Salgaonkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3865 OF 2022

S.E.Transstadia Pvt. Ltd. & Ors. .. Petitioners

Versus

Reserve Bank of India & Ors. .. Respondents

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Mr.Ieshan Sinha with Mr.Aayesh Gandhi and Ms.Riya Narichania i/b Wadia Ghandy & Co. for the Petitioners.

Mr.Vekatesh Dhond, Senior Advocate with Mr.PradeepMane, Ms.Huzan Bhumgara and Ms.Ridhi Badheka i/b Desai and Diwanji for the Respondent No.1.

Mr.Harsh Sheth with Ms.Niyati Merchant i/b MDP Legal for Bank of Baroda (Respondent No.3) and Union Bank of India (Respondent No.5).

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATE : 17th MARCH, 2026

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ORAL JUDGMENT (Per Bharati Dangre, J.)

1. Petitioner No.1-S.E. Transstadia Pvt. Ltd., a company incorporated under the provisions of the Companies Act alongwith its Managing Director and Director as well as its holding Company Transstadia Holdings Pvt. Ltd. have approached this Court praying for quashing and setting aside the Circular issued by the Reserve Bank of India on 07/06/2019 , by submitting that the said circular has removed the infrastructure category, which was held entitled for long term project loans and permitted the lender banks to fix longer amortization period with an option for periodic re-financing in

respect of the loans to infrastructure project and core industries. The grievance raised is, that the impugned circular has taken away the said benefit and this has placed the Petitioner' infrastructure project in doldrums.

2. We have heard the learned counsel Mr. Ieshan Sinha for the Petitioners, and Mr.Harsh Sheth, who has represented the Bank of Baroda and Union Bank of India. Mr. Venkatesh Dhond, learned Senior Advocate has represented Reserve Bank of India, whose circular is under challenge.

By consent of the respective counsel, we deem it appropriate to issue Rule which is made returnable forthwith..

3. Petitioner No.1 was incorporated on 17/12/2008, *inter alia,* with a view to promote sports and bring a paradigm change in the sporting eco system. According to the Petitioner, it entered into partnership with Government of Gujarat and Tourism Corporation of Gujarat, which announced its project of development of multipurpose indoor and outdoor stadium and sports infrastructure at Kankaria, Ahmedabad. On 14/06/2012 a lease for indoor stadium came to be granted.

4. Petitioner No.1 sought additional loan from Respondent Nos.3 to 5, which was granted and the construction of the project commenced in January 2014.

The project was completed and was inaugurated in June 2017.

5. According to the Petitioner, the RBI issued a Circular on 15/07/2014, declaring a "Flexible Structuring of Long Term Project Loans to Infrastructure and Core Industries". Issuance

of the said Circular was prefaced in the background that infrastructure and core industries projects are characterized by long gestation periods and large capital investments and the long maturities of such project loans consist of the initial construction period and the economic life of the asset/underlying concession period (usually 25 - 30 years). It was also noted that in order to ensure stress free repayment of such long gestation loans, their repayment tenor should bear some correspondence to the period when cash flows are generated by the assets.

Recording that the banks had been representing that they were unable to provide such long tenor financing owning to asset-liability mismatch issues and as a result of several factors, long term projects were experiencing stress in servicing the project loan.

6. With a view to overcome the problems, banks had requested the RBI that they may be allowed to fix longer amortisation period for loans to projects in infrastructure and core industries sectors, based on the economic life or concession period of the project, with periodic refinancing, every five years.

It is the aforesaid background, the RBI directed thus :-

> "6. The issues have been examined by the Reserve Bank of India (RBI). It is clarified that RBI has not prescribed any ceiling or floor on repayment period of loans, except in the case of special regulatory treatment for asset classification on restructuring. Paragraph 1.3 of Master Circular - Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, urges banks to ensure that while granting loans and advances, realistic repayment schedules are fixed on the basis of cash flows with borrowers as it would go a long way to facilitate prompt repayment by the borrowers and thus improve the record of recovery in advances. Further, in terms of circular DBOD.No.BP.BC.144/21.04.048-2000 dated February 29, 2000 on

'Income Recognition, Asset Classification, Provisioning and other related matters and Capital Adequacy Standards - Takeout Finance', banks can refinance their existing infrastructure project loans by entering into take-out financing agreements with any financial institution (FI) on a pre-determined basis. If there is no pre-determined agreement, a standard account in the books of a bank can still be taken over by other banks/FIs, subject to guidelines on 'Transfer of Borrowal Accounts from one Bank to Another issued vide circular DBOD.No.BP.BC-104/21.04.048/2011-12 dated May 10, 2012.

