$~4 (2021 Cause List)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 12th November, 2021

\+ W.P.(C) 9504/2021 & CM APPL. 29472/2021

RGV INFRATECH PVT LTD & ANR ..... Petitioners

Through: Mr. S.L. Gupta & Mr. Aditya Vikram, Advocates.

versus

INDIAN BANK ERSTWHILE ALLAHABAD BANK & ORS ..... Respondents

Through: Mr. Sajan Kr. Singh & Mr.Subodh Kr. Singh, Advocates for R-1 & 2.
Ms. Monika Arora, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>J U D G M E N T</u>

<u>PRATEEK JALAN, J. (*Oral*)</u>

The proceedings in the matter have been conducted through video conferencing.

1. The principal claim of the petitioner in the present writ petition is for restructuring of the loans of the petitioner no. 1 by the respondent Nos. 1 and 2- Indian Bank ["Bank"] in terms of a Circular issued by the Reserve Bank of India ["RBI"] dated 11.02.2020.

2. The credit facilities were originally taken by the petitioner No.1 in the year 2017. The petitioner No.1 is in the category of Micro, Small and Medium Enterprise ["MSME"] industry and is, therefore, covered by two circulars issued by the RBI dated 01.01.2019 and 11.02.2020.

3. The petitioner No.1 applied for restructuring of the account by a communication dated 16.02.2020. Correspondence thereafter took place between the Bank and the petitioner no. 1 which, according to the petitioners, was in furtherance of the proposals for restructuring. Ultimately, by a communication dated 19.02.2021, the Bank informed the petitioner that its account had turned into a Non Performing Asset [“NPA”] on 28.01.2020, and could not be restructured. It was recorded therein as per the RBI guidelines for MSME accounts, restructuring was permitted for accounts which were in standard category as on 01.03.2020. The petitioner no. 1 responded to this communication on 27.02.2021, following which the Bank informed it of the total overdue amounts in its accounts by a communication dated 03.03.2021. The relief of restructuring was however denied.

4. In these circumstances, the petitioners have approached the Court for the following reliefs:-

> *“a. to the Respondents No. 1 & 2 to restructure the Loans of the Petitioner No.1 as per the circular instructions of RBI dated 11.02.2020, to grant the Covid relief and to sanction the Loan of RS. 75 Lakhs under the CGTMSE scheme of the National Credit Guarantee Trust Company Ltd. Of the Govt. of India;*
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> *b. to the Respondent No. 1 of not initiating or continuing any coercive action against the Petitioner Company;*
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> *c. to the Respondent No. 1 for providing the 'value dating' effect of the amount kept by the Bank in the Fixed Deposits;*
>
> *d. to direct the Respondent No. 3 to initiate penal and monetary action against the Respondents No. 1 & 2 for intentionally skipping the instructions and guidelines of*

the Respondent No. 3 for restructuring the Loan accounts of the MSME."

5. Notice in the writ petition was issued on 03.09.2021. Directions were given for completion of pleadings, and the following order was passed:-

> *"4. Learned counsel for the petitioners submits that the relief in the present petition is not intended to impede the action taken by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["the SARFAESI Act"], in respect of which the petitioners have already approached the Debts Recovery Tribunal ["DRT"] under Section 17 of the said Act. It is made clear that the proceedings under the SARFAESI Act may proceed in accordance with law, notwithstanding the pendency of the present petition. This Court expresses no view on the merits of the action taken by the Bank under the SARFAESI Act or the proceedings instituted by the petitioners against the same. That is a matter for the DRT to consider, which is already in seisin of the proceedings.*
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> *5. List on 12.11.2021.*
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> *6. In the meanwhile, if the petitioners wishes to make a proposal for settlement to the Bank, they may do so, which the Bank will consider in its own discretion."*

6. During the course of hearing, I am informed that the petitioner has filed LPA No. 368/2021 against the aforesaid order, insofar as this Court had declined interim relief. Although the Division Bench has issued notice in the LPA, which is next listed for hearing on 22.11.2021, no interim directions have been issued. A copy of the order of the Division Bench dated 11.10.2021 has been shared on screen during the video conference hearing. Learned counsel for the parties are *ad idem*

that there is no impediment to this Court hearing the present writ petition.

7. I have heard Mr. S.L. Gupta, learned counsel for the petitioner, and Mr. Subodh Kr. Singh and Mr. Sajan Kr. Singh, learned counsel for the respondent Nos. 1 and 2- Indian Bank ["Bank"].

