AD-24
Ct No.09
15.01.2024
TN

WPA No. 25736 of 2023

Debmalya Mitra
Vs.
Union of India and others

Ms. Aparajita Rao,
Mr. Subhankar Das,
Mr. Bikram Sarkar,
Ms. Priyanka Das
.... for the petitioner

Ms. Soni Ojha,
Ms. Sonia Nandy
.... for the respondent nos.3 & 4

1. Learned counsel for the petitioner contends that the petitioner is agreeable to square off the dues of the Bank. Although measures have been taken by the Bank in the meantime under Section 13(4) of the SARFAESI Act, 2002, learned counsel for the petitioner submits that the same is not an absolute bar to interference by this court.

2. The petitioner places reliance on the Circular dated May 05, 2021 issued by the Reserve Bank of India (RBI) incorporating the Resolution Framework – 2.0: Resolution of Covid-19 related stress of Individuals and Small Businesses whereunder the petitioner, which is an MSME unit, is entitled to restructuring/rescheduling of its loan. However, although the petitioner wrote to the Bank in its reply under Section 13(3A) of the SARFAESI Act, 2002, indicating the intention of the petitioner to enter into such a restructuring, the Bank did not specifically respond to the same.

3. Learned counsel submits that the remedy available under Section 17 of the 2002 Act before the concerned Tribunal has already been availed of by the petitioner but it will be difficult in view of the extreme pressure before the concerned Bench of the said Tribunal to move any interlocutory application at this stage.

4. Learned counsel for the Bank opposes the writ petition on the ground that measures have already been taken under Section 13(4) of the SARFAESI Act, 2002. That apart, it is submitted that the Circular of the RBI relied on by the petitioner is not applicable to the petitioner.

5. A perusal of the said Circular dated May 05, 2021 issued by the RBI indicates that the last date for invocation of resolution permitted under the window covered by the said Circular was September 30, 2021. However, admittedly, the petitioner's accounts were marked as NPA on

March 31, 2023 (arguably as per the Bank's version, however, February 28, 2023).

6. Hence, I do not find any scope of applying the RBI Circular-in-question to create a right of the petitioner which has been infringed by the Bank.

7. In the event the petitioner seeks to repay the debts of the Bank, it is always open to the petitioner to do so. However, since the petitioner submits that despite having written to the Bank, the Bank has not disclosed the current dues of the petitioner, it would only be appropriate to direct the Bank to so disclose.

8. However, there is no scope of interference in the writ petition with the measures taken by the Bank under Section 13(4) of the SARFAESI Act, 2002 at this stage. The remedy available to the petitioner is before the Tribunal and it will be open to the petitioner to agitate all points before the said Tribunal.

9. Accordingly, WPA No. 25736 of 2023 is disposed of by directing the respondent-Bank to disclose the exact dues on the petitioner on account of all the loan accounts of the petitioner within a week from date, in writing giving particulars of the break-up of such debts due from the petitioner to the Bank.

10. It is made clear that the rights and contentions of the parties before the Tribunal have not been entered into on merits by this court.

11. There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)