IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.19531 of 2020

Gevika Agro Food Private Limited
rep. by its Director, K.Revathi
W/o. Late Kumara Krishnan
No.2, 4th Cross, Jawahar Nagar
Pondicherry - 605 005. .. Petitioner

Vs

1. Bank of India
rep. by its Assistant General Manager
No.110, I Floor
Jawaharlal Nehru Street
Pondicherry.

2. Bank of India
Zonal Office
9, Errabalu St, Parry's Corner
George Town, Chennai
Tamil Nadu - 600 001.

3. Reserve Bank of India
Fort Glacis
No.16, Rajaji Salai
Chennai - 600 001. .. Respondents

Prayer: Petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records on the file of the first respondent in its proceedings BOOI/PONDY/2020-21/13 and dated August 11th 2020 leading to the Sale Notice dated 21.11.2020 under Proc.No.PDY.BOI:SALE NOTICE:2020-21:05 and quash the same as arbitrary, erroneous and unsustainable in law and on facts and consequently grant the petitioner's restructuring package on its representation dated 5.8.2020 to its Loan Account Nos.810030110000078, 81007040410000039, 81007040410000040, vide

Proceedings - RBI 2019-20/160 - DOR.No.BP.BC.34/21.04.048/ 2019-20, dated 11th February 2020 of the third respondent.

For Petitioner : Mr.V.Raghavachari
for M/s.AR.M.Arunachalam

For Respondents : Mr.P.Neelakantan
for M/s.Menon
for Respondent 1 and 2

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The grievance of the writ petitioner is that despite the writ petitioner qualifying to obtain the benefit of a restructuring plan in terms of a circular dated February 11, 2020 issued by the Reserve Bank of India to all banks regulated by it, the respondent bank in this case did not permit the petitioner to avail of the benefit.

2. According to the petitioner, the relevant circular permitted a borrower to seek restructuring of the debt even if it was in default, but the account was considered as a standard asset as on January 1, 2020. The petitioner refers to paragraph 13 of the counter-affidavit filed by the first and second respondents to point out therefrom that the assertion therein is that the petitioner failed to make repayments from November, 2019 and, as such, in February, 2020, the account became a non performing asset.

3. According to the petitioner, since the Reserve Bank of India circular of February 11, 2020 required January 1, 2020 to be reckoned as the cut-off date and the petitioner's account turned NPA only towards the end of February, 2020, the petitioner must be seen to have qualified to have the loan restructured.

4. However, the relevant paragraph in the circular of February 11, 2020 imposed two conditions that a borrower needed to fulfill: that the borrower's account should be a standard asset as at January 1, 2020; and, the account continues to be classified as a standard asset till the implementation of the restructuring. It cannot be the petitioner's case that the second limb of the condition was also satisfied by the petitioner. However, no final opinion needs to be expressed on such aspect, in view of the order proposed to be made.

5. Section 17 of the Act of 2002 permits any person, including a borrower, to carry a grievance to the appropriate Debts Recovery Tribunal upon any measure being adopted by a secured creditor under Section 13(4) of the Act. In this case, it is the petitioner's stand that the secured creditor has proceeded against the secured asset and seeks to sell the same. Surely, in such a scenario, the petitioner's right has accrued to approach the appropriate Tribunal. Since the statute provides a remedy, not only to a borrower but to any other person who may be aggrieved by any measure adopted by the bank under Section 13(4) of the Act of 2002, the petitioner ought to have approached the appropriate Debts Recovery Tribunal. Since there is an efficacious alternative remedy available to the petitioner, it may not be appropriate to continue with the writ petition and get into disputed questions of fact that may not be conveniently answered on affidavit evidence.

6. It is made clear that the observations herein are for the purpose of the present proceedings and should not be treated as binding or conclusive either in favour of the petitioner or in favour of the respondents. In the event the measures adopted by the secured creditor are challenged before the appropriate Debts Recovery Tribunal, the observations herein that may prejudice either party ought to be disregarded.

W.P.No.19531 of 2020 is disposed of. There will be no order as to costs. Consequently, W.M.P.Nos.24149 and 24151 of 2020 are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To:

1. The Assistant General Manager
Bank of India
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W.P.No.19531 of 2020

RSV(CO)
GMY(22/06/2021)