IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12934 of 2022

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M/s Milan Enterprises Dariyapur, Bari Road, Patna - 800004, through its Proprietor Md. Naseem, Son of Late Abdul Shakoor.

... ... Petitioner/s

Versus

1. The Chairman, State of Bank of India State Bank Bhawan, Madame Cama Marg, Mumbai - 400021.
2. The Regional Manager, State Bank of India Regional Business Office 1, Administrative Office, J.C. Road, Patna - 800001.
3. The Chief Manager, State Bank of India, Govind Mitra Road Branch, Govind Mitra Road, P.S. - Pirbahore, Patna - 800004.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dr. Binay Kumar Singh, Advocate
		Mr. Amit Singh, Advocate
For the Respondent/s	:	Mr. Binod Bihari Sinha, Advocate
		Mr. Santosh Kumar Singh, Advocate
		Mr. Divyam Verma, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

(i) For issuance of a writ in the nature of certiorari for quashment of demand notice dated 05-07-2022 u/s 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 (herein after the "Act") whereby and whereunder the respondent Bank in derogation of RBI Guidelines on Income Recognition Assets Classification and Provisioning Norms (in short IRAC Norms) classified the accounts of the petitioner as Non-Performing Assets (in short NPA) on 28-05-2022 when by their own showing (vide their letter dated 13-04-2022) the IRAC status of all the accounts except one was SMA-0 i.e. standard and by their another letter dated 06-05-2022 the status of all the accounts was also standard but by their letter dated 30-05-2022 the respondents informed the petitioner that the IRAC status of their accounts is 4 since 28-05-2022.

(ii) For holding that the restructuring of the accounts by the Bank on 27-02-2021 is in the teeth of RBI Guidelines for COVID 19 related stress contained in RBI Circular No. RBI/2020-21/16 DOR.No.BP.BC/3/ 21.04.048/2020-21 dated 06-08-2020 whereby and whereunder after restructuring of MSMEs, the repayment Funded Interest Term Loan (FITL) and Working Capital Term Loan (WCTL), was to be made in a period of seven years inclusive of moratorium period of two years but in the instant case circumventing this circular dated 06-08-2020, the Bank granted moratorium period of one year only and did not grant extra fund for infusion into the business and that the Bank had intentionally also not granted the benefits of GECL unveiled by Ministry of Finance, Government of India in May 2020 in the first instance i.e. in the year 2020, aggravating the problem of the petitioner firm.

(iii) For holding that coins above rupee one are legal tender and that the banks cannot refuse to accept the coins from borrowers when their business module itself is based on sale of packaging products to local ice-cream, incense stick, notebook, manufactures and to sellers of grocery items such as spices etc., a fact in the active knowledge of respondent Bank vide loan proposal due diligence prepared by the Bank itself.

(iv) For holding that the respondent bank has sanctioned the loan to the firm after being fully satisfied with the project and that the business module of the firm is very much mentioned in the project report of the firm.

(v) For a direction upon the Bank in the light of Master Circular Reference No. RBI/2007-2008/60 DCM (NE) No.7/ 08.07.18/2007-08 dated July 02, 2007 and RBI/2020-21/07 DCM (NE) No. G-3/08.07.18/2020-21 and July 01, 2020 to accept the coins, hither to denied, on the specious plea that it cannot accept coins more than the aggregate value of Rs. 1000/- and it is for this reason that the transactions of the firm do not reflect from the account yet, on the contrary, the bank has been accusing the petitioner of not routing the transactions into their account leaving the petitioner in a veritable quandary.

(vi) For a direction upon respondent Bank to restore the Drawing unit to the original limit in the cash credit account as it is the Bank which has refused to accept coins being sale proceeds.

(vii) For holding that the Guidelines/Circulars of RBI u/s 46 (4) of Banking Regulation Act, 1949 have statutory flavor and any contravention thereof is fraught with penal consequences for the Bank and Financial Institutions but in the instant case, the Bank as if an autonomous body has flouted the guidelines with impunity.

(viii) For a direction upon Bank to accept coins tendered by the retail purchasers to the petitioner so that the same may reflect as transaction into the account or in the alternative consider GST returns as actual transactions.

(ix) For any other relief / reliefs for which the petitioner may be found entitled to in the facts and circumstances of this case.

And in the interim the petitioner prays (i) for issuance a direction upon respondent Bank to consider letters dated 19-08-2019, 20-03-2020, 29-06-2020, 28-09-2020, 10-06-2022 and 30.06.2022 in terms of RBI Guidelines and as per law, which have been not been responded to, yet coercive action under SARFAESI Act has been initiated by the Bank with the issuance of demand notice. (ii) For a direction upon Bank not to take further coercive measure under SARFAESI Act till disposal of the representation/letters as referred to above and/or during pendency of this writ application.

Learned counsel for the respondent Bank states that the present petition is premature, inasmuch as no action under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the Act”) stands taken.

Learned counsel for the petitioner submits that petitioner, with the issuance of the demand notice dated 05.07.2022, issued under Section 13(2) of the Act, had submitted several representations which are yet pending consideration with the Bank.

Learned counsel for the respondent Bank states that prior to the passing of any order/taking any action under the Act, the petitioner’s case, as set out in the representation(s), shall be considered and decided in accordance with law, and till then, no coercive action shall be taken against the petitioner.

Statement accepted and taken on record.

In view of the statement made on behalf of the respondent Bank, the present petition stands disposed of. However, no coercive action shall be taken against the petitioner till the decision is taken on the petitioner’s request.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	15.09.2022
Transmission Date	