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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 5022 OF 2022

Choksi Energy and Infrastructure Pvt Ltd …Petitioner
Versus
Indian Overseas Bank …Respondent

Mr Siddharth Samantaray, *with Vinod K & Priyansh Jain, i/b Apex Law, for the Petitioner.*
Siddha Pamecha, *with Prachi Kolambekar & Ruchita Chavan, i/b Thodur Law Associates, for the Respondent-Bank.*

CORAM G.S. Patel &
S.G. Dige, JJ.
DATED: 18th January 2023

PC:-

1. Rule. There is an Affidavit in Reply. Rule is made returnable forthwith and the Petition is taken up for hearing and final disposal.

2. We have heard both sides.

3. The Petition challenges a classification of the Petitioner's account by the sole Respondent, Indian Overseas Bank ("**IOB**"), a public sector bank, as a Non Performing Asset ("**NPA**") as on 30th June 2021. The Petition then seeks that this classification be quashed and set aside. Prayer clause (c) seeks a mandamus to IOB to restructure the account of the Petitioner.

4. We reject prayer (c). Such a direction cannot possibly be granted.

5. The classification as an NPA itself appears to us to be more than somewhat problematic from the facts and circumstances of the case. The Petitioner is undoubtedly a borrower from IOB. In 2017, the Petitioner was a bidder at an e-auction of certain mortgage property in District Ratlam, Madhya Pradesh. The property was auctioned by IOB itself. The Petitioner was the successful bidder with a bid of Rs.12.55 crores. The Petitioner paid an initial margin of 25%. For the remainder of 75%, the Petitioner had a term loan facility from IOB. There were also a bills limit facility. The necessary correspondence and documents are annexed. We are only concerned with the Term Loan Facility. There was a delay in delivery of the subject property. It is to be noted that as the auction was conducted by IOB itself, IOB had possession of the property.

6. Paragraph 8 of the Petition says that since there was this delay, by its letter of 20th April 2017, the Petitioner sought a moratorium on interest payments on the term loan. There was no response. On 31st May 2017, the Petitioner said that although there was a sale certificate, this was not accepted by another entity for transfer of power purchase agreement. Nonetheless, Petitioner had paid all electricity dues to avoid disconnection. Despite these demands, the Petitioner made interest payments under protest to avoid an NPA classification of its account. There was some correspondence in this regard. Ultimately there was a modified sanctioned letter of 12th July 2017 that had the effect of reducing the interest rate on the Term Loan credit facility.

7. The Petition has a lengthy recital of this correspondence and various disputes, the upshot of which is that the Petitioner did what it could to keep the account regular despite not getting possession of the property in question.

8. Mr Samantaray has invited our attention to some of the documents in the Petition and in a separate compilation that he tenders.

9. In particular, we are concerned with a more recent set of circumstances from 30th December 2020. This date is more important because it puts us firmly just a few months after the onset of the Covid-19 pandemic, the ensuing lockdown and the consequential directions to banks to extend a moratorium. On 30th December 2020, the Petitioner wrote to the Chief Manager of the Respondent to restructure the term loan account due to the Covid-19 pandemic situation. A reply on 31st December 2020 advised the Petitioner that the restructuring or rephasing of the instalments was *permitted*. The existing repayment of instalments would be an annual instalment of Rs.1,76,87,410.50 commencing from 30th September 2020. In the sanctioned and approved restructuring, although the yearly instalment amount remained the same, it was to commence from 31st December 2021.

10. On 1st June 2021, just six months after this letter and six months before the revised proposed instalment was to start, IOB wrote to the Petitioner saying that its loan account was irregular and it was overdue as on 31st May 2021. That letter said that if the loan remained overdue until 30th June 2021, it would become an NPA. This letter is impossible to understand. In view of the agreed restructuring, it could never have been issued.

11. On 1st November 2021, there was another communication by the bank to the Petitioner. This reconfirmed that the account was indeed restructured due to the Pandemic situation and the revised instalment would commence from 31st December 2021. All these communications referred to the Term Loan account by description and by number.

12. On 26th November 2021, the bank wrote to the Petitioner saying, abruptly, that its term loan account had been classified as NPA *with effect from 30th June 2021*.

13. We are at a loss to see how this could have been done in view of the facts narrated above.

14. What followed was even more strange. On 12th April 2022, there came another long letter from the bank. But this said now that the Petitioner's account had been classified as NPA — *on 1st February 2022*.

15. We are at a loss to understand how this could ever be done by the IOB. In commercial transactions, certainty is crucial. Once the loan was restructured to instalments commencing from 1st December 2021, there was no possibility of the account being declared as an NPA six months *prior* to that date. That date of 30th December 2021 was asserted twice by the bank itself. It is inconceivable that the Petitioner's account could have been declared as an NPA six months before the restructured instalments were to start, on 30th December 2021, leave alone two months after 30th December 2021. The bank cannot be allowed to constantly shift goalposts like this.

16. Mr Samantaray delivers two cheques for the agreed instalment amount. These are presently undated. They are drawn on Canara Bank. They are in the amount of the agreed instalment. These are annual payments. They are payable for 2021 and e for 2022. The cheques are to be made out to the IOB and the term loan account with the current dates. It is on account of the NPA declaration that they could not be paid to IOB earlier.

17. The cheques are delivered to the learned Advocate for the IOB. These cheques are accepted on a without prejudice basis, that is to say without prejudice to IOB's rights to take action strictly in accordance with law for any further or future irregularities.

18. The Petition succeeds to this limited. The classification of the Petitioner's term loan account with IOB is quashed and set aside. We clarify that the IOB is at liberty to take up the matter again if there is a further irregularity after today and not for any previous period. In doing so, and having regard to this correspondence, the IOB will be required to give the Petitioner adequate notice and a brief hearing to show cause. We require this because the conduct of the IOB in correspondence thus far has been less than satisfactory.

19. IOB is required to update its records to reclassify the Petitioner and remove the classification as an NPA. This is to be done within 48 hours of this order being uploaded.

(S. G. Dige, J) **(G. S. Patel, J)**