

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7863 of 2021

M/s Maksi Agro Cool Chains Pvt. Ltd. Regd. Office-214, 2nd Floor, Ashiana Towers, Exhibition Road, Patna through Mr. Manoj Kumar Sinha, Director, S/o Shri Damodar Prasad Sinha, age about 51 years, Male, R/o Bachi Villa, House NO. 255, Judges Colony (West), P.S. Danapur, Danapur-Khagaul Road, Near Saguna More, Patna.

... .. Petitioner/s

Versus

1. Union Bank of India, pursuant to amalgamation of Corporation Bank and Andhra Bank into Union Bank of India Scheme, 2020 issued by Government of India vide Gazette Notification dtd. 4th March, 2020 through Chairman-cum-Managing Director, Union Bank of India, 239, Vidhan Bhawan Marg, Nariman Point, Mumbai.
2. The Regional Manager, Union Bank of India, 1st Floor, Nashiman Bhawan, Mazharul Haq Path, Frazer Road, Patna.
3. The Senior Manager, Union Bank of India, Kankarbagh Main Road Branch, Near NMCH, Kankarbagh, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arbind Kumar Jha, Adv
Ms. Jyoti Prakash, Adv
For the Respondent/s : Mr. Kumar Alok

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 16-02-2022

This application has been taken up for online hearing through video conference because of COVID-19 pandemic restrictions.

Heard learned counsel for the petitioner as well as the learned counsel for the Bank.



The claim in the writ petition is for restructuring of the petitioner's loan repayment. The claim is based on the communication of the Reserve Bank of India dated January 1, 2019 which reiterates the earlier circulars in this regard for restructuring of advances to Micro, Small & Medium Enterprises (MSME). The petitioner's application for such restructuring was rejected by the respondent-Bank under communication dated 10.02.2020, quashing of which is sought in the instant proceeding. Petitioner also seeks a direction to the respondent-Bank to consider and accept the proposal for restructuring of the petitioner's debt.

The brief factual background is that the petitioner claims to have been sanctioned term loan and cash credit facilities by the Bank. His case is that insufficient working capital was sanctioned and there was delay in disbursement of the same and thereby the petitioner's unit has fallen in rough weather and was unable to meet its obligations due to various lapses in the sanction of the loan.

The learned counsel for the petitioner has submitted that the Reserve Bank of India communications have statutory force. They are binding upon the Bank and therefore, the Bank should have considered his application for



restructuring and granted the facility of restructuring of the loan repayment to the petitioner.

The Court, having considered the prayer and submission of the learned counsel, has carefully examined the communication dated 01.01.2019 issued by the Reserve bank of India (RBI). From bare perusal of the same, it is apparent that enforceability of the same is dependent upon fulfillment of several conditions specified therein. Another aspect of the matter is that admittedly the respondent-Bank on 17.06.2019 had already initiated action for recovery of the loan under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'SARFAESI Act').

It is the petitioner's own case that such recovery proceedings were assailed by the petitioner before the Debt Recovery Tribunal (in short 'DRT') at Patna by making an application under Section 17 of the SARFAESI Act. As on the date of rejection of the petitioner's claim for restructuring, the Bank had already taken steps under the SARFAESI Act, for recovery of the loan which was pending for consideration before the DRT. As per submission of the petitioner's counsel, the action for recovery was found not to be in accordance with law



and set aside on 29.09.2021.

The petitioner has not been able to show from the guidelines or communication of the Reserve Bank of India that the restructuring is available in respect of accounts for which recovery proceedings have been initiated and are pending and against which the borrower was pursuing his SARFAESI Appeal before the DRT.

The admitted fact is that as on the date of rejection (10.02.2020), the petitioner's account was already subject to recovery under the provisions of the SARFAESI Act and, therefore, even on this score the petitioner has failed to show that he could claim restructuring of the loan repayments as per RBI communication dated 01.01.2019.

Another aspect of the matter which this Court would consider is that grant or refusal of restructuring of the loan accounts is a matter of fiscal prudence. The Banks are not expected to allow restructuring merely for the asking by any borrower. Such relief is granted based on consideration of various financial parameters, including status and viability of the project, the status of the collateral securities, the past profile of the borrower, etc. which invariably are disputed issues of facts which cannot be effectively considered in a proceedings



under Article 226 of the Constitution of India. Accordingly, this Court is not inclined to interfere in the decision of the Bank dated 10.02.2020. Clearly, no case is made out for issuance of any direction for restructuring of the petitioner's loan account.

The Court would observe that this instant proceeding is thoroughly misconceived for the aforesaid reasons. No enforceable claim has been made out. However, without expressing any opinion on the merits of the dispute which remain to be adjudicated in appropriate civil remedies, this Court would observe that the instant proceeding is nothing short of a luxurious litigation at the instance of the petitioner for which this Court would consider it appropriate to impose a cost of Rs. 2,000/- to be paid to the Patna High Court Legal Services Authority.

The writ petition is dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.02.2022
Transmission Date	NA

