IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2021

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.20106/2020 & WMP.No.24809/2020

[Video Conferencing]

1.Mr.R.Arumugasamy
2.Mrs.Easwarisamy ... Petitioners

Versus

1.The Punjab National Bank
rep.by its General Manager,
Recovery Stressed Asset Management
Branch, Arulmani Building
No.27, Whites Road,
Chennai - 600014.

2.The Deputy General Manager
SASTRA Special Department
Punjab National Bank, TTK Road
Chennai 600 014.

3.The Chief Manager, Recovery,
Punjab National Bank,
Stressed Asset Management Bank
Zonal Office, Chennai-600 014. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the letter dated 14.10.2020 of the 3rd respondent above named rejecting the OTS proposal of the petitioners and quash the same and direct the respondents 1 to 3 to reconsider the petitioners OTS proposal letter dated 24.09.2020 in accordance with law and the applicable guidelines.

For Petitioners: Mr.R.Srinivas for
Mr.G. Vijayakumar

For RR 1 to 3 : M/s.S.R.Sumathy
Standing Counsel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2)M/s.S.R.Sumathy, learned Standing counsel accepts notice on behalf of the respondents.

(3)Originally, M/s.R.A.Samy Trading Private Limited, T.Nagar, Chennai, had availed financial assistance from State Bank of Bikaner and Jaipur and the said Bank had sanctioned a limit of Rs.11.40 Crores and subsequently, in order to meet the requirements of enhanced credit and funds and working capital of the Company, the petitioners had shifted the Accounts to the United Bank of India during December 2009 and the said Bank had granted the following limits:-

Overdraft Rs.12.50 Crore Term Loan [Takeover of Rs.7.50 Crore being balance in TL with SBB] ;
Additional Term Loan of Rs.5.00 Crore for construction of 3rd and 4th floor ;
Cash Credit Rs.12.00 Crore for working capital ;
Totally Rs.24.50 Crores.

(4)The learned counsel for the petitioners would submit that due to vagaries of business and other circumstances, the Account of the Company became ''Non Performing Assets'' and therefore, the United Bank of India had invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, [in short ''SARFAESI Act''] and issued notice dated 02.09.2013 demanding a sum of Rs.20,65,92,565/- due as on 01.09.2013 and despite that, the Company had paid a sum of Rs.20.40 Crores to the said Bank.

(5)The United Bank of India proceeded further and issued two Possession Notices dated 09.12.2013 and 11.12.2013 respectively under Section 13[4] of the SARFAESI Act and the residential property at Neelangarai was sold in the public auction on 20.10.2014 for a sum of Rs.5.5 Crores , though the market value of the said property was more than Rs.10 Crores.

(6) It is the further submission of the learned counsel for the petitioner that a One Time Settlement [OTS] Proposal for a sum of Rs.13.50 Crores was submitted and the same was approved on 11.11.2016 and accordingly, a sum of Rs.5 Crores was paid immediately and further amount of Rs.1 Crore was paid on 23.01.2019 and however, the Company could not mobilise the balance amount and though a request was made for extension of time, it was rejected vide communications dated 29.01.2019 and 06.02.2019 respectively and the OTS proposal was also cancelled on 01.12.2018 for extension of OTS along with the Down Payment of Rs.50 Lakhs and in the process, also identified an Asset Reconstruction Company, viz., M/s.ARC Company, and the said Company has also issued a Letter of Commitment dated 03.02.2020 as to its commitment to fund a sum of Rs.9 Crores to revive the OTS proposal and it was followed by a Binding Offer Letter dated 21.03.2020 undertaking to pay the said amount.

(7) The learned counsel for the petitioner would further submit that the officials of the United Bank of India orally directed the Company to enhance the offer without responding it officially and on 27.07.2020, another letter for OTS proposal for a sum of Rs.9.35 Crores was submitted and once again, there was an oral information to improve the offer and accordingly, another proposal was submitted on 25.08.2020 undertaking to pay a sum of Rs.9.50 Crores by way of OTS and upon advise, a sum of Rs.1 Crore was also deposited in ''No Lien'' Account along with the OTS Offer Letter dated 27.07.2020. The respondents/Bank had sent a communication dated 24.09.2020, rejecting the OTS as it is low and they have to improve the offer and on 27.11.2020, respondents 2 and 3 has pressurized the petitioners to give an offer letter for an amount of Rs.15 Crores and a letter to that effect was also given. In the interregnum, the United Bank of India has also proceeded against the Company under the Insolvency and Bankruptcy Code and a Resolution Professional was also appointed by the National Company Law Tribunal, Chennai Bench, vide order dated 01.05.2019 and the challenge made to the same has also been dismissed by the National Company Law Appellate Tribunal vide order dated 01.08.2019.

(8) The primordial submission made by the learned counsel for the petitioners, by drawing the attention of this Court to the Policy for Recovery and Management of Non Performing Assets dated 27.03.2020 is that as per Annexure-I, the powers have been delegated to various functionaries to approve sacrifice and the case of the petitioner falls within Head Office Credit Approval Committee [HOCAC] Level III and contrary to the same, the impugned order of rejection has been communicated to the petitioners by the Chief Manager of the respondents-Bank and in this regard, a representation dated 27.11.2020 has also been submitted to them and despite receipt and acknowledgment, no

further progress is taking place and therefore, the petitioners are constrained to approach this Court by filing the present writ petition.

(9) M/s.S.R.Sumathy, learned Standing counsel appearing for the respondents prays for short accommodation to get necessary instructions in this regard.

(10) This Court has considered the rival submissions and also perused the materials placed before it.

(11) A perusal of the impugned communication would prima facie disclose that some observation has been made by the authorities and according to the learned counsel for the petitioners, a call with regard to the rejection of OTS should have been taken by HOCOC Level III and not by the Chief Manager.

(12) This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners, either in their representation or in this writ petition, directs the 3rd respondent to consider and dispose of the petitioners' representation dated 27.11.2020 in accordance with law as expeditiously as possible and not later than four weeks from the date of receipt of a copy of this order / uploading of the order in the website and communicate the decision taken, to the petitioners.

(13) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager, (Recovery)
Punjab National Bank,
Recovery Stressed Asset Management,
Branch, Arulmani Building,
No.27, Whites Road,
Chennai - 600014.

2.The Deputy General Manager,
SASTRA Special Department,
Punjab National Bank, TTK Road,
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3.The Chief Manager, Recovery,
Punjab National Bank,
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Zonal Office, Chennai-600 014.

+2cc to M/s.G.Vijayakumar, Advocate Sr.35

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