7. Further, in partial modification to the above-mentioned circular dated February 29, 2000, banks were advised, vide circular DBOD.BP.BC.No.98/21.04.132/2013-14 dated February 26, 2014 on 'Framework for Revitalising Distressed Assets in the Economy - Refinancing of Project Loans, Sale of NPA and Other Regulatory Measures', that if they refinance any existing infrastructure and other project loans by way of take-out financing, even without a pre-determined agreement with other banks / FIs, and fix a longer repayment period, the same would not be considered as restructuring if the following conditions are satisfied :

i. Such loans should be 'standard' in the books of the existing banks, and should have not been restructured in the past;

ii. Such loans should be substantially taken over (more than 50% of the outstanding loan by value) from the existing financing banks/Financial institutions; and

iii. The repayment period should be fixed by taking into account the life cycle of the project and cash flows from the project"

7. By the aforesaid Circular, the RBI issued instructions that it shall not come in the way of banks' structuring long term project financing products, insofar as the prudential and regulatory framework is meticulously observed while structuring such products.

8. On 15/12/2014, the RBI issued another circular allowing banks to flexibly restructure even the existing the project loans of infrastructure and core industries, thus modifying and updating the 2014 circular.

On 01/08/2016, Bank of Baroda issued a gazette notification adding a new sub-sector, namely, 'Sports Infrastructure" under category of Social and Commercial

Infrastructure of the Harmonised Master List of Infrastructure Subsectors.

9. Upon the project of the Petitioner being completed and even inaugurated by the Hon'ble Prime Minister on 30/06/2017, the Petitioner addressed a letter to the Respondent No.3-Bank, with a request to consider applying the 5/25 structure to the loan obtained by Petitioner No.1 in relation to the project. A Joint Lenders Forum (JLF) was formed for assessing the feasibility of its request and JLF concluded that the project was technically feasible and economically viable and, therefore, each of Respondent Nos.3 to 5 would refer the proposal to their respective higher authorities for approval. However, the entire plan fizzled out as on 12/02/2018, the RBI issued a circular covering Respondent Nos.3 to 5, whereby the existing instructions in relation to 5/25 schemes, including the flexible structuring of term loans to Infrastructure and Core sectors were revoked and a new regime was introduced in relation to accounts where the restructuring scheme was not yet implemented.

By the said circular, the RBI repealed 28 circulars issued by it earlier, which included the circulars dated 15/07/2014, 15/12/2014 and 10/11/2016 in relation to the 5/25 structure.

10. The Petitioners approached the Hon'ble Supreme Court by filing a writ petition, seeking quashing and setting aside of the said circular, with a direction to the banks to consider and process Petitioner No.1's request to avail the benefit of 5/25 circular. In the meantime, Petitioner No.1's account became Non Performing Account (NPA), and on 02/04/2019, the Apex

Court in the case of ***Dharani Sugars and Chemicals Ltd. Vs. Union of India & Ors.***[1] declared the 2018 Circular to be ultra vires and of no effective law. This, however, was replaced with the impugned circular dated 07/06/2019 on "Prudential Framework For Resolution of Stressed Assets". It is the contention of the Petitioners that the impugned circular failed to address the sectoral requirements peculiar to the infrastructure sector, for which the 5/25 structure was introduced. It is also the accusation of the Petitioners that the RBI failed to provide any distinct and separate treatment for the infrastructure sector and the impugned circular repealed arbitrarily and in a manifestly unreasonable manner the earlier circulars providing for flexible structuring to the infrastructure sectors. The Petitioners, though addressed a letter a letter to the RBI, to consider modification of the impugned circular, through its repeated correspondence with a relief to revive 5/25 structure and/or to restore all the benefits stipulated under the circulars for the long term project loan availed by the Infrastructure and Core Industries, no cognizance was taken and as a result, the Petitioners are constrained to approach this Court.

11. The learned senior counsel Mr.Sinha has urged before us that by adopting the flexible structuring for the infrastructure loans, it was possible to adopt two modes of financing for long term projects being take over finance or refinance-take out finance. According to him, considering the change in the market conditions and increase in the cost of project, Petitioner No.1 has sought additional loan from the banks,

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which was granted, but this facility according to the Petitioners, was taken away by the impugned circular dated 07/06/2019.

12. The learned senior counsel Mr.Dhond, appearing for the RBI, has invited our attention to an "ever greening concept" prevalent in the banking system. He would submit that whenever default is declared by a bank, bank would infuse new loan and cover up the said default instead of reporting it to the RBI and at times, the refinancing weakened the position of the project/entity in long run. Therefore, it was deemed appropriate that such default shall be reported so that some checks and balances can be imposed and a resolution plan shall be put in place, so that the position did not get worst, but definitely if the borrower is able to improve his position, then he may come out of the resolution plan and establish himself once again. The submission of Mr.Dhond is, the whole purpose of the circular dated 07/06/2019 is to assess the stress prior to the default and take appropriate steps.

