IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Moushumi Bhattacharya

WPA 7924 of 2023

Tibrewal Steels Private Limited & Ors.
-Vs-
IDBI Bank Limited & Ors.

For the petitioners	:	Mr. Siddhartha Banerjee, Adv. Mr. Debashis Karmakar, Adv. Mr. Arya Nandi, Adv.
For the respondents	:	Mr. Supriya Singh, Adv. Ms. Sangjukta Singh, Adv.
Last Heard on	:	01.05.2023
Delivered on	:	02.05.2023

Moushumi Bhattacharya, J.

1. The petitioner nos. 2, 3 and 4 are the guarantors and Directors of the petitioner no. 1 Company and seek a direction on the respondent IDBI Bank to accept a sum of Rs. 2,25,51,833/- from the petitioners towards repayment of

all the credit facilities which are lying outstanding in the name of the petitioner no. 1 Company and to the full and final satisfaction of the respondent Bank.

2. The respondent Bank is the IDBI Bank Limited. Hence, the Bank has taken a point of maintainability of the writ petition, which should be considered first.

3. Learned counsel appearing for the petitioners has relied on *Federal Bank Ltd. Vs. Sagar Thomas And Others; (2003) 10 SCC 733* where the Supreme Court summarized the position of maintainability of a writ petition filed under Article 226 of the Constitution in respect of 8 categories. The 7th category was a private body discharging public duty or positive obligation of a public nature. *Federal Bank* was relied on in a judgment passed by this Court in *WPA 11406 of 2022 (M/s. Olive Tree Retail Private Limited & Anr. Vs. South Indian Bank Limited & Anr.*) where the Court was faced with a similar resistance to the maintainability of the writ petition. The issue also came up before a coordinate Bench in *Pearson Drums & Barrels Pvt. Ltd. Vs. General Manager, Consumer Education & Protection Cell of Reserve Bank of India and Others; 2021 SCC Online Cal 503*. The aforesaid decisions make it clear that a writ petition is maintainable even against a private Bank if it involves the enforcement of a statutory duty on the part of the Bank, which involves discharging a public duty or a positive obligation of a public nature.

4. In the present case, the Bank announced a special Scheme "Amrit Mahotsav Rinn Bhugtan Yojana" by way of a Press Release for the purpose of boosting its recovery effort through One time Settlement (OTS) of NPAs up to Rs. 10 crores. The Scheme indicates that the benefit would be passed on to a large number of account holders whose accounts have become NPA. The Scheme hence has a public element attached to it and the Bank is discharging a public duty, which the Bank is under a positive obligation to uphold. These conditions persuade the Court to hold that the writ petition is maintainable.

5. With regard to the merits of the matter, the account of the petitioner no. 1 Company became NPA in 2017 and the Bank initiated proceedings under The SARFAESI Act, 2002 by issuing the notices under Section 13(2) and 13(4) of the said Act. The Bank also approached the Debts Recovery Tribunal (DRT) in 2018. The stand taken on behalf of the Bank is that the petitioners should go before the DRT and contest the pending proceedings. Having held the writ petition to be maintainable on the reasons stated above, this Court is of the view that the petitioners have a right to approach the Writ Court for seeking a Mandamus on the Bank to discharge its obligations under the Scheme. This is particularly where learned counsel appearing for the Bank submits that the Scheme does not have a fixed time-line or an end-date.

6. The records placed before the Court show the up-front payment of OTS amount which was payable on or before 28th February, 2023. The writ petition,

however, encloses a mail from the Bank to the petitioners dated 1st March, 2023 stating that the Bank is "resending" the sanction letter as requested. The mail encloses the Bank's letter of 31st January, 2023 stating that the petitioners are eligible for OTS under the Scheme towards full and final settlement subject to the petitioners' unconditional and absolute acceptance of the sanction and settlement of dues. Counsel appearing for the petitioners submits that the petitioners received the mail only on 1st March, 2023 and did not receive any mail on 31st January, 2023 and that the "resending of the mail" is an incorrect statement.

7. Since the Bank has already informed the petitioners of its eligibility under the Scheme, the only dispute is whether the petitioners received the mail prior to the date on which the petitioners were to make its payment under the Scheme. The Bank has not been able to show any documents to support the fact that the petitioners were aware of the Scheme at any time before 1st March, 2023. Hence, the Court must conclude that the petitioners only became aware of its eligibility under the Scheme on or before 1st March, 2023.

8. If that be the case, the petitioners must be given an opportunity to pay the admitted amount which the petitioners are due to make to the Bank and towards the Scheme in question. The admitted amount, from the Bank's own document, is Rs. 2,25,51,833/-. This figure has not been disputed by the Bank. This Court is, therefore, of the view that the petitioners should be given

an opportunity to make payment of this amount to the Bank in pursuance of the conditions of the special Scheme and by way of OTS of the account of the petitioner no. 1.

9. WPA 7924 of 2023 is accordingly disposed of with a direction on the respondent Bank to receive and accept the amount of Rs. 2,25,51,833/- from the petitioners towards payment of the petitioners' credit facilities which are lying due and payable to the respondent Bank and to the full and final satisfaction of the credit facilities. The petitioners shall make the payment within 7 days from date. It should also be noted that the eligibility of the petitioners for the Scheme in question was already recorded by the Bank in its letter dated 31st January, 2023.

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

(**Moushumi Bhattacharya, J.**)