8. Mr. Gupta submits that the circular dated 01.01.2019 provided for a one time restructuring of MSME accounts. He draws my attention to the following clauses of the said circular:-

> *"1. Please refer to the circulars DBR.No.BP.BC.100/21.04.048/2017-18 dated February 07, 2018 and DBR.No.BP.BC.108/21.04.048/2017-18 dated June 6, 2018. In this regard, with a view to facilitate meaningful restructuring of MSME accounts {MSME as defined in the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006} that have become stressed, it has been decided to permit a one-time restructuring of existing loans to MSMEs classified as 'standard' without a downgrade in the asset classification, subject to the following conditions:*
>
> *xxxx xxxx xxxx*
>
> *ii. The borrower's account is in default but is a 'standard asset' as on January 1, 2019 and continues to be classified as a 'standard asset' till the date of implementation of the restructuring.*
>
> *xxxx xxxx xxxx*
>
> *3. It is clarified that accounts classified as NPA can be restructured; however, the extant asset classification norms governing restructuring of NPAs will continue to apply."*

9. The further circular dated 11.02.2020, provided for an extension of one time restructuring under the circular dated 01.01.2019. The

conditions stipulated therein included *inter alia* the following:-

> *"ii. The borrower's account was in default but was a 'standard asset' as on January 1, 2020 and continues to be classified as a 'standard asset' till the date of implementation of the restructuring."*

10. It is undisputed that the petitioner's account was, in fact, declared as NPA by the Bank on 28.01.2020. Mr. Gupta's contention, however, is that the RBI circular dated 11.02.2020 clearly contemplated restructuring of accounts which were standard assets as on January 01, 2020. He submits that the petitioner's account having been classified as an NPA only on 28.01.2020, the petitioner was entitled to the benefit of the said circular.

11. Mr. Gupta has also drawn my attention to the statement of account which shows that an amount of ₹52,500/- was debited from the petitioner's Cash Credit Account on 27.01.2020 on account of processing fee. According to Mr. Gupta, this processing fee was in respect of an earlier application for restructuring which was made by the petitioner.

12. Having heard learned counsel for the parties, I am of the view that the relief sought by the petitioners cannot be granted in these proceedings. The circular of the RBI dated 11.02.2020 in Clause (ii) contains two conditions:-

a) the account should be a standard asset as on January 01, 2020, and

b) it must be continued to be classified as a standard asset until the date of the implementation of the restructuring.

13. In the present case, the petitioner's application for restructuring under this circular was made only on 16.02.2020, by which time its account had already been declared as NPA. It thus could not qualify under the second limb of clause (ii) of the circular dated 11.02.2020.

14. Mr. Gupta submits that the circular dated 01.01.2019 contained a specific clause (Clause 3) permitting restructuring of NPA accounts. He submits that the later circular being an extension thereof, this clause must also apply be read into it. I notice that both circulars clearly specify the eligibility conditions, including the dates on which the accounts must be standard, and that they must be standard until implementation of the restructuring. Clause 3 of the circular dated 01.01.2019 refers to the asset classification norms governing restructuring of NPAs. The interpretation placed by Mr. Gupta would virtually negate the second limb of clause 1(ii) of the circulars dated 01.01.2019 and 11.02.2020. Suffice it to say that the entitlement of the petitioner to restructuring under the asset classification norms pertaining to NPAs is not the subject matter of the present petition.

15. Mr. Gupta next submits that the declaration of the account of the petitioner no. 1 as NPA itself was in error. I do not find any prayer of this nature in the writ petition. Mr. Gupta submits that this is because those contentions have been taken by the petitioner in pending proceedings before the Debts Recovery Tribunal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["the SARFAESI Act"]. As recorded in the order dated 03.09.2021, the scope of the present proceedings was not intended to cover the proceedings under the

SARFAESI Act, or the merits of the petitioner's case challenging those proceedings. The petitioner's case on that account is, therefore, also beyond the scope of the present proceedings.

16. For the reasons aforesaid, I do not find force in the petitioners' submission regarding its eligibility for restructuring in terms of the RBI circular dated 11.02.2020.

17. However, as far as clause 3 of the circular dated 01.01.2019 is concerned, Mr. Gupta submits that the Bank may be directed to consider the restructuring of the petitioner's NPA account in terms of the extant asset classification norms governing restructuring of NPAs. As stated above, such relief is beyond the scope of the present petition. However, if the petitioner makes such an application, it may be considered, if the petitioner no. 1 is otherwise eligible for the said relief in accordance with law. This Court has not made any observations with regard thereto.

18. The writ petition, alongwith the pending application, is accordingly dismissed, with the above observations.

PRATEEK JALAN, J.

NOVEMBER 12, 2021/*'pv'*

Signature Not Verified
Digitally Signed By:SHITU NAGPAL
Signing Date:15.11.2021 19:30:59