11.05.2023
Item No.10
gd/ssd

MAT/700/2023
IA NO: CAN/1/2023
JOYKEY MERCHANDISE PRIVATE LIMITED
VS
THE KARUR VYSYA BANK LIMITED AND ORS.

Mr. Vivekananda Bose,
Mr. Ratikanta Pal
..for the Appellant.

Ms. Soni Ojha
..for the Bank.

Mr. Rajesh Upadhyay
..for the Respondent No.3.

Mr. Gautam Chakraborty
..for NCGTC.

1. This intra court appeal by the writ petitioner is directed against the order dated 31.03.2023 passed by the learned Single Bench in WPA 5461 of 2023. The said writ petition was filed by the appellant praying for various reliefs and when we went through the relief sought for in the writ petition, we find that the relief is against the 1st and 2nd respondent bank which is a scheduled bank and not a nationalized bank.

2. The appellant seeks to give a colour to this litigation by referring to a scheme which has been formulated and made known to the public as ECLG Scheme.

3. The appellant's case is that it is entitled to the benefit of the said scheme being an eligible

borrower as defined in clause 4 of the Scheme and the operational guidelines updated as on 6th October, 2022 by the National Credit Guarantee Trust Company (NCGTC).

4. The learned Single Bench noted that the respondent bank is a private bank and the submissions of the respondent bank with regard to the maintainability of the writ petition was raised. The learned Single Bench was of the opinion that the said Scheme was floated by the Ministry of Finance, Government of India for providing 100% guarantee coverage for additional working capital term loans in case of banks and financial institutions and additional term loans in case of non-banking financial company upto 20% of the outstanding credits as on 29th February, 2020. The Scheme also provided for various other framework. The learned writ court was of the view that the respondent bank being member of the lending institution under the Scheme is consequently drawn within the obligation and duties incorporated therein and the learned writ court was also of the view that the object of the scheme elevates the scheme into one with the clear public element for preserving small and medium businesses following the Pandemic. Therefore, the learned writ court opined that the role of the respondent bank cannot be seem within the limited parameters of a private financial institution.

5. The learned advocate appearing for the appellant submitted that the Reserve Bank of India has nothing to do in the subject matter and it is a scheme which has to be looked into.

6. The learned advocate appearing for the respondent bank would submit that the lending facilities it is being regulated by the guidelines issued by the Reserve Bank of India and it would be incorrect to state that the scheme has to be extended to the appellant do hors the guidelines issued by the Reserve Bank of India.

7. In our considered view, we do not fully subscribe to the findings recorded by the learned Single Bench with regard to the maintainability of the writ petition. However, since the respondent bank has not preferred any appeal, we do not wish to express any opinion on that. Rebutting back to the manner in which the appellant had pursued the matter, we find that the request made by the appellant was first rejected by the respondent bank on 19th October, 2020. The appellant appears to have reiterated its request which was rejected on 3rd November, 2020 and finally on 16th November, 2020 the further request was rejected. In all these communications it has been mentioned that the appellant is not eligible for WCTL-GECL Scheme issued by the Government of India. Admittedly, the scheme has come to an end on 31st

March, 2023 and the writ petition was filed at the fag end of the expiry of the Scheme, as noted by the learned Single Bench about one month from the date of expiry of the Scheme came to an end. On going through one of the orders of rejection, namely, 3rd November, 2020 the respondent bank has referred to RBI Master Circular dated 1st July, 2015. On reading of the said circular it is seen that the guidelines are recommendatory in nature because it gives enough leverage to the lending institutions to adhere to the guidelines while purchasing/discounting/negotiating/ rediscounting of genuine commercial/trade deals. The Circular further states that the banks have already been given freedom to decide their own guidelines for assessing and sanctioning working capital limits of borrowers etc. Furthermore, the bank has been given liberty to lay down clearly a bill discounting policy approved by its Board of Directors which should be consistent with their policy of sanctioning of working capital limits and there are further other suggestions/recommendations made in the circular. Thus, the circular clearly indicates that the respondent bank more particularly a private bank has been granted full autonomy to frame its own guidelines while purchasing/discounting/negotiating/rediscounting of genuine commercial/trade deals. Therefore, given the factual scenario, the writ court cannot be called upon to examine these financial niceties which are based left to the lending institutions. Therefore, we agree with the ultimate conclusion arrived at by the learned Single Bench stating that no relief can be granted in the writ petition. As pointed out earlier, we are not fully in agreement with that portion of the order passed by the learned Single Bench qua the maintainability of the writ petition considering the subject cause of action.

8. With the above observation, the appeal is dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)