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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on: 22.02.2024

Orders pronounced on: **06.03.2024**

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA ,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.24067 of 2023

M/s.Craft Knit Garments,
A Partnership Firm, Represented
by its Partner, K.Rangasamy .. Petitioner

Versus

1. Board of Directors of
Small Industries Development Bank of India (SIDBI)
Represented by its Managing Director,
1st Floor, K.S.N.Complex,
No.J.G.Nagar, 60 Feet Road,
Tirupur - 641 602.

2. Small Industries Development Bank of India (SIDBI)
Represented by its Managing Director,
1st Floor, K.S.N.Complex,
No.J.G.Nagar, 60 Feet Road,
Tirupur - 641 602.

3. Authorised Officer,
Small Industries Development Bank of India (SIDBI)
1st Floor, K.S.N.Complex,
No.J.G.Nagar, 60 Feet Road,

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Tirupur - 641 602.

4. Union of India, Represented by Secretary
   Department of Banking, Ministry of Finance,
   3rd Floor, Jeevan Deep Building,
   Sansad Marg, New Delhi - 110 001.

5. Ministry of Micro Small & Medium Enterprises,
   Represented by its Secretary,
   Department of Banking, Ministry of Finance,
   3rd Floor, Jeevan Deep Building,
   Sansad Marg, New Delhi - 110 001.

6. State of Tamil Nadu, Represented by its Secretary,
   Department of Micro, Small &
   Medium Enterprises (MSME),
   Fort St. George, Chennai - 600 009.

7. Reserve Bank of India, Represented by its Governor,
   Central Office Building,
   Shahed Bhagat Singh Road,
   Mumbai - 400 001.

8. Station House Officer,
   Veerapandi Police Station,
   Palavanjipalayam Ring Rd.,
   K Chettipalayam, Tiruppur,
   Tamil Nadu - 641 605. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the files of respondent 2 in pursuant to their proceedings: classifying the petitioner's loan account as Non-Performing Asset (NPA); demand-notice TPBO No.150750412/SBL (24), dated 28.06.2017; and possession notice, dated

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05.09.2017, and quash the same as being illegal, void, arbitrary, unconstitutional, and contrary to the principles of natural justice.

For Petitioner	:	Mr.Mathew J. Nedumpara for Mr.S.Isaac Prince
For Respondents	:	Mr.Dhruva, for M/s.Anand, Samy, Dhruva, for RR-1 to 3
	:	Mr.V.Chandrasekaran, for RR-4 and 5
	:	Mr.A.Anandan, Government Advocate for R6
	:	Mr.C.Mohan, for M/s.King and Partridge for R7
	:	Mr.C.Kathiravan, Special Government Pleader for R8

ORDER

(Order made by the Hon'ble Mr Justice D.Bharatha Chakravarthy)

The Writ Petition:

This Writ Petition is filed with a prayer to call for the records on the file of the second respondent i.e., Small Industries Development Bank of India, in respect of their proceedings, dated 28.06.2017, thereby, classifying the account of the writ petitioner as a Non-Performing Asset (hereinafter

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referred to as '*NPA*') and the consequential possession notice, dated 05.09.2017, to quash the same as being illegal, unconstitutional and without jurisdiction.

The Case of the Petitioner:

2. The case of the petitioner is that it is a manufacturing unit engaged in the manufacture of garments. It was registered as a Tiny Unit with the Directorate of Industries, Government of Tamil Nadu, vide Permanent Registration Certificate, dated 10.03.1995. In the year 2016, the petitioner was registered under the *Micro, Small and Medium Enterprises Development Act, 2006* (from now on referred to as '*MSMED Act*') as an *MSME* vide Udyog Aadhar Certificate, dated 24.12.2016. The said certificate is being renewed periodically. In the year 2016, the petitioner availed mortgage loan from the Union Bank of India which was subsequently taken over by the first respondent under the category "Secured Business Loan for *MSME*s in Manufacturing Sector" to the tune of Rs.3,85,00,000/-. The same is secured by the mortgage of Ac.0.59 cents of non-agricultural property belonging to the partners of the petitioner.

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2.1. It is submitted that the respondent Bank did not enhance the credit facilities, did the petitioner have to default in repayment of installments. Despite a massive block of inflow of funds of the petitioner, the petitioner honoured commitments from other sources. However, hastily, the petitioner's loan account was classified as an *NPA* on 10.04.2017 and further proceedings under the *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (hereinafter referred to as '*SARFAESI Act*') were initiated. The petitioner has challenged the action under the *SARFAESI Act* before the Debts Recovery Tribunal, Coimbatore and the same is pending. The petitioner's effort to settle the matter amicably by way of One Time Settlement also did not fructify since the petitioner could not remit the amount in time and the said One Time Settlement offer stood forfeited. Now, a sum of Rs.8,34,52,957/- is demanded from the petitioner. A sale notice is also issued to sell the property of the petitioner and the same is also challenged before the Debts Recovery Tribunal, Coimbatore.

