IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 15438 of 2022

JMV Polymer Limited & Anr

vs.

Panjab National Bank & Ors.

For the petitioner	:	Mr. Anirban Ray, Adv. Mr. Sudhasatva Banerjee, Adv. Mr. Prantik Gara, Adv. Mr. Radhey Shyam Tiwari, Adv.
For Respondent nos. 1 & 2	:	Samrat Sen, learned AAAG.
	:	Omkar Ganguly, Adv.
Last Heard on	:	15.09.2022.
Delivered on	:	20.09.2022.

Moushumi Bhattacharya, J.

1. The petitioners seek quashing of notices issued by the respondent Bank under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The petitioners rely on a Circular of the Reserve Bank of India dated 5.5.2021 issued to all

Commercial Banks and Non-Banking Financial Companies for restructuring of loans during the Covid 19 Pandemic. The petitioners, through learned counsel, also rely on several communications between the petitioners and the Bank by which the petitioners' loan was proposed to be restructured pursuant to an invocation under the RBI Circular and steps taken by the Bank in connection thereto. Counsel places section 13(2) of the 2002 Act and submits that the Bank could not have published the demand notices in the newspapers naming the petitioners.

2. Learned counsel appearing for the respondent Punjab National Bank submits that restructuring of a loan cannot be claimed as a matter of right and that the petitioners' account was declared as a NPA on 23.3.2021. Counsel relies on a communication from the Bank dated 4.2.2022 by which the restructuring proposal was dropped by the Bank. Counsel further relies on Rule 3 of The Security Interest (Enforcement) Rules, 2002 to submit that the Bank is entitled to publish the content of the demand notice in newspapers under the said Rule.

3. The dispute in the present matter relates to three successive notices issued by the Bank to the petitioner under section 13(2) of the 2002 Act and publishing of the demand notices in connection with the petitioners' loan in newspapers. It must first be clarified that the respondent Bank has not taken the point of maintainability of the writ petition. Parties appear to be *ad idem* that the controversy has not ripened to the stage where an application may be taken out under section 17(1) of the 2002 Act before the Debt Recovery

Tribunal. Regardless of the position taken on behalf of the parties, this Court is also of the view that the relief in the writ petition relates to the petitioners claim *vis-a-vis* the restructuring of the petitioners' loan by the Bank and the timing of the impugned notices.

4. The undisputed facts reflected from the documents before the Court include the following :

a) Bank responded to the petitioners' invocation for restructuring under the RBI Circular on 22.6.2020 and approved sanction of the proposal for enhancement of the existing overall cash credit limit and other measures. The terms of sanction was enclosed with the Bank's letter of 22.6.2020.

b) The Terms also include Processing and Review charges of the Bank for the restructuring requested by the petitioners.

c) The Bank deducted Review Charges on 25.3.2021 from the accounts of the petitioners which is reflected from the statement period from 1.4.2020 – 31.3.2021.

d) The Bank issued the first notice under section 13(2) of the 2002 Act on 28.4.2021 stating that the accounts of the petitioners have been classified as NPA on 23.3.2021.

e) A second notice under section 13(2) was issued by the Bank on 2.6.2021.

f) A third notice under section 13(2) was issued on 15.6.2022.

g) The Bank dropped the restructuring proposal by a letter dated 4.2.2022.

h) The demand letters were published on 28.6.2022 in newspapers.

5. The peculiarity of the impugned action taken by the Bank would appear from the classification of the petitioners' accounts as NPA on 23.3.2021 when compared to the Processing/Review Charges deducted by the Bank from the petitioners' accounts from 25.3.2021. The contrary stand of the Bank would also appear from its letter dated 4.2.2022 dropping the restructuring of the loan of the petitioners while the NPA status was given to the petitioners' accounts much earlier on 23.3.2021. The Bank appears to have taken definite steps in the restructuring of the petitioners' loan under the RBI Circular providing relief to entities, particularly MSMEs, during the Covid-19 Pandemic.

6. Clause 2 (vi) of the RBI Circular is relevant in this context. The said Clause provides that the restructuring of a borrower's account shall be treated as "invoked" when the lending institution and the borrower agree to proceed with the efforts towards finalising of restructuring plan to be implemented in respect of such borrower. The invocation is to be done by 30.9.2021 under this Clause.

7. In the present case, the Bank's letter of 22.6.2020 falls within the time limit provided under Clause 2 (vi) of the RBI Circular. The endorsement of the Bank asking the petitioner to submit documents as late as in October, 2020 further shows that the Bank acted in terms of Clause 2 (vi) of the RBI Circular.

8. Section 13(2) of the 2002 Act deals with enforcement of a security interest where any borrower, who is under a liability to a secured creditor under a security arrangement, defaults in repayment of a secured debt and his

account is classified as a non-performing asset, the secured creditor may make demand by a notice in writing to the borrower to discharge his full liability to the secured creditor within sixty days from the date of notice failing which the secured creditor would be entitled to exercise rights in section terms of 13(4). There is no provision for publishing the notice referred to in section 13(2) in newspapers or otherwise. Rule 3 of The Security Interest (Enforcement) Rules, 2002 concerns service of a demand notice under section 13(2) by providing for the mode and manner of such service.

9. The *proviso* to Rule 3 envisages a situation where the authorised officer has reason to believe that the borrower is avoiding service of the notice or cannot be found. In that event, the *proviso* contemplates service by affixing a copy of the demand notice on a conspicuous part of the house where the borrower lives or carries on business and also by publishing the contents of the demand notice in two leading newspapers having sufficient circulation in that locality. The *proviso* to Rule 3, which has been relied on by the respondent Bank, clearly contemplates a situation where service under Rule 3(1) cannot be effected in the manner provided. The foremost requirement under the *proviso* is that the borrower is avoiding service or cannot be found. The *proviso* also incorporates a requirement where the authorised officer (of the secured creditor) has "*reason to believe*" that the conditions precedent as stated aforesaid exist for effecting the service by the alternative modes. In the present case, all three of the impugned notices were served on the petitioners and there is no evidence on record to show that the petitioners were either avoiding

service or could not be located at the relevant point of time. The petitioners were regularly communicating with the Bank as late as in June, 2022. Hence, the conditions precedent for publication of the demand notices under the *proviso* to Rule 3 of the Security Interest Rules, 2002, did not exist and were not fulfilled for the Bank to take the step of publication of the notices under section 13 (2) of the Act in the newspapers.

10. By reason of the above, namely, the Bank acting on the invocation of restructuring under the RBI Circular, deducting Review Charges even after the accounts of the petitioners were allegedly declared as NPA and proceeding to publish the impugned notices contrary to the 2002 Act and Enforcement Rules of 2002, this Court is of the view that the petitioners have made out a case for the relief prayed for.

11. WPA 15438 of 2022 is accordingly allowed and disposed of by restraining the respondents from taking any further steps in respect of the impugned notices dated 28.4.2021, 2.6.2021 and 15.6.2022 or publishing the same in newspapers. The respondent Bank is also directed to revisit its decision of dropping the restructuring proposal of the petitioners' loan. Needless to say, the petitioners shall provide all necessary information to the Bank and comply with the required conditions for reconsideration as directed by the Court.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)