

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 681 of 2021

With

CAN 1 of 2021

Reserved on: 08.03.2022

Pronounced on: 20.04.2022

Birla Tyres Limited

...Appellant

-Vs-

Reserve Bank of India and Others

...Respondents

Present:-

Mr. Sabyasachi Chaudhury,
Mr. Retobroto Mitra,
Mr. Rajarshi Dutta,
Mr. V.V.V. Sastry,
Mr. Debjyoti Saha,
Mr. Vishwarup Acharya, Advocates

... for the appellant

Mr. Ratnanko Banerjee, Sr. Adv.
Mr. Soorjya Ganguli,
Ms. Pooja Chakraborti,
Mr. Kanishk Kejriwal,
Ms. Radhika Misra, Advocates

... for the respondent no. 2

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal at the instance of the writ petitioner is directed against the order of the learned Single Judge dated 9th July, 2021 whereby WPA 10637 of 2021 has been dismissed.

2. Appellant had approached the Writ Court with the plea that against respondent no. 3, there was a term loan of working capital outstanding before demerger on 31st December, 2018. A part of the said amount was transferred to the appellant's books on demerger with effect from 1st January, 2019. The appellant had the current account and also cash credited account with the respondent no. 2 bank and as per the averments made in the petition, on 30th April, 2021, the appellant had transferred Rs. 3.73 crores in the current account and had made a request

to the respondent no. 2 to transfer a sum of USD 5, 00, 000 to a third party to meet its business commitment but the respondent no. 2 had debited the sum of Rs. 3.73 crores and also Rs. 17 lakhs from the current account and had subsequently adjusted to the cash credited account. The account of the appellant was classified as non-performing asset (NPA) with effect from 30th September, 2020 without taking into account COVID relief package. Hence, in the writ petition, the appellant had made a prayer to refund Rs. 3.90 crores to the account and also to recall/rescind the notices issued by the respondent no. 2.

3. Learned Single Judge while passing the order under appeal has taken the view that the proceedings against the respondent no. 2 bank under Article 226 of the Constitution is not maintainable and the petition involves disputed questions of fact and that there is no public element involved. Taking note of the fact that the bank had already instituted proceedings under the Insolvency and Bankruptcy Code, 2016, the learned Single Judge has dismissed the petition.

4. Submission of learned Counsel for the appellant is that in the IBC proceedings, the issue of NPA cannot be decided and that in view of the order of the Hon'ble Supreme Court and also the RBI circular, the account could not have been declared as NPA during the COVID period and that the respondent bank is not justified in debiting the amount from the current account of the appellant.

5. Learned Counsel for the respondent no. 2 bank has submitted that the recall notice cannot be challenged in writ petition and the account of the petitioner has not been classified as NPA in violation of the order of the Hon'ble Supreme Court or the RBI policy.

6. Learned Counsel for both the parties have relied upon several judgments in support of their respective plea.

7. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that undisputedly, the respondent bank has initiated the proceedings under Section 7 of the Insolvency and

Bankruptcy Code, 2016. Learned Single Judge has already held the writ petition to be maintainable for the purpose of moratorium imposed by the Hon'ble Supreme Court and thereafter has examined the issue and taken the view that since the bank has already instituted proceedings under the Insolvency and Bankruptcy Code, 2016 and the authorities thereunder are better equipped to adjudicate the issue, therefore, in the light of the judgment of the Hon'ble Supreme Court in the matter of **Small Scale Industrial Manufactures Association (Registered) vs. Union of India and Others** reported in **(2021) 8 SCC 511**, has refused to interfere by observing that the authorities under the Code are competent to assess the correctness of the decision of the bank to treat the account of the appellant as NPA and to recall the advances. Nothing has been pointed out to show that there is any restriction upon the power of the authorities under the Code to go into these issues. Hence, we are of the opinion that the learned Single Judge has committed no error in dismissing the petition. We have refrained ourselves from going into the merits of the issue as the parties have the opportunity to raise these issues before the authorities under the Insolvency and Bankruptcy Code, 2016 and any observation by this Court at this stage may prejudice their right.

8. Hence, in our opinion, no case for interference in the impugned order of the learned Single Judge is made out. The appeal is accordingly, dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
20.04.2022

PA(RB)

(A.F.R. / N.A.F.R.)