2.2. The Government of India has issued the notification in S.O.1432(E), dated 29.05.2015 under the provisions of the *MSMED Act*

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which is mandatory. Without following the procedure of rehabilitation and restructuring under the said notification, the respondent Bank straightaway proceeded to classify the account of the petitioner as a *NPA* and therefore, the same is illegal and hence the Writ Petition.

The Case of the Respondents:

3. The Writ Petition is resisted by respondent Nos.1 to 3 by filing a common counter-affidavit. It is the case of the respondents that it sanctioned financial assistance under the Secured Business Loan Scheme, whereby, a sum of Rs.3,85,00,000/- was sanctioned in favour of the petitioner which is a partnership firm consisting of two partners. The petitioner was given a repayment period of 171 months with an initial moratorium of six months. The petitioner executed the mortgage of the non-agricultural land measuring Ac.0.59 cents. The petitioner failed to pay the installments and honour commitments as per the loan agreement, dated 10.03.2016. Therefore, the petitioner's account was classified as *NPA* on 10.04.2017. A recall notice recalling the entire amount due was issued on 26.04.2017. A demand notice under Section 13(2) of the *SARFAESI Act* was issued on 28.06.2017. After that, possession under Section 13(4) of the

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SARFAESI Act was taken on 05.09.2017. As of 10.12.2023, a sum of Rs.910.31 lakhs with further costs and expenses are due from the petitioner.

3.1. It is submitted that the petitioner has been filing repeated proceedings to stall the attempt of the respondents to recover the amount due. A suit in O.S.No.434 of 2018, on the file of the learned Additional Sub-ordinate Judge, Tiruppur, is filed by the sons of the partner against their parents on the ground that the properties mortgaged are ancestral properties and the relief of partition is sought. The said suit was ultimately dismissed as default on 02.08.2023. The possession notice under Section 13(4) of the *SARFAESI Act* issued to the petitioner is challenged by the petitioner by way of an application under Section 17 of the *SARFAESI Act* and the same is pending on the file of the Debts Recovery Tribunal, Coimbatore in S.A.No.321 of 2017. When an E-Auction sale notice, dated 30.12.2022 was issued, the petitioner again challenged the same in S.A.No.64 of 2023 before the Debts Recovery Tribunal, Coimbatore. The petitioner did not comply with the conditions imposed for grant of stay and as such, the bank proceeded with the sale. However, there were no bidders and as such, the above Securitisation Application was withdrawn.

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3.2. The Bank has also initiated proceedings for recovery of the money before the Debts Recovery Tribunal, Coimbatore in O.A.No.100 of 2018 and the same is pending. The Bank has also approached the learned Chief Judicial Magistrate, Tiruppur by filing a petition in Crl.M.P.No.9554 of 2023 and by an order, dated 08.11.2023, already, an Advocate Commissioner is appointed to take physical possession of the property. The Bank has also filed two private complaints under Section 138 of the *Negotiable Instruments Act, 1881* before the jurisdictional magistrate at Coimbatore towards the dishonour of cheques issued by the petitioner. In compliance with the notification in S.O.1432(E), dated 29.05.2015, the respondent Bank has already formed a Committee vide its circular No.11 / 2016-17, dated 07.10.2016 and 01.12.2016. The said framework is optional. The petitioner did not opt for any restructuring. On the contrary, the petitioner has already wound up its business. The action of declaring the account as *NPA* and initiation of further recovery proceedings are only on internal analysis and after conclusion as to the viability aspects.

The Submissions:

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4. We have heard *Mr Mathew J. Nedumpara*, learned Counsel for the petitioner; *Mr Dhruva*, learned Counsel for respondents Nos.1 to 3; *Mr V.Chandrasekaran*, learned Counsel for respondents Nos.4 and 5; *MrAnandan*, learned Government Advocate for respondent No. 6; *Mr C.Mohan*, learned Counsel for the respondent No.7 and *Mr C.Kathiravan*, learned Special Government Pleader for the respondent No.8.

4.1. *Mr Mathew J. Nedumpara*, learned Counsel for the petitioner, taking this Court through the notification issued by the Government of India in the exercise of powers under Section 9 of the *MSMED Act*, would submit that once the borrower is an *MSME*, it is the duty of the respondent Bank, as per paragraph No.1 of the said notification, to identify any incipient stress. The three levels of stress are categorised as SMA-0, SMA-1 and SMA-2. The Bank is also liable to form committees for stressed *MSME*s. Either *MSME* or the Bank or the creditor has to apply to the Committee in the manner specified for all decisions on the corrective action plan and terms thereof. Upon such application as per paragraph No.5, the Committee has to explore the various options to resolve the stress in the account. The first two options are rehabilitation and restructuring. Only upon exhausting the

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first two options, the third option of recovery can be resorted to. The details of the restructuring are given in paragraph No.11 of the notification. Even the decision of the Committee is subject to review under Section 15 which would show that the Committee should act judiciously and grounds of review are akin to Order 47 R 1 *CPC*.

