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WPO/1715/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

CALCUTTA CERAMICS P LTD
VS
THE BANKING OMBUDSMAN KOLKATA CENTER AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 19th December, 2023.

Appearance:

Mr. Gaurav Purkayastha, Adv.

Mr. Ashutosh Mukherjee, Adv.

. . .for the petitioner.

Mr. Om Narayan Rai, Adv.

Mr. Shiv Mangal Singh, Adv.

Ms. Jahan Ara Kulsum, Adv.

. . .for the respondent (Indian Overseas Bank)

Ms. Suchismita Ghosh, Adv.

. . .for the respondent no.1.

The Court: The grievance of the writ petitioner is that the Banking Ombudsman is sitting tight over a complaint made by the writ petitioner/company on the premise that even after repayment of the debts under an one-time settlement scheme by the petitioner, the respondent bank is not returning the title deeds of the petitioner.

During pendency of the writ petition, learned counsel for the Ombudsman has handed up an order dated October 6, 2023 passed by the Ombudsman

whereby the Ombudsman closed the complaint on the ground that the same was not maintainable under Clause 16(1)(a) read with Clause 10(2)(b)(ii) of the Reserve Bank – Integrated Ombudsman Scheme, 2021.

Learned counsel for the petitioner argues that the said provisions are not attracted in the present case as the cause of action of the pending NCLT proceeding is not the same as that which the petitioner has urged before the Ombudsman.

Learned counsel for the bank argues that a similar prayer for return of the title deeds was made by the petitioner before the concerned Debts Recovery Tribunal but the same was turned down.

That apart, it is argued that the bank does not have any qualms to return the title deeds; however, there is a factional dispute between two sets of management of the petitioner company on the issue as to who the title deeds should be returned to. Thus, the bank is not in a position to release the title deeds.

Upon hearing the parties, it is evident that the disputes in question pending before the NCLT and the Ombudsman are not identical or same. Whereas the complaint taken before the NCLT is by a set of shareholders on the allegation of oppression and mismanagement under the Companies Act, 2013, the limited dispute taken to the Ombudsman by the petitioner company pertains to the alleged non-release of title deeds by the respondent bank in favour of the company despite the company having repaid all dues of the bank.

Clause 10(2)(b)(ii) of the 2021 Scheme provides that a complaint under the Scheme shall not lie if the same cause of action is already pending before any Court, Tribunal or Arbitrator or any other forum of authority.

On the other hand, Clause 16(1)(a) provides that the Deputy Ombudsman or the Ombudsman may reject a complaint at any stage if it appears that the complaint made is non-maintainable under Clause 10.

In view of the above observations to the effect that the complaints pending before the NCLT and the Ombudsman are not the same, the said Clauses, indeed, do not apply to the present case. Hence, it is for the Ombudsman to decide on merits the issue raised before it by the petitioner.

However, it will be pre-judging the issue pending before the Ombudsman in the event this Court renders a finding on the disputes raised by the bank and controverted by the petitioner to the extent that there has been a similar application before the concerned DRT which has been turned down and that there are warring fractions of the company itself, having rival claims to the return of the title deeds.

Thus, such issues are kept open to be decided by the Ombudsman in accordance with law, while deciding the complaint taken to it by the petitioner.

WPO 1715 of 2023 is accordingly disposed of by directing the Banking Ombudsman to dispose of the complaint preferred by the petitioner company upon giving appropriate opportunity of hearing to all concerned and in accordance with law, in the process deciding all points which have been raised by

the respondent bank. It is expected that such disposal shall be made as expeditiously as possible, preferably within six weeks from date.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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