WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.Nos.20124, 20130 & 20134 of 2023
and WMP.Nos.19461, 19477 & 19482 of 2023

A.K.S. Cold Storage Limited
Represented by its Managing Director
MrA.K.S.Saravanan
S.F.No.956, AKS Farm
Bathrakaliamman Koil Road
Thekkampatti Village
Mettupalayam - 641 305. ... Petitioner in all WPs.

Vs

1.IDBI Ltd.,
Raja Street Branch
No.589, Sri Lakshmi Lodging Complex
Raja Street, Coimbatore - 641 001. ... 1st Respondent in all WPs

2.Aravindhkumar.C ... 2nd Respondent in WP.No.20124/2023

3.Nandakumar D ... 2nd Respondent in WP.No.20130/2023

4.Ramamoorthy.P ... 2nd Respondent in WP.No.20134/2023

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the letter dated 25.10.2022 issued by the respondent Bank withdrawing the One Time Settlement (OTS) given under Amrit Mahotsav Rinn Bhugtan Yojana Scheme with respect to the loan accounts of Mr.C.Arvindhkumar (A/c.

WEB COPY

No.1621671100034991), Mr.D.Nandakumar (A/c.No.1621671100035006), and Mr.P.Ramamoorthy (A/c.No.1621671100034742) as the same is null and void and consequently, direct the respondent Bank to give the benefit of the One Time Settlement (OTS) under Amrit Mahotsav Rinn Bhugtan Yojana Scheme vide letter dated 12/10/2022 Ref.No.ARBY2022-23051982, Ref.No.ARBY2022-23076688 and Ref.No.ARBY2022-23024674 respectively to the petitioner.

For Petitioner (in all WPs)	: Mr.P.H.Arvind Pandian Assisted by Mr.M.Roshan Atiq
For Respondents (in all WPs)	: Mr.K.Balamurali for M/s.Shivakumar & Suresh for R1 R2 - No Appearance

COMMON ORDER

In each of these three petitions, the first respondent bank had advanced separate loans to the second respondent in the respective petitions under separate contract. These borrowers have stocked their agricultural produce in the cold storage of the petitioner, which they had offered as collateral security for the loan they had borrowed. And, the petitioner herein stood as a guarantor for each of the loan transactions between the second respondent and the first respondent in each of the three petitions.

WEB COPY

2. While so, the first respondent-bank chose to exercise its right over the *hypotheca*, and had approached the Principal District Court, Coimbatore with its Arbitration O.P.No.163 of 2019 for an injunction against the petitioner herein not to obstruct it in taking possession of the *hypotheca*. On 27.01.2020, this was resolved through settlement, and this was made the rule of the Court. The salient features of the agreement arrived between the parties are :

> *(a) The respondent shall pay the total sum of Rs.2,30,00,000/- (Rupees two Crores thirty lakhs only) in full and final settlement to the petitioner on or before 30th April 2020. The respondent has agreed to pay a sum of Rs.30,00,000/- (Rupees thirty lakhs only) as upfront amount to the petitioner on or before 20.02.2020. The respondent shall pay another sum of Rs.1,25,00,000/- (Rupees One crore twenty five lakhs only) to the petitioner on or before 23.03.2020 and the balance amount of Rs.75,00,000/- (Rupees seventy five lakhs only) on or before 30.04.2020.*
>
> *(b) The respondent, on payment of the upfront amount of Rs.30,00,000/- (Rupees thirty lakhs only) on or before 20.02.2020, is entitled to find out the purchaser to sell the chillies which are hypothecated in favour of the*

WEB COPY

petitioner and shall realize the amount and remit the balance sum of Rs.2,00,00,000/- (Rupees two crores only) on or before 30th April 2020 as per the schedule of payment referred to supra.

(c) The respondent is entitled to apportion any excess amount realized if any out of which the sale of chillies hypothecated in favour of the petitioner over and above the sum of Rs.2,30,00,000/- (Rupees two crores and thirty lakhs only). In case there is a shortfall in realization of the amount in sale of chillies by the respondent notwithstanding realizing less amount, the respondent shall pay the agreed total amount of Rs.2,30,00,000/- (Rupees two crores thirty lakhs only) to the petitioner.

(d) In case of default in payment of the upfront amount on or before 20.02.2020, the further amount of Rs.1,25,00,000/- (Rupees one crore twenty five lakhs only) on or before 23.03.2020 and Rs.75,00,000/- (Rupees seventy five lakhs only) on or before 30.04.2020, the petitioner is entitled to realize the entire outstanding amount of Rs.2,72,00,000/- as on 01.11.2019 with subsequent interest a 10.40% per annum with compound interest with monthly rests from 02.11.2019 till the date of repayment together with costs and incidental charges thereto.

WEB COPY

(e) ....

This apart, the petitioner had also offered some 10 sale deeds of his as collateral security for the repayment of the loan amount by all the second respondents in each of these petitions.

3. While so, vide its communication dated 12.10.2022, the first respondent-bank offered an One Time Settlement (OTS) of eligible non-performing assets under *Amrit Mahotsav Rinn Bhugtan Yojana* (ARBY) scheme, and this was withdrawn by the Bank on 25.10.2022. This is now under challenge.

4. The first respondent-Bank has filed its counter and his core line of defence is an allegation that the petitioner had breached each of the terms of the settlement, nor did it abide by the terms of OTS. In particular, the bank was concerned about the removal of *hypotheca* by each of the principal debtors in the three cases now before this Court, as a justification for withdrawing or cancelling the OTS.

