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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1509/2023

JAIN INFRA PROJECTS LIMITED AND ANOTHER
VS
STATE BANK OF INDIA AND ANOTHER

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 14th August, 2023.

Appearance :

Mr. Sudip Deb, Adv.
Mr. Riju Ghosh, Adv.
Mr.Sumitava Chakraborty, Adv.
Mr. Aranyak Saha, Adv.
Ms.Ipsita Ghosh, Adv.
..for the petitioners

Mr.Anirban Pramanick, Adv.
Mr. Punar Basu Nath, Adv.
..for the respondents

The Court : The affidavit of service filed in Court today be kept with the record.

Learned counsel for the petitioners contends that the impugned show-cause notice issued by the respondent no.1 bank, that is, the State Bank of India to the petitioners, for the purpose of classifying the petitioners' account as fraud account, is palpably *de hors* the law. It is contended that in the same breath, the respondent no.1 bank is continuing settlement negotiations with the petitioners and on the other hand, while issuing the show-cause notice whereby the petitioners had been sought to be classified as a fraud account, on the other.

That apart, learned counsel for the petitioners places reliance on an offer for settlement dated April 12, 2023 issued by the State Bank of India to the petitioners, annexed at page 85 of the writ petition. It is submitted that one of the conditions for the same is that all cases filed by the company/directors/guarantors, if any, against the bank are to be withdrawn. It is submitted that, as opposed to the said clause in the settlement terms with the State Bank of India, the agreements entered into in similar perspective with the other consortium banks contain a contrary clause. By placing reliance on a similar agreement with the Central Bank of India, annexed at page 25 of the writ petition, learned counsel points out that Clause 2 thereof provides that criminal action /initiated in the accounts would continue since the account was declared as fraud.

That apart, learned counsel also places reliance on Clause 7 of another such proposal for settlement entered into by the petitioners with the United Bank of India (annexed at page 46 of the writ petition) which provides that criminal case filed /to be filed to the law enforcing authority will not be withdrawn.

It is submitted by the petitioners that the show-cause notice impugned herein would jeopardize the undertaking given by the bank with regard to the withdrawal of the proceeding.

It is also argued by learned counsel for the petitioners that the impugned show-cause notice is contrary to the letter and spirit of the Master Directions on Fraud – Classification and Reporting by commercial banks and select FIs dated July 1, 2016 issued by the Reserve Bank of India.

By placing particular reliance on Clause 8.9.4 and Clause 8.12.3 thereof, it is argued that the procedure contemplated therein is being flouted by the respondent no.1 bank by issuing the show-cause notice.

Learned counsel further argues that in the minutes of a lender's meeting held on April 22, 2014, it transpires that the State Bank of India, being one of the parties to such meeting and a part of the consortium of banks, did not initiate any action against the petitioners, whereas the lead bank of the consortium, being the Central Bank of India, had informed that it had already issued willful defaulter notice on 23.11. 2013.

It is argued that the premise of the impugned issuance of notice by the State Bank of India all on a sudden after so many years, is unknown and has taken the petitioners by surprise.

In view of the above arguments, it is contended by the petitioners that the impugned notice be set aside.

Such contentions are controverted by the contesting respondent.

Heard learned counsel for the parties.

In view of the limited conspectus of the writ petition and all relevant documents being annexed to the writ petition itself, affidavits are not being directed, it would unnecessary prolong the proceedings. It is however, deemed that none of the allegations made in the petition are admitted by the respondents.

Coming to first things first, the petitioners have placed reliance on an offer for settlement made by the State Bank of India on April 12, 2023.

The same clearly shows that a process of settlement is going on between the petitioners and the State Bank of India. Clause (f) of the said communication stipulates that all cases filed by the company/directors/guarantors, if any, against the bank are to be withdrawn.

