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WPA 4747 of 2023

Baro Maa Hospital Pvt. Ltd. & Ors.

-Vs-

Union of India & Ors.

Mr. Rupak Ghosh,
Mrs. Sweta Gandhi

... for the petitioners

Ms. Chandreyi Alam,
Mr. Sujit Mitra

... for the Union of India

Mr. Om Narayan Rai,
Mr. P. Choudhury

... for the respondent Indian Bank

The petitioners pray for a direction on the respondent Bank to grant the benefit of an Emergency Credit Line Guarantee Scheme (ECLGS) in favour of the petitioners for an amount of Rs. 3.50 crores in accordance with the Guidelines and Circulars issued by the National Credit Guarantee Trustee Company.

The other prayers in the writ petition relate to restraint on the respondents from proceeding in terms of a Demand Notice dated 19.04.2022 and the Possession Notice date 30.07.2022. By earlier orders, the petitioners had been directed to approach the Debts Recovery Tribunal and the Debts Recovery Appellate

Tribunal for necessary orders since the DRT is the statutory forum available to the petitioners under The SARFAESI Act, 2002. Hence, the relief claimed to the extent of the impugned Possession Notice is not before the Court.

The only issue which is to be decided is whether the petitioners are eligible for the benefit of the ECLGS in the backdrop of the documents shown to Court.

There is evidently urgency in the matter since learned counsel appearing for the petitioners submits that today, i.e. 31st March, 2023, is the last date for the validity of the Scheme.

Upon hearing counsel for the petitioners and the respondent Indian Bank, this Court is of the view that the petitioners are not eligible for the benefit of the Scheme. The reasons are stated below.

First, the Emergency Credit Line Guarantee Scheme (ECLGS) was issued by the National Credit Guarantee Trustee Company (Ministry of Finance, Government of India) read with Resolution Framework/s of the Reserve Bank of India specifically for helping eligible micro, small and medium enterprises/businesses/borrowers for tiding over the financial crisis caused in the wake of the Covid-19 pandemic. This is the stated purpose of the Scheme and would appear from Clause 2 of the Operational Guidelines updated as on 30.03.2022. The essential

arrangement was that the eligible borrowers would be provided 100% guarantee coverage for loans outstanding as on 29.02.2020 or 31.03.2021 or 31.01.2022 whichever is earlier in the form of additional timelines/working capital term loans and other forms of non-fund based facilities. A document placed on behalf of the Bank shows that the petitioners had written to the Bank on 22.02.2020 giving various reasons for not being in a position to repay the loan instalments in accordance with the agreed timelines. One of the reasons given is 'lockdown' in the last one year. Since the letter is of 22.02.2020 which is before the first wave of pandemic and the ensuing lockdown commenced from 23.03.2020, it is evident that the petitioners' alleged financial strain happened before the lockdown. The petitioners hence cannot claim that they are the intended beneficiaries of the ECLGS which was to handhold the borrowers who faced financial strain by reason of Covid-19 pandemic.

Second, an internal communication from the Bank of 23.03.2018 records that the petitioners' account may also have become NPA but that due to a system error, the account is treated to be standard. Even if this internal communication is discounted, earlier letters from the Bank of October, November and December, 2018 would show that the Bank gave repeated reminders to the petitioners for regularizing

the concerned term loan amounts. This was followed by a further letter of 09.07.2020 which again put the petitioners on notice of the default and that the Bank would initiate action under the SARFAESI Act, 2002. The correspondence makes it clear that the petitioners' loan accounts were vulnerable and the petitioners were put on notice of their default from 2018 onwards. It is relevant to state that ECLGS was floated only on 23.05.2020.

The related issue would be whether the petitioners can claim relief despite being put on notice of their default (alleged or otherwise) from 2018. The purpose of the ECLGS is to bail small and medium scale business out from financial distress and the relief is only intended to be given to deal with financial crisis caused by Covid-19 pandemic. Extending the benefit of such a Scheme to the petitioners would hence amount to a premium given to defaults by borrowers. Reference in this context may be made to *K.P. Varghese vs. Income Tax Officer, Ernakulam; (1981) 4 SCC 173* where the Supreme Court held that a statute has to be construed to further the object thereof.

The other important reason is the balance of convenience. The Bank issued a notice under Section 13(2) of the SARFAESI Act, 2002 on 19.04.2022. Hence, even if all earlier correspondences are discounted, the petitioners had notice of the proceeding, which the

Bank initiated under the SARFAESI Act. The petitioners did not challenge this action before any forum which the petitioners were authorized to do under the SARFAESI Act. The petitioners remained silent even thereafter till 27.02.2023 when the present writ petition was filed. The petitioners' silence or inactivity is nothing short of acquiescence. The Supreme Court decision in *U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, (2006), 11 SCC 464* can be referred to in this context.

Apart from the lack of eligibility, the petitioners' lack of diligence also does not assist the petitioners in seeking relief on the last day of the validity of the Scheme. Since the petitioners' default forms the basis of the notice under Section 13(2), directing the respondent Bank to provide the assistance of the Scheme to the petitioners would hence become an exercise in futility. The respondent Bank certainly cannot be made subject to such a direction.

The fact of the respondent Bank accepting approximately Rs. 95 lacs after the issuance of notice under Section 13(2) is an act, which is independent of the relief claimed in the writ petition. Although a document has been placed on behalf of the Bank being a message by which the petitioners chose to opt out of the Scheme as on 16.09.2020 the same has not been

taken into consideration in view of the nature of the communication.

Relief can only be granted to the petitioners if they are considered to be eligible under the Scheme. Having found that the petitioners do not satisfy the benchmark of being eligible borrowers under the Scheme, WPA 4747 of 2023 is dismissed without any order as to costs.

(Moushumi Bhattacharya, J.)