

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA.

W.P.O. 2366 of 2022

Varun Roshan Kohli

Vs

Union of India And Ors.

For the petitioner : Mr. Jishnu Chowdhury, Adv.
Mr. Altamash Alim, Adv.
Ms. Rajashree Bhowmick, Adv.

For the Union of India : Ms. Sarda Sha, Adv.

For the Respondent No. 7 & 8 : Mr. Shiv Mangal Singh, Adv.
Ms. Jahan Ara Kuloum, Adv.

Last Heard on : 23.09.2022.

Delivered on : 03.11.2022.

Moushumi Bhattacharya, J.

1. The petitioner prays for a direction on the respondent State Bank of India to abide by a Letter of Arrangement dated 28th June, 2021 and give

effect to the same. The petitioner prays for a consequential order on the Bank to give the benefit of the said Letter of Arrangement to the petitioner. The petitioner was served with notices from April, 2022 under sections 13(2) and 13(4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the petitioner has filed an appropriate application before the Debts Recovery Tribunal (DRT), Kolkata. The parties are contesting the said proceedings.

2. The respondent Bank, through its learned counsel, takes the point of maintainability of the writ petition on the ground of the petitioner having challenged the impugned notice under the provisions of 2002 Act by invoking the writ jurisdiction of this Court which cannot be done according to the respondent. Counsel submits that the Bank has also filed proceedings under section 19 of The Recovery of Debts and Bankruptcy Act, 1993 before the DRT, Kolkata and that the issues raised by the petitioner in this writ petition can be urged by the parties before the DRT.

3. Learned counsel appearing for the petitioner opposes the issue of maintainability on the ground that the petitioner has restricted his prayer only to the Letter of Arrangement/restructuring dated 28th June, 2021 which the Bank had suppressed from the petitioner at the material point of time.

4. The peculiar facts of the present case are required to be narrated for answering the point of maintainability. The facts, in brief, are stated as follows.

5. The petitioner had three separate transactions with the respondent Bank which consisted of a cash credit loan of 3.50 crores, a housing loan and a vehicle loan. The letters of sanction of the said three loans are on record. It is an undisputed fact that there was no default on the part of the petitioner in any of these three accounts until March, 2021. This would appear from the schedule forming part of records. From the schedule, it would appear that the payment dates of the Letters of Credit (LC) were 23rd December, 2019 to 18th January, 2021. The amounts under the Letter of Credit only fell due in March, 2021 and the amount was approximately Rs. 162 lacs. Hence, the petitioner's accounts could only become NPA after 90 days from March, 2021 which would be June, 2021. The limits were renewed on 2nd April, 2021 by another twelve months from 10th March, 2021. This was due to the fact that the accounts had not become NPA even though amounts under the LCs had fallen due. The accounts were in fact regular as of 2nd April, 2021 when the Bank renewed the limits as stated above. The letter of sanction dated 2nd April, 2021 described, as the Letter of Arrangement, is part of records. The letter has been addressed by the Bank to the proprietor of Kohlbros Wireless Solutions, namely the petitioner.

6. The petitioner thereafter applied for restructuring on 28th May, 2021 in accordance with the Reserve Bank of India Circular dated 17th March, 2016. The Framework for Revival and Rehabilitation of MSMEs provided in the said Circular reflects that the banks should identify incipient stress in the account by creating three sub-categories under the Special Mention

Account (SMA) category as given in the Table under clause 2 of the Circular. SMA-2 provides for principal or interest payment becoming overdue between 60-90 days as the basis for classification. The said clause further provides that on the basis of the above early warning signals, the branch maintaining the account should consider forwarding the traced accounts with aggregate loan limits above Rs.10 lacs to the committee under para 3.3 of the Circular within five working days for suitable corrective action plan. Clause 2.1 further provides that forwarding account to the committee for a Corrective Action Plan (CAP) is mandatory in cases of accounts reported as SMA-2. The material on record shows that the petitioner fell within SMA-2 and would have got twelve months if the restructuring had been allowed by the Bank in terms of the Circular.

7. The restructuring was in fact allowed on 28th June, 2021. However, the letter of restructuring was not made over to the petitioner by the Bank. The petitioner was therefore under the impression that it was in default of payment of Rs. 162 lacs under the LCs even though the petitioner was actually not in default and was not required to make any payment until June, 2022. The petitioner, in order to avoid being in default and since the petitioner was not informed of the restructuring at the material point of time, collected money from the customer of Kohlbros, namely the Kerala Police and paid Rs. 2.94 crores to the Bank. The petitioner also requested the Bank to appropriate this amount by a letter dated 19th August, 2021 being under the impression that the petitioner was in default.

8. The letter is part of records. The petitioner in fact thanked the Bank for standing by the petitioner MSME during the critical time after the outbreak of the pandemic. The Bank appropriated Rs. 2.94 crores accordingly. The petitioner thereafter fell into default with respect of his housing and vehicle loans being all along under the impression that the petitioner continued to be in default. The Bank appropriated Rs. 92.56 lacs on 27th August, 2021. On 27th September, 2021, the petitioner was called to the Bank to sign a letter of acceptance whereby the petitioner acceded to such demand but recorded that the petitioner was asked by the Bank not to put a date on the said letter.

9. The significant facts in the present writ petition show that the Bank failed to inform the petitioner of the restructuring which was allowed on 28th June, 2021 whereas the letter of sanction was not made over to the petitioner. The petitioner was hence under the impression that the petitioner's accounts had not been restructured and the petitioner wrote several letters requesting the Bank to enhance the credit limits. In fact, the petitioner's letter of 19th August, 2021 informing the Bank that the petitioner is due to receive Rs. 2.5 crores from Kerala Police and asking the Bank to adjust the part of the said amount was written at a time when the restructuring had already been allowed by the Bank. The Bank on the other hand, knowing fully well that the petitioner's accounts had been restructured as of 28th June, 2021, appropriated the money from Kerala Police while refusing to give the benefit to the petitioner under the RBI Circular. Thus, the Bank took full advantage of the petitioner being

unaware of both the RBI Circular and the Letter of Arrangement/ restructuring dated 28th June, 2021.