4.2. The learned Counsel would also submit that subsequently, the Reserve Bank of India has been issuing circulars and communications directing the Banks that adequate care should be taken in respect of the *MSME* sector. He would place reliance on the communication, dated 01.08.2012 and also the communication, dated 21.07.2016 enclosing the Master Directions. The Master Directions require even separate branches to be constituted for *MSME* in each of the banks. He would further submit that by a communication, dated 17.03.2016, the Reserve Bank of India also issued revised framework superseding the earlier guidelines, thereby, ensuring that the Banks did follow the mandate. Therefore, when the Reserve Bank of India mandates that the guidelines mentioned in the framework should be followed, the Writ Petition deserves to be allowed.

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4.3. *Mr.Dhruva*, learned Counsel for respondent Nos.1 to 3 Bank, reiterating the submissions made in the counter-affidavit, would submit that firstly, the guidelines are an optional framework. Secondly, when the Committee was very much available, the Petitioner Company did not opt for restructuring. He would further submit that there was no question of any restructuring because even when the Bank authorities first decided to take stock of the situation and recall the loan amount, the petitioner had wound up all the operations and the unit was closed for all practical purposes. He would submit that the identical questions were decided by the learned Single Judge of the Kerala High Court in ***N.P.Abdul Nazer Vs. Union Bank of India and Anr.***[1] and a Division Bench of the Bombay High Court in ***M/s.A.Navinchandra Steels Pvt. Ltd., Mumbai and Ors. Vs. Union of India and Ors.***[2].

4.4. *Mr.C.Mohan*, learned Counsel appearing on behalf of the Reserve Bank of India, would submit that there is no bonafide in the request made by the petitioner and the petitioner had not even complied with the OTS offered by the Bank. In support of his submissions, he would rely

1 CDJ 2023 KerHC 911
2 CDJ 2024 BHC 054

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upon the judgments of the Hon'ble Supreme Court of India in ***State Bank of India Vs. Arvindra Electronics Pvt. Ltd.***[3]; ***Bijnor Urban Cooperative Bank Ltd., Bijnor and Ors. Vs. Meenal Agarwal and Ors.***[4] and ***Small Scale Industrial Manufactures Association (Registered) Vs. Union of India and Ors.***[5].

The Discussion & Findings:

5. We have considered the rival submissions made on either side and perused the material records of the case.

5.1. A categorical submission has been made on behalf of the learned Counsel for the respondent Nos.1 to 3 Bank that the operations of the petitioner have since been wound up and there is no scope for rehabilitation and restructuring. The said position was not refuted on behalf of the petitioner. Even in the Writ Petition, while challenging the order reclassifying the petitioner as *NPA*, it can be seen that there is no consequential prayer for any restructuring or rehabilitation. In this scenario, the entire argument relating to the non-following of the framework for

3 (2023) 1 SCC 540
4 (2023) 2 SCC 805
5 (2021) 8 SCC 511

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revival and rehabilitation for MSME is made on behalf of the petitioner only as a ground of illegality to attack the action of classifying the account of the petitioner as *NPA*.

5.2. It can be seen from the facts narrated above that after the reclassification of the petitioner's account as *NPA*, further measures have been taken under the *SARFAESI Act* and the petitioner has also challenged the measures before the Debts Recovery Tribunal, Coimbatore. It goes without saying that when the petitioner is challenging the measures, that is taking over possession under Section 13(4) of the *SARFAESI Act*, even the grounds relating to the classification of *NPA* can also be raised. When the petitioner has filed an appeal challenging the further steps i.e., initiation of *SARFAESI* proceedings and taking over possession by way of an Application under Section 17 of the *SARFAESI Act*, a subsequent Writ Petition in respect of one of the possible grounds of attack on the possession notice, dated 05.09.2017 will not lie. Even in the present proceedings, it is to be noted that the self-same possession notice dated 05.09.2017 is also challenged along with the order classifying the petitioner's account as *NPA*.

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5.3. In view thereof, it would be appropriate that the question is left open for the petitioner to raise in the pending S.A.No.321 of 2017 before the Debts Recovery Tribunal, Coimbatore. Since we are relegating the issue to be decided before the Tribunal, we are not considering the question as to whether the framework for rehabilitation and restructuring of *MSME*s under S.O.1432(E), dated 29.05.2015 and the subsequent circulars is a mandatory pre-requisite in respect of *MSMEs* before proceeding to recovery under SARFAESI or is an optional framework which should be exercised on the application of the parties.

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The Result:

6. Accordingly, the Writ Petition is disposed of with liberty to the petitioner to raise and canvass all the grounds raised in the present Writ Petition, in S.A.No.321 of 2017 pending before the Debts Recovery Tribunal, Coimbatore. There shall be no order as to costs. Consequently, W.M.P.Nos.2218 of 2024; 23552, 23553 and 23554 of 2023 are closed.

(S.V.G., CJ.) (D.B.C., J.)
06.03.2024

Index : yes
Speaking order
Neutral Citation : yes
grs

To

1. The Secretary,
Department of Banking, Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi - 110 001.

2. The Secretary,
Ministry of Micro Small & Medium Enterprises,
Department of Banking, Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi - 110 001.

3. The Secretary,
Department of Micro, Small &
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4. The Governor,
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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.24067 of 2023

06.03.2024