(2010) 03 MAD CK 0027

In the Madras High Court

Case No : Writ Petition (MD) No''s. 13470 and 13471 of 2009 and M.P. (M.D.) No. 1 of 2009

MSG Arts Crafts APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(3A), 13(4), 17

Citation : (2010) 2 BC 631 : (2010) 2 CTC 497 : (2010) 5 MLJ 245 : (2011) 7 RCR(Civil) 1808

Hon'ble Judges : K.B.K. Vasuki, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Santharam Natarajan, for the Appellant; S. Sethuraman and A.V. Arun, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.—By consent of all parties, the writ petitions itself are taken up together for hearing and disposed of by a common

order.

2. The petitioners seek to challenge the impugned notices, dated 22.10.2009, on the file of the first respondent and quash the same as illegal and

arbitrary and direct the first respondent-Bank to consider the grievances of the petitioner in the background of equity and Principles of Natural

Justice.

3. It is well settled that at the stage of issuance of Section 13(2) notice, there is no right for the petitioners to seek for a challenge. In fact, after

13(2) notice, the petitioners get an opportunity to file their objections within 60 days and responsibility on the first respondent-Bank to deal with such objections in an appropriate manner by invoking Section 13(3-A) of the SRFAESI Act. Thereafter, if further action is initiated u/s 13(4) of

the Act, then alone, there would be any scope for the petitioners to seek for a challenge and that too, before the Debts Recovery Tribunal (in short

''DRT'') u/s 17 of the SRFAESI Act. In such circumstances, we are not inclined to entertain the Petitions challenging the Section 13(2) notices

impugned in these Writ Petitions.

4. As far as the direction to the first respondent to consider their grievances are concerned, we take note of the submissions made by Mr.

Santharam Natarajan Counsel for the petitioners as well as Mr. A.V. Arun, learned Counsel appeared for the Second respondent.

5. The learned Counsel for the second respondent placed before us the circulation of the Reserve Bank of India, dated 4.5.2009, communicated

to all Scheduled Commercial Banks. Paragraphs 7 to 9 of the said communication read as under:

7. The Reserve Bank has carefully considered the Group''s recommendations regarding rehabilitations of potentially viable sick MSE

units/enterprises, which essentially aim at timely detection of sickness and adoption of remedial measures to rehabilitate the potentially viable ones.

While fully appreciating the sense of the Group''s recommendations, attention of Banks is invited to the guidelines issued by the Reserve Bank on

MSE debt restructuring in respect of borrowal accounts that show symptoms of stickiness, vide its circulars:

(i) DBOD.BP.BC. No. 34/21.4.132/2005-06 dated September 8, 2005

(ii) DBOD.BP.BC. No. 37/21.04.132/2008-09 dated August 27, 2008

These guidelines, in fact, subsume the incipient sickness stage and, if implemented as intended, could significantly prevent or arrest sickness at the

initial stages. Such MSE units/enterprises, which turn sick in spite of debt re-structuring are expected to be few and would fall within the ambit of

the extant guidelines on rehabilitation of potentially viable sick units/enterprises (vide Circular RPCD. No. PLNFS.BC. 57/06.04.01/2001-2002

dated January 16, 2002). Banks are, therefore, advised to apply the Reserve Bank''s guidelines on debt restructuring optimally and in letter and

spirit. This would be to their advantage as well as their MSE clients.

8. The group has also recommended that Reserve Bank of India may announce a

One Time Settlement Scheme (OTS) for the MSME Sector.

However, any policy on settlement of non-performing loans essentially a management function to be exercised by individual Banks, based in their

commercial judgment. It is necessary that the Banks have their own non-discretionary OTS policy which enables their officials to make quick and

judicious decisions on OTS. As such, Banks are advised to put in place a suitable OTS for this sector.

9. Accordingly, in the light of the recommendations of the group and the Banking Codes, Standards Board of India''s code of commitment for the

MSE borrowers, your Bank may undertake a review and put in place the following policies for the MSE Sector, duly approved by the Board of

Directors:

(i) Loan policy governing extension of credit facilities

(ii) Restructuring/Rehabilitation policy for revival of potentially viable sick units/ enterprises.

(iii) Non-discretionary One Time Settlement Scheme for recovery of non-performing loans.

6. In this context, Mr. A.V. Arun, brought to our notice the decision of the Hon''ble Supreme Court in Sardar Associates and Others Vs. Punjab

and Sind Bank and Others, . The Hon''ble Supreme Court applied the constitutional Bench''s decision of the Apex Court in Central Bank of India

Vs. Ravindra and Others, , and made it clear that the said judgment binds all concerned and that there is every power in this Court under Article

226 to come for an aid of a borrower in the event of any violation of the guidelines issued by the Reserve Bank of India at the instance of the

Scheduled Banks. In paragraphs 42 and 43 of the said judgment, the Hon''ble Supreme Court made the said position clear in the following words:

42. If in terms of the guidelines issued by Reserve Bank of India a right is created in a borrower, we see no reason as to why a writ of mandamus

could not be issued. We would assume, as has been contended by Mr. Singh, that while exercising its power under Article 226 of the Constitution

of India, the High Courts may or may not issue such direction but the same, in our opinion, by itself, would not mean that the High Court would be

correct in interfering with an order passed by the Appellate Tribunal which was entitled to consider the effect of such One Time Settlement.

