

Shakuntla Educational& Welfare ... vs Punjab & Sind Bank on 13 April, 2020

Author: Rekha Palli

Bench: Rekha Palli

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C)2959/2020
SHAKUNTALA EDUCATIONAL& WELFARE SOCIETY
PETITIONER
Through: Mr.Saket Sikri with Mr.Gautam
Khazanchi & Ms.Aayushi Sharma, Adv.
versus
PUNJAB & SIND BANK RESPONDENT

Through: Ms.Suruchi Aggarwal, Adv.

CORAM:

HON'BLE MS.JUSTICE REKHA PALLI % ORDER 13.04.2020 CM
APPL.10273/2020 (exemption)

1. Allowed, subject to all just exceptions.

C.M.No.10274/2020 (for exemption from filing court fee and notarized affidavit)

2. Learned counsel for the petitioner submits that the requisite court fees and affidavit will be filed within three working days of the High Court's reopening.

3. The application stands disposed of.

W.P.(C)2959/2020 & CM APPL.10272/2020 (for stay)

4. The present petition has been taken up for hearing through video conferencing.

5. By way of this petition, the petitioner seeks a direction to the respondent not to declare its pending loan accounts as Non Performing Assets (NPA). The petitioner also seeks a direction to the respondent for grant of moratorium of three months to it in terms of circular issued by the Reserve Bank of India(RBI).

6. At the outset, learned counsel for the petitioner submits that since the circular premised on which relief in the present petition are sought have been issued by the RBI, the said bank may at his oral

prayer be impleaded as respondent no.2. Learned counsel for the respondent has no objection to the said request. Accordingly, at the oral request of the learned counsel for the petitioner, the RBI through its Governor is impleaded as respondent no.2. The amended memo of parties be filed within three days.

7. Learned counsel for the petitioner submits that the petitioner is a charitable society engaged in the business of technical and higher education. In order to set up the institutions, the petitioner had availed six term loans from the respondent/Bank out of which four term loans stand fully repaid in accordance with the restructured repayment plan as conveyed by the respondent vide its letter dated 30.12.2014. He submits that even qua the remaining two term loans that have been referred to as term loans 'V' & 'VI', the petitioner has been diligently making repayments in accordance with the restructured plan but before the instalments payable in March, 2020, could be paid, the pandemic COVID has set in and consequently the RBI in order to ease the financial crises being faced by borrowers, has vide its circular dated 27.03.2020 provided a moratorium of three months in respect of all term loans as outstanding on 01.03.2020.

8. He submits that in view of this circular issued by the RBI, whereunder a 90 days moratorium qua the instalments, which became payable after 01.03.2020 has been granted, the respondent cannot declare the petitioner's accounts as NPA only on account of its failure to pay the instalments, which were payable on or before 31.03.2020. He further submits that since the various Institutes run by the petitioner are educational institutes situated in the State of Uttar Pradesh, where the State Government has issued a specific directive prohibiting the petitioner from coercing the students to pay the due fees, the petitioner on account of its inability to collect or demand pending fees from the students, is not in a position to repay the instalments as payable in March, 2020 qua the term loan V & VI.

9. In support of his aforesaid contentions, he places reliance on a order dated 06.04.2020 passed by a Coordinate Bench of this Court in W.P.(C) URGENT 5/2020 [Anant Raj Limited v. Yes Bank Limited] as also on a decision dated 11.04.2020 of Bombay High Court in W.P. LD- VC.NO.30/2020 [Transcon Inconia Pvt. Ltd. & Ors. v. ICICI Bank & Ors.].

10. Finally he submits that the petitioner has every intention to honor its commitments and submits that he has instructions to state that the petitioner undertakes to pay the instalments as were payable on or before 30.03.2020, within a week from the date of withdrawal of the State Government's directive prohibiting the petitioner from collecting fees from the students. He, therefore, prays that the interim orders be passed restraining the respondent from declaring the petitioner's account as NPA.

11. Issue notice. Ms.Suruchi Aggarwal, Advocate accepts notice. She prays for and is granted two weeks time to file the counter affidavit. Rejoinder thereto, if any, be filed within one week thereafter. While praying for time to file reply, she vehemently opposes the grant of interim relief by primarily contending that the moratorium as envisaged by the RBI is applicable only qua instalments which became payable on or after 01.03.2020 and not qua those which had become due prior to 01.03.2020. She submits that as per the restructured payment plan, the petitioner was liable to

make payment of quarterly instalments, and the default qua instalments in respect whereof the respondent is proposing to declare the petitioner's accounts as NPA had already fallen due on 31.12.2019 itself and, therefore, the moratorium envisaged by the RBI would not be applicable to defaulters like the petitioner. She further submits that the Statement of Development Regulatory Policy dated 27.03.2020 does not envisage any such moratorium in cases of instalments which had already become due prior to 01.03.2020. She finally submits that the RBI's circular dated 27.03.2020 on which heavy reliance is being placed by the petitioner, can in any event not override Regulatory Policy, which does not provide for deferment of an account being classified as NPA on account of the pandemic of COVID 19.

12. Having considered the submissions of the learned counsel for the parties, I find that the respondent does not dispute the position that in case the petitioner had, at any time, on or before 31.03.2020, made the payment qua the instalments, which had fallen due on 31.12.2019, the respondent could not have declared the petitioner's aforesaid accounts as NPA. In the light of this position, in my view, irrespective of the question, as to whether, the moratorium as envisaged by the RBI's circular dated 27.03.2020 would be applicable to the petitioner qua the instalments, which question can be determined only after completion of pleadings and considering the stand of the RBI, the fact remains that in view of the lockdown in the country as also the undisputed position that the petitioner still had time to make the payment of the due instalments till 31.03.2020, before which date on account of the lockdown and directive issued by the State Government, it has been prevented from demanding the due fees from the students of its various institutes. I also find myself in agreement with the observation of the Coordinate Bench in Anant Raj Limited (supra) that the intention of the RBI while issuing the regulatory package was to maintain status quo with regard to the classification of accounts of the borrowers as they existed on 01.03.2020.

13. In these circumstances, I am of the view that the petitioner has made out a prima facie case for restraining the respondent from declaring its two accounts as NPA, when the countrywide lockdown is still continuing. Any classification of the petitioner's accounts as NPA would certainly amount to altering the position as existing on 01.03.2020 and, therefore, grave and irreparable loss will be caused to the petitioner, in case, its accounts are declared as NPA, only on account of its failure to pay the instalments, which were admittedly payable on or before 31.03.2020.

14. It is accordingly directed that till the next date, the respondent will stand restrained from declaring the petitioner's accounts as NPA. It is, however, made clear that, in case, before the next date, the directive issued by the State of Uttar Pradesh prohibiting the petitioner from demanding fees from its students is withdrawn, the petitioner would be liable to forthwith pay the instalments within one week from the date of the said withdrawal.

15. Notice be issued to the newly impleaded respondent/RBI through e-mail, returnable on 04.05.2020. Reply, if any, be filed within two weeks. Rejoinder thereto, if any, be filed within one week thereafter.

16. List along with W.P.(C) URGENT 5/2020 on 04.05.2020 before the roster bench.

17. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

REKHA PALLI, J APRIL 13, 2020/sr