10. From the facts as stated above, there is little doubt that the petitioner is a victim of circumstances where the Bank chose to remain silent at the material point of time and failed to inform the petitioner of certain extended time limit relaxation by reason of the restructuring of the petitioner's accounts. Admittedly, there was no default in the accounts until March, 2021 and the accounts could not have been declared as NPA before 90 days from March, 2021. Further, had the Bank informed the petitioner in June, 2021 itself of the restructuring, the petitioner would not have asked the Bank to appropriate a substantial part of the money received from Kerala police in August, 2021. This resulted in a cascading effect of financial stress to the petitioner's accounts and the petitioner thereafter defaulted in his housing and vehicle loans. The petitioner's request to the Bank to appropriate money received from Kerala police was an act of desperation in order to save himself from further defaults. This act of desperation however was not necessary at all since the petitioner's accounts had been restructured in June, 2021.

11. The issue raised by the Bank on maintainability becomes irrelevant in light of the modified prayer which is now being sought for by the petitioner. The petitioner does not seek any stay on the notices issued by the Bank under sections 13(2) and (4) of the SARFAESI Act. The petitioner seeks to pursue the proceedings which are already before the DRT. The scope of

relief sought for from this Court relates to the conduct of the Bank in failing to inform the petitioner of the restructuring and compelling the petitioner to allow the Bank to appropriate substantial sums of money leading to further defaults on the part of the petitioner. The question of maintainability would have been successful had the petitioner prayed for stay of the notices issued by the Bank in spite of the restructuring. This Court is inclined to hold that the writ petition is maintainable since the relief of actions under the SARFAESI is not being pressed.

12. The charge of suppression made by the Bank against the petitioner with reference to a letter dated 11th November, 2021 was only disclosed in the opposition of the Bank in the section 17 proceedings initiated by the petitioner before the DRT. The affidavit was served on the petitioner only in August, 2022. Hence, it cannot be said that the petitioner has suppressed any material before this Court. In any event, the letter dated 11th November, 2021 stating that the entire outstanding of the Working Capital Term Loan (WCTL) would be liquidated by 31st December, 2021 would not have arisen at all had the Bank corrected its conduct by appropriate steps as of June, 2021. Further, this letter also goes against the time limits for repayment in accordance with the restructuring of June, 2021 and brings the liability forward by several months. This Court is accordingly inclined to grant the relief to the petitioner as prayed for.

13. The cases cited on behalf of the Bank proceed on the writ petition not being maintainable on the ground of an alternative remedy being available

to the writ petitioner. *Commissioner of Income Tax vs. Chhabil Dass Agarwal*; (2014) 1 SCC 603, *Union Bank of India vs. Satyawati Tondon*; (2010) 8 SCC 110, *Devi Ispat Limited vs. State Bank of India*; (2014) 5 SCC 762, *Authorized Officer State Bank of Travancore vs. Mathew K.C.*; (2010) 8 SCC 85 and *Phoenix Arc Private Limited vs. Vishwa Bharati Vidya Mandir*; (2022) SCC 345 are decisions where the Supreme Court found the existence of an alternative remedy under the SARFAESI Act, 2002. The Supreme Court was hence of the view that the petitioners had a statutory remedy of filing proceedings under section 17(1) of the SARFAESI Act.

14. These decisions lose relevance since it has already been held above that the parties are pursuing and contesting the proceedings before the DRT both under the SARFAESI Act as well as The Recovery of Debts and Bankruptcy Act, 1993 and the fact that the petitioners have not prayed for any relief with regard to the impugned notices issued by the Bank under the SARFAESI Act. On the other hand, in *ITC Ltd. vs. Blue Coast Hotels Ltd.*; AIR 2018 SC 3063, the Supreme Court approved of the view taken in *Mardia Chemicals Ltd. vs. Union of India*; (2004) 4 SCC 311 in respect of the mandatory requirement of furnishing of reasons and the duty to act fairly and reasonably on the part of the concerned authorities. A constitutional Bench in *Central Bank of India vs. Ravindra*; AIR 2001 SC 3095 held that circulars issued by the Reserve Bank of India are binding on all banks, which fall within the net of such directives and may be treated as standards for the purpose of deciding whether the interest charged is excessive or opposed to public policy. *Windson Electronics Private Ltd. vs. Union of India*;

(2004) 2 69 ITR 481 points to the role of the Bank as trustee in respect of the funds received from a person.

15. In view of the above discussion this Court is inclined to direct the Bank to give effect to the Letter of Arrangement dated 28th June, 2021 and to give the benefit of the same to the petitioner. Any money appropriated by the Bank from the account of the petitioner for the purpose of adjustment or otherwise should be returned to the petitioner within a period of 4 weeks from date. Upon receiving the same the petitioner shall make payments of all outstanding amounts to the Bank from the period when the amounts became due until September, 2022 within a period of 2 weeks thereafter. It is understood that the petitioner shall make the outstanding payments in respect of the credit facilities, home loan and vehicle loan availed of by the petitioner from the respondent Bank.

16. WPO 2366 of 2022 is disposed of in terms of the above.

17. Learned counsel appearing for the petitioner prays for stay of the operation of the order. Such prayer is considered and refused.

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

(Moushumi Bhattacharya, J.)