5. When the matter came up before this Court on 09.08.2023, this Court

WEB COPY

raised three pointed questions to the petitioner to answer. They are :

(1) Is it the case of the petitioner that the second respondent had removed the agricultural produce from the cold storage of the petitioner without the knowledge and consent of the petitioner;

(2) Inasmuch as the settlement arrived between the bank and its debtor has become rule of the Court, whether the second respondent or the petitioner thought it fit to approach the District Court seeking its leave to alienate the agricultural produce;

(3) Whether the second respondent or the petitioner thought it fit to atleast deposit the value of the security, the sale price of agricultural produce in the District Court?

6.1 The learned counsel for the petitioner made the following statements :

(a) So far as question No.(2) raised by the Court as stated above is concerned, the petitioner concedes that he knew about the removal of *hypotheca* by all the three principal debtors, and that he did not approach the District Court before letting it happen.

(b) So far as the question No.(3) is concerned, the sales made by the

WEB COPY

principal debtors were credit sales, and once the money is realised, it will be credited to the loan account of the respective principal debtors.

(c) So far as removal of security is concerned, while it should have been avoided by the petitioner / guarantor, yet the petitioner has secured the repayment of the debts more than adequately, when he created an equitable mortgage as regards the principal covered under 10 different sale deeds. While it would have been appropriate if the petitioner had approached the bank, and had the securities substituted, yet the omission to do the same may not be accounted against it to upset the settlement originally arrived between the parties.

6.2 What is more important for the Bank is realization of the debts, and if it is adequately secured, it may not injure the rights or interest of the first respondent-bank, and today in each of the three cases, the second respondent/principal debtor is now ready to repay the principal debt amounts immediately to the Bank, submitted the counsel.

WEB COPY

7. The learned counsel for the first respondent canvassed vigorously how the petitioner has breached his commitments under the settlement arrived. The settlement is reduced to a farce by the petitioner, and indeed in terms of Clause (b) of the settlement arrived in Arb.OP.No.163 of 2019, the right to remove *hypotheca* was given to the petitioner only on payment of the first instalment of Rs.30,00,000/- (Rupees thirty lakhs only) on or before 20.02.2020. The petitioner knew it and yet he breached it, he contended.

8.1 The rival submissions are weighed carefully, and this Court finds that there is relative merit in submissions of both. So far as the first respondent's contention is concerned, its anxiety as well its disappointment, or its anger can well be appreciated, for it has lent a helping hand to the petitioner when it offered the OTS, but the petitioner has breached the terms there of with his eyes open. Turning to the petitioner's side, this Court senses its remorse when it concedes that the present situation could have been easily avoided if only it was acted carefully, respecting the terms of the OTS.

8.2 However, what is more relevant to this Court is not what the petitioner had failed to do earlier, but how it intends to compensate the damage that it

WEB COPY

had created for the first respondent. It now offers at least 10 sale deeds to the bank to treat the properties covered under them m as collateral securities. This can be considered as an offer to substitute the security, even though the valuation of this alternative security is not made yet. Here, it also requires to be stated that when the first respondent advanced loan to the second respondent in each of the cases, the petitioner had offered corporate guarantee for the repayment of the loans to these respondents, but without offering any specific immovable property as collateral security. Therefore, the stock in trade which was stocked with the petitioner is not the only security which the borrowers had offered, but there are other securities as well. This includes the immoveable properties covered under the aforesaid ten sale deeds. In the final analysis, it may be stated that the bank is, and can be interested only in repayment of loan, and adequate security for securing the loan. The petitioner, in letting the principal debtor to remove the agricultural produce from the former's cold storage, which it knew that they had been offered as collateral security for the loan, and which it also knew that to let their removal would breach the terms of the OTS, can only stated to have have acted most imprudently. At least it qualifies for a benefit of doubt, essentially because today, it does not justify what it had done, nor

WEB COPY

attempt to evade payments. It makes the statement that the second respondent in each of the cases, the principal debtors in each of the loan transactions, are ready to pay the principal amount, and that it would also offer collateral security in the form of ten sale deeds.

9. In view of the same, it may not be a bad idea for the Bank to reconsider its earlier decision to withdraw the OTS. While none appeared for the second respondent, the petitioner undertakes that it can organise for the repayment of the entire sum mentioned in the OTS within a period of four weeks from today. Now it is for the petitioner to ensure that it is done. Once done, it must encourage the Bank, for ultimately the money has started coming its way. Here the bank must also realise that even though the hypotheca was quite unnecessarily removed from the cold storage of the petitioner without bank's knowledge, that it is likely to obtain collateral security which is stated to be more valuable than the hypotheca, which is but a perishable commodity.

10. Now this Court merely directs the petitioner to go with a fresh representation to the Bank for reconsidering its earlier decision to withdraw

WEB COPY

the OTS, when once the principal debtors make payments as promised by the petitioner. It will at least help the petitioner in establishing its bonafides.

11. Other than fixing the time schedule for deposit of the amount stated in the OTS, this Court refrains from fixing any time line for further course of action, and it is for the parties to work out what is needed to be done after the deposit of the amount stated in the OTS.

12. The writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

17.08.2023

Index : Yes / No
Speaking order / Non-speaking order
ds

WEB COPY

N.SESHASAYEE.J.,

ds

W.P.Nos.20124, 20130 & 20134 of 2023

17.08.2023