause 5(v) defined an eligible borrower to mean "promoters of MSME units which are stressed, viz. SMA-2 and NPA accounts as on 30.04.2020 and can become commercially viable as per the assessment of the lending institutions. ..."

3. Thus, there are two limbs to the definition: the first being that the concerned MSME unit has to be stressed whether as SMA-2 or as an NPA; and, next, the unit must be regarded as commercially viable as per the assessment of any lending institution.

4. The petitioner says that the petitioner applied on July 01, 2020 seeking further credit facilities in terms of the said scheme, whereupon the respondent bank rejected the request, inter alia on the ground that the petitioner herein "may not become commercially viable for the reasons already conveyed in our various communications ....". In such backdrop, the respondent bank wrote to the petitioner that the petitioner was disentitled from becoming an eligible borrower under the Scheme.

5. Since it appears that the assessment of the commercial viability of an MSME unit has to be that of a lending institution and the lending institution in this case in the form of the respondent bank does not consider the petitioner to be commercially viable, the petitioner does not qualify to be an eligible borrower within the meaning of the definition in clause 5(v) of the scheme floated on June 24, 2020.

6. Accordingly, W.P.No.17864 of 2020 is dismissed. The respondent bank will be free to proceed to recover its dues and proceed against the securities that may have been furnished by or on behalf of the borrower. Similarly, the borrower will be entitled to approach the appropriate forum in accordance with law in respect of any measures that may be taken by the respondent bank under Section 13(4) of the Act of 2002.

7. There will be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kpl

To

The Assistant General Manager
Catholic Syrian Bank
Mount Road Branch
No.826, Tarapore Towers
Anna Salai, Chennai 600 002.

+1cc to Mr.P.J.Rishikesh, Advocate, S.R.No.18927.

W.P.No.17864 of 2020

SSN(CO)
CSR 30.03.2021