
(2005) 03 DEL CK 0202

In the Delhi High Court

Case No : Writ Petition (C) 4630 of 2005 and CM 3332 of 2005

Sh. Ashok Anand

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

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

Citation : (2005) 3 BC 523 : (2005) 119 DLT 210

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : H.L. Tikku and Dilip Vasudevan, for the Appellant; Rajiv Kapur, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In this petition under Article 226 of the Constitution, the relief claimed is for direction to the respondent (hereafter referred to as "SBI") to consider and accept the proposal for settlement given by the petitioner in accordance with certain guidelines issued by the Reserve Bank of India.

2. The petitioner is a borrower; it had sought for various advances and credit facilities from the SBI. The current account of the petitioner was showing a debt balance of Rs. 22,97,791.46 as on 25th January, 2001 due to the devolvement of inland letters of credit . In the meanwhile, the petitioner had apparently given export bills to the tune of Rs. 15,07,117/- to the SBI on 29th December, 2000 drawn under D/P at sight. That was paid on 22nd January, 2001. The SBI credited this amount in the Export Packing Credit, which was showing an outstanding amount of Rs. 34,95,212.32 as on 31st March, 2000.

3. The petitioner avers that pursuant to the guidelines formulated by the RBI, for settlement of Non-performing Assets (NPA"s), it proposed a "One Time Settlement (OTS)". It has relied upon two circulars/guidelines dated 28th July,

1995 and 29th January, 2003, in that regard.

4. The petitioner placed particular reliance on the following provisions in the 1995 Guidelines which were extracted as under:

"We have further to advise that banks should observe the following guidelines:

(a) The compromise should be a negotiated settlement under which the bank should ensure to recover its dues to the maximum extent possible at minimum expense.

(b) Proper distinction needs to be made between willful defaulters and the borrowers defaulting in repayments due to circumstances beyond their control.

(c) Where security is available for assessing the reliable value, proper weight age has to be given to the location, condition and marketable title and possession thereof.

(d) What is important in settlement cases is that the bank could promptly recycle the funds with advantage instead of reporting to expensive recovery proceedings spread over a long period."

5. Likewise, the petitioner relies on the objective underlying the guidelines formulated in January 2003, namely, the creation of a simplified, non-discretionary and non-discriminatory mechanism for settlement for chronic NPA. It is submitted that all Banks, including the SBI, have to consider and follow the guidelines, and accept settlements, since such a course of action would augment the fund position and the amounts would be available for re-cycling.

6. The grievance made out in these proceedings is that the proposal for one time settlement made on 28th May, 2003 has not been appropriately dealt with; in the meanwhile, pursuant to provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act (hereafter called the Securitisation Act), the SBI proceeded to take action u/s 13(2) and recall the advances and outstandings. The petitioner submits that the proposals made have been turned down without objective assessment and in an arbitrary manner.

7. Mr. Tikku, learned senior counsel appearing for the petitioner submits that the settlement proposal given in the year 2003 has clearly highlighted the fact that a claim for Rs. 39 lakhs was pending before the ECGC (Export Credit Guarantee Cover) which was likely to be settled and the bank would have been a beneficiary in that case.

8. Learned counsel submits that the objective of the guidelines, as also the imperative, the bank has to follow (being a public institution) is non-discriminatory and non-discretionary treatment. Essentially, that embodies the principle of fairness. In his submissions, these elements are completely lacking since the bank mechanically proceeded to deal with the petitioner's proposal and reject it. It is also submitted that the facility of one time settlement as per the guidelines is unavailable only to two categories, namely, willful defaulters and

concerns/individuals who are involved in fraudulent activities. The petitioner does not falls anyone of those categories.

9. In these circumstances, the relief of various directions to the SBI has been sought, the sum and substance, of which is to direct it to consider and settle the proposals in accordance with the RBI guidelines.

10. Mr. Kapur, learned counsel appearing on behalf of the SBI submits that action under Securitisation Act had already been initiated; in these circumstances, the reliefs at least as far as the one relating to withdrawal/quashing of the notice are concerned cannot be agitated in these proceedings. The petitioner would have to seek recourse u/s 17 of the Act of the Securitisation Act by approaching the Appellate Body, namely, Debt Recovery Tribunal. It is also submitted that the one time scheme formulated by the RBI expired on 31st July, 2004. Learned counsel has also submitted that the proposals were rejected on 31st August, 2004 and again on 10th December, 2004.

11. I have heard the learned counsel for the parties and examined the material on record. The claim in these proceedings is essentially that the SBI should be compelled to effect a compromise based on the proposals of the petitioner. That there are certain outstandings and the petitioner is liable to pay or settle the same is not disputed. However, certain controversies with regard to quantum and the manner in which the advances have been shown as outstanding have been disputed.

12. It is well-settled that in Article 226 of the Constitution, the Court does not act as a appellate body. It cannot don the role of a primary decision maker, and examine the merits of a decision. Its concern primarily with the decision making process and the areas of concern where the Court can step in, are existence of mala fide, procedural irregularity, illegality and what is termed "Wednesbury unreasonableness. In addition, the Court also examines the correctness of the action impugned from the stand-point of the arbitrariness and fairness.

13. Whenever, judicial review is invoked under Article 226, the nature of the subject matter is a relevant circumstance that impels the Court to exercise or decline jurisdiction. That factor also guides the extent and scope of jurisdiction. In the present proceedings, the scope of enquiry whether the respondent SBI ought to be directed by an appropriate order to consider and settle the proposals submitted by the petitioner. The petitioner have primarily relied upon the guidelines issued by the RBI.

14. In my considered opinion, every bank, including the SBI, has to follow the guidelines while examining the settlement proposal submitted by its borrowers. However, those would have to be in the light of considerations that are relevant to the issue. Primarily, they are commercial in nature. It may not be possible for the Court to outline all those considerations. The bank in question in a given case may place more emphasis on the possibilities of recovery and the credit-worthiness of the party concerned notwithstanding the amount due; in some

other cases it may, in spite of the presence of these, decline the proposal having regard to the previous track record etc. The nature of this exercise itself involves exercise of discretion, and commercial judgment. The guidelines of the RBI Therefore have to be seen as requiring the concerned bank to adopt a fair and non-discriminatory manner within its discretionary jurisdiction. There can be no invariable rule that Banks have to accept all such proposals, and settle with such clients/debtors.

15. Having regard to the above, on the materials available on record, I am of the view that there is nothing to point to the fact that the bank acted in an arbitrary or non-discriminatory manner. The proposal appears to have been considered by the bank in accordance with the guidelines, by the Board of Directors. The nature of consideration and the order that has to be passed in such cases has to be guided by the subject matter, namely, a proposal to compromise or settle the dues. Hence, one of the consideration that would weigh with the Bank are purely commercial. It would Therefore not be possible to expect the bank or the financial institution to outline detailed reasons, either for acceptance or rejection of a given proposal. The reasoning given by the SBI, namely, that offer given is too low to be accepted which appears to have been already intimated during personal discussion, to my mind, cannot be faulted.

16. In view of the above reasoning, I am of the view, that no interference is called for.

17. It is made clear that the observations made during the course of this order shall not come in the way of consideration of the merits of the Appeal that may be filed by the petitioner u/s 17 of the Securitisation Act.

18. In the light of the above, the writ petition and CM for interim relief are dismissed with no orders as to costs.