Nothing hinges on the said clause, however, insofar as the present case is concerned. The said clause pertains to cases filed by the company/directors/guarantors, that is, people on the same footing as the present petitioners, against the bank, which were to be withdrawn, and not the contrary. If the said clause provided that the bank has to withdraw pending proceedings against the petitioners, it might have had a semblance of relevance in the perspective of the arguments of the petitioner. However, the clause providing for the petitioners withdrawing all cases against the bank does not help the petitioners in any manner in the present litigation.

In any event, the said clause only pertains to the litigations which were pending as on that date, i.e., on April 12, 2023 and does not pertain to any future litigation.

Even if the petitioners' account is ultimately classified as a fraud account, the same cannot fetter or circumscribe in any manner a previous agreement entered into between the parties on April 12, 2023, which had a clause which was limited to withdrawal of the cases pending on the said date.

The contrary clause in the settlement agreements with other banks is not relevant in the present context; thus, not required to be considered at all.

Insofar as the reliance placed by the petitioners on the lenders' meeting held on April 22, 2014 is concerned, the State Bank of India, due to its inaction till that stage, cannot be bound such inaction from taking out any proceeding for classification of the petitioners' account as fraud for all time to come.

The Master Directions on frauds are very categorical on classifying the accounts as fraud accounts and the purpose thereof, as stipulated in the said directions. These directions are issued with a view to providing a framework to banks enabling them to detect and report frauds early and taking timely consequent actions like reporting to the investigative agencies. These directions also aim to enable faster dissemination of information by the Reserve bank of India to alert other banks in the banking system.

In the year 2014, the occasion for marking accounts as a fraud account, has not arisen, as the 2016 RBI Directions had not yet come in force.

Lastly, clause 8.9.4 of the Master Direction contains nothing to support the petitioners' argument to vitiate the show-cause notice issued by the bank. The first sentence thereof stipulates that the initial decision to classify any standard or NPA account as RFA or Fraud will be at the individual bank level and it would be the responsibility of the said bank to report the RFA or fraud status of the account on the CRILC platform so that other banks are alerted. Subsequent procedure, that is, in case it is decided at the individual bank level to classify the account as fraud straightaway at this stage itself, is followed by other paraphernalia and procedure, which have nothing to do with the initial classification of the account of fraud by an individual bank straightaway at the initial stage.

In the present case, the show-cause notice issued is apparently at the initial stage for the purpose of classifying the petitioners' account as fraud. In fact, the respondent no.1 bank has complied with all norms of natural justice in issuing the show-cause notice, thereby being gracious to the petitioner and complying with the contours of such natural justice. No fault could, thus, be found with the said show cause notice.

Insofar as clause 8.12.3 is concerned, the same merely stipulates that no compromise settlement involving a fraudulent borrower is allowed, unless conditions stipulate that the criminal complaint will be continued.

In the present case, the petitioners' apprehension, that the mutual settlement proceeding between the petitioners and the State Bank of India may be hampered due to such clause, is baseless and unjustified. The reason is that the clause, in the mutual settlement agreement between the petitioners and the State Bank of India annexed to the writ petition, pertains to the withdrawal of the then pending cases by the petitioners and not the bank.

Hence, there is nothing in the show-cause notice which could prevent the bank from going ahead with the compromise with the petitioners. Under Clause 8.12.3, no compromise settlement involving a fraudulent borrower, if the petitioner is so classified, would only be allowed, unless the condition stipulates that the criminal complaints will be continued.

Hence, the grounds for challenge against present impugned show cause notice are not tenable in the eye of law.

However, keeping in view that the present writ petition has been pending and the last date of showing cause by the petitioners as per the impugned show-cause notice is due to expire today, the time for filing reply to the show-cause notice issued by the bank, on the part of the petitioners, is extended till August 28, 2023.

It is made clear that this Court has not entered into the merits of the allegations made in the show-cause notice and/or the reply to be given thereto by the petitioners.

WPO/1509/2023 is, accordingly, disposed of in terms of the above directions without interfering with the show-cause notice at this stage.

There shall be no order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

D.Ghosh