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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8814/2018 & CM No. 33880/2018**

AMIRA PURE FOODS PVT LTD

..... Petitioner

Through: Mr Harish Malhotra, Sr. Advocate
with Mr Ruchir Midha, Mr Karthik K.
R. and Mr Iggu Chiitioppa,
Advocates.

versus

CANARA BANK & ORS

..... Respondents

Through: Mr Kush Sharma, Mr Varun Sharma,
Ms S. Garg and Mr Ekant Luthra,
Advocates for Vijaya Bank.
Mr Karan Khanna and Ms Asmita
Kumar, Advocates for R-1 (Canara
Bank) & R-6 (Indian Overseas Bank).
Mr Rajiv Kapur and Mr Nahit Bangia,
Advocates for SBI.
Mr Ateev Mathur, Mr Navneet Gupta,
Mr Ajay Monga, Ms Jagriti Ahuja
and Mr Amol Sharma, Advocates for
R-3/ICICI
Mr Sumit Nagpal, Advocate for IDBI
Bank/R-4.
Mr Santosh Kumar Rout, Advocate or
BOB and BOI.
Mr Niraj Kumar, Advocate for
Oriental Bank of Commerce.
Mr Amit Mahajan, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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24.08.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“A. An appropriate writ in the nature of Mandamus *inter-alia* directing the Respondent Banks to consider and accept the resolution plan and options put forth by the Petitioner Company for repayment of the total debt owned by the Petitioner Company;

B. An appropriate writ in the nature of Mandamus *inter-alia* directing the respondent banks to provide necessary guidelines and/or resolution plans conducive with the continuance of the daily business of the Petitioner Company, in case the resolution plan provided by the Petitioner Company is unacceptable to the Respondent Banks;”

2. The petitioner had availed of financial assistance from various banks, which are arrayed as respondents in the present petition. Admittedly, the petitioner has been unable to repay its debts due to various reasons, which the petitioner claims are beyond its control and/or occasioned by publication of false statements at the instance of two of its competitors.

3. Since the financial assistance extended to the petitioner exceeded ₹100 crores (thousand million), the respondent banks formed a Joint Lenders Forum (JLF) with respondent no.1 (Canara Bank) being the lead banker.

4. The petitioner's grievance (as articulated by its counsel) is that although it had submitted viable rehabilitation packages, however, the bankers have failed to consider the same.

5. Mr Malhotra, learned Senior Counsel appearing for the petitioner had referred to the proposal submitted by the petitioner for discharge of its debts and submitted that the said proposal was viable and the failure on the part of the respondents to consider the same, is arbitrary and unreasonable.

6. He also referred to the circular dated 26.02.2014 issued by the Reserve Bank of India (RBI), which mandates the lending banks to form a JLF in cases where the aggregate exposure of the lenders is more than ₹1000 million. He submitted that in terms of the aforesaid circular, the JLF was required to consider various options for a Corrective Action Plan (CAP) but the respondent banks have failed to arrive at an appropriate CAP for revival of the petitioner's business, in order to enable the petitioner to discharge the debts owed to the respondent banks.

7. Mr Karan Khanna, learned counsel appearing for respondent no.1 (Canara Bank) countered the aforesaid submissions. He submitted that the JLF had examined the proposals submitted by the petitioner and had rejected the same. He further stated that the bankers had also lost their confidence in the management of the petitioner company. He submitted that although the petitioner claims that it has stocks in excess of ₹1400 crores, it has failed to submit a stock audit report despite various reminders. Thus, its claim of holding stocks in excess of ₹1400 crores remains unsubstantiated. He further submitted that the petitioner's account has been classified as a Red Flag Account (RFA) and it is not possible for the lenders to consider any further rehabilitation proposals.

8. Mr Ateev Mathur, learned counsel appearing for respondent no.4

(ICICI Bank Limited) handed over a compilation of the Minutes of the Meetings of the JLF held on 16.01.2018, 28.03.2018 and 15.05.2018. He submitted that the respondents had held discussions to ascertain whether a restructuring plan was feasible and had concluded that the petitioner has been unable to present any concrete action plan despite sufficient opportunity. He further submitted that the petitioner's proposal to monetise its factory land at Gurgaon was also considered at the meeting held on 16.01.2018 but the same was not accepted.

9. I have heard the learned counsel for the parties.

10. A plain reading of the Minutes of the JLF Meeting held on 16.01.2018 and 15.05.2018 clearly indicate that the bankers had held discussions with regard to the proposals submitted by the petitioner. However, the respondents were not agreeable to the same. The minutes of the meeting held on 16.01.2018 indicate that the DGM of Canara Bank had summarised the views of the JLF as under:-

“Company's presentation for regularisation of accounts/clearing overdues is unable to build confidence and not convincing Nothing new has been added.

Sufficient time has been given to the company to present concrete action plan but company has failed to do so.

Company's progress on compliance matters/ operationalization is very poor

Looking all the aspects, JLF has decided to initiate recovery steps/filing the case with NCLT.”

11. Similarly, the Minutes of the JLF Meeting held on 15.05.2018

indicate that the respondents had unanimously decided as under:-

- “Company has been always assuring but fails to comply pending matters. Reasons quoted by the company are repetitive and far from convincing
- Since account is already marked as RFA so proposal for OTS/restructuring can't be considered, moreover OTS proposal is also not convincing. It is also felt that company is just coming with proposals for the sake of proposals without tangible/concrete details.
- Lenders have decided to go with M/s Haribhakti & CO LLP having quoted Fee of Rs.14 lacs plus taxes for assignment of forensic audit.
- Company to submit PBS by June 1st week
- Company to comply all the pending matters
- Recovery process like DRT/NCLT etc will continue,
- Cost of the forensic audit will be shared in proportion of the lenders liability.”

12. In the aforesaid view, the contention that the respondent banks have not explored the possibility of a restructuring plan, is unmerited. The relief as sought by the petitioner – to direct the respondent banks to consider and accept the resolution plan and the options put by the petitioner – is plainly not maintainable. This Court cannot issue a mandamus directing the respondent banks to restructure the financial assistance granted by them to the petitioner. (See: ***Haryana Steel & Alloys Ltd. v. IFCI Ltd. & Anr.:*** 137(2007) DLT 554; also see: ***Chinar Fabrics and Furnishing Private Limited and Ors. v. State Bank of India:*** W.P.(C) Nos. 18753-57/2005,

decided on 17.11.2005)

13. Insofar as the second prayer is concerned, that is, for directing the respondent banks to provide necessary guidelines and/or resolution plans for continuing of daily business of the petitioner; the same is also unmerited. This is so as the respondent banks have already examined the petitioner's case within the framework of the circulars issued by the Reserve Bank of India. It is also relevant to note that the CAP, as envisaged in the RBI's circular dated 26.02.2014, also includes the option for recovery of dues. The decision as to whether the respondent banks require to support a resolution plan proposed by the petitioner is a matter of their commercial wisdom and warrants no interference from this Court.

14. This Court is further informed that certain banks have already approached the Debt Recovery Tribunal for recovery of the dues and respondent no.4 (ICICI Bank limited) has filed a petition under The Insolvency and Bankruptcy Code, 2016.

15. In view of the above, the petition is unmerited and is, accordingly, dismissed. The pending application stands disposed of.

VIBHU BAKHRU, J

AUGUST 24, 2018

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