43. The question pertaining to the present matter is regarding whether or not a circular issued by a statutory body for the governance and

regulation of certain agreements confers a legal right upon the aggrieved party in case of non-compliance of complete and absolute deviation from

the said guidelines by the body formulating such circulars. Alternately, can the aggrieved parry, then, claim its right of judicial review under Article

32 or 226 to quash the said circular in case of discriminatory application of such rules/guidelines so mentioned in the circular?

7. In the above said legal background, when we examined the communication of the Reserve Bank of India, dated 4.5.2009, we find that in

paragraph 7, the Reserve Bank of India after referring to its guidelines issued on 8.9.2005 and 27.8.2008 advised the Bank including the first

respondent to comply the Reserve Bank''s guidelines on debt restructuring optimally and in letter and spirit. In the opinion of the Reserve Bank of

India, such a course would be advantageous to the Banks as well as micro and small industries.

8. It is not dispute that the petitioner falls under the category of MSE clients. As per the impugned notices, the non-performing assert was stated to

be Rs. 17,93,634/- in respect of W.P.(MD). No. 13470 of 2009 and Rs. 28,06,546/- in respect of W.P. (MD). No. 13471 of 2009. The Non-

performing Assets (in short ''NPA'') is in the order of more than Rs. 45/- lakh. The petitioners are said to have sent proposals on 16.2.2010.

9. Mr. S. Sethuraman, learned Counsel for the first respondent would, however, raise serious objections to the contention of the learned Counsel

for the petitioners and submitted that going by the communication of the Reserve Bank of India, dated 4.5.2009, there is no specific or mandatory

directions to the first respondent to consider the proposal of the petitioners for One Time Settlement (OTS).

10. The learned Counsel for the first respondent submitted that in paragraph 9 of the said communication, the Reserve Bank of India has left to the

discretion of the Banks to formulate any non-discretionary One Time Settlement Scheme for recovery of non-performing loans and that first

respondent thought it fit not to formulate any such scheme in the interest of the Banks. Therefore, inasmuch as none of the previous scheme is in

operation, there is no scope for considering the proposal of the petitioners.

11. We are not inclined to accede to the said contention so made on behalf of the first respondent. The communication of the Reserve Bank of

India, dated 4.5.2009, consists of two directives. In paragraphs 7, after making reference to the earlier guideline, dated 8.9.2005 and 28.7.2008,

the Reserve Bank of India advised the scheduled Banks to comply Reserve Bank of India''s guidelines on debt restructuring optimally and in letter

and spirit, as in the opinion of the Reserve Bank of India, it would be advantage to the Banks as well as MSE clients. Alternatively, in paragraph 9,

the Reserve Bank of India has suggested to the Banks to formulate their own scheme for loan policy restructuring/rehabilitation policy for revival of

potentially viable sick units/enterprises and for non-discretionary One Time Settlement Scheme.

12. In such circumstances, in our considered opinion, the first respondent-Bank, if has not framed its own One Time Settlement Scheme should

consider the proposal of the petitioners for One Time Settlement under any of the schemes or guidelines issued by the Reserve Bank of India prior

to the issuance of the communication, dated 4.5.2009. In the same breadth, we will have to take note of the fact that the impugned notices in the

Writ Petitions disclose the declaration of Non-performing Assets of the petitioners and the liability was Rs. 17,93,634/- in respect of W.P. (MD).

No. 13470 of 2009 and Rs. 28,06,546/- in respect of W.P. (MD)No. 13471 of 2009.

13. As per the interim orders passed, on 17.2.2009, in M.P. (MD). Nos. 1 of 2009 in both the Writ Petitions, a direction was issued to pay a sum

of Rs. 5,00,000/-. The petitioners are stated to have complied with the said direction and deposited a sum of Rs. 5,00,000/-. The first respondent-

Bank is also stated to have given credit to the said sum and adjusted the sum in the loan account of the petitioners. Therefore, in order to show its

bona fide, the petitioners are directed to deposit a further sum of Rs. 5,00,000/- from the date of receipt of a copy of this order. On such deposit

being made, the first respondent shall consider the proposal of the petitioners, dated 16.2.2010, for One Time Settlement and pass appropriate

orders within a period of four weeks from the deposit of the sum of Rs. 5,00,000/- by the petitioners. Till such time final orders are passed, we

only direct the first respondent-Bank to keep the impugned notices in abeyance. Based on the final order to be passed, the notices issued u/s 13(2) shall be revived.

With the above directions and observations, these Writ Petitions are disposed of. Consequently, connected M.Ps. are closed. No costs.