13. He has also taken us through the circular by clause-by-clause and highlighted the purpose of the same.

We have perused the circular to note the following clauses indicative of its purpose :

> "**Purpose**
>
> 4. These directions are issued with a view to providing a framework for early recognition, reporting and time bound resolution of stressed assets.
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> 5. These directions are issued without prejudice to issuance of specific directions, from time to time, by the Reserve Bank to banks, in terms of the provisions of Section 35AA of the Banking Regulation Act, 1949, for initiation of insolvency proceedings

against specific borrowers under the Insolvency and Bankruptcy Code, 2016 (IBC)."

From the framework of resolution of stressed assets, we have noted that its emphasis is on the 'early identification and reporting of stress', as it is provided that the Lenders shall recognise incipient stress in loan accounts, immediately on default, by classifying such assets as special mention accounts (SMA) and the lenders shall then report credit information, including classification of an account as SMA to Central Repository of Information on Large Credits (CRILC), on all borrowers having aggregate exposure of ₹ 50 millon and above and the CRILC-Main Report shall be submitted on monthly basis.

The scheme contemplate Implementation of Resolution Plan as below :-

"9. All lenders must put in place Board-approved policies for resolution of stressed assets, including the timelines for resolution. Since default with any lender is a lagging indicator of financial stress faced by the borrower, it is expected that the lenders initiate the process of implementing a resolution plan (RP) even before a default. In any case, once a borrower is reported to be in default by any of the lenders mentioned at 3(a), 3(b) and 3(c), lenders shall undertake a *prima facie* review of the borrower account within thirty days from such default ('**Review Period**'). During this Review Period of thirty days, lenders may decide on the resolution strategy, including the nature of the RP, the approach for implementation of the RP, etc. The lenders may also choose to initiate legal proceedings for insolvency or recovery.

10. In cases where RP is to be implemented, all lenders shall enter into an inter-creditor agreement (ICA), during the above-said Review Period, to provide for ground rules for finalisation and implementation of the RP in respect of borrowers with credit facilities from more than one lender. The ICA shall provide that any decision agreed by lenders representing 75 per cent by value of total outstanding credit facilities (fund based as well non-fund based) and 60 per cent of lenders by number shall be binding upon all the lenders. Additionally, the ICA may, *inter alia*, provide for rights and duties of majority lenders, duties and protection of rights of dissenting lenders, treatment of lenders with priority in cash

> flows/differential security interest, etc. In particular, the RPs shall provide for payment not less than the liquidation value due to the dissenting lenders."

14. Apart from this, it is open for the RP to involve any action/plan/reorganization including, but not limited to, regularisation of the account by payment of all over dues by the borrower entity, sale of the exposure to other entities/investors, change in ownership and restructuring.

'Restructuring' is defined as a act in which a lender, for economic or legal reasons relating to the borrower's financial difficulty, grants concessions to the borrower and restructuring would normally involve modification of terms of the advances/securities, which would include alteration of payment period/payable amount/amount of instalments/rate of interest; roll over of credit facilities; sanction of additional credit facility/release of additional funds for an account in default to aid curing of default/enhancement of existing credit limits; compromise settlements where time for payment of settlement amount exceeds three months.

15. The new circular, therefore, has involvement of RP in involving restructuring and with a supervisory review, as stipulated, subject to stringent supervisory/enforcement actions as deemed appropriate by the Reserve Bank. The scheme according to Mr.Dhond, has clearly contemplated the policy of saving the day for the lender as well as the borrower instead of permitting the problem to percolate. The scheme made certain exceptions in form of restructuring in respect of projects under implementation involving deferment of date of

commencement of commercial operations as well as revival and rehabilitation of MSMEs and restructuring in case of natural calamity, including asset classification and provisioning.

16. The only apprehension expressed by Mr.Sinha is, upon restructuring, its account will have to be declared as NPA and this would put it to a detrimental situation.

We have noted that in case of restructuring, the scheme contemplate that the account be classified as 'standard' and shall be downgraded as Non Performing Asset i.e. sub-standard and the NPAs, upon restructuring, would continue to have the same asset classification as prior to restructuring. However, we also find that the same scheme provide for conditions for upgrade as below :-

> "5. Standard accounts classified as NPA and NPA accounts retained in the same category on restructuring by the lenders may be upgraded only when all the outstanding loan / facilities in the account demonstrate 'satisfactory performance' during the period from the date of implementation of RP up to the date by which at least 10 per cent of the sum of outstanding principal debt as per the RP and interest capitalisation sanctioned as part of the restructuring, if any, is repaid (**'monitoring period'**).
>
> Provided that the account cannot be upgraded before one year from the commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of moratorium under the terms of RP."

17. There is also provision for Additional Finance in clause 13 as well as Interim Finance in clause 14, which stipulate thus :-

> "13. Any additional finance approved under the RP (including any resolution plan approved by the Adjudicating Authority under IBC) may be treated as 'standard asset' during the monitoring period under the approved RP, provided the account demonstrates satisfactory performance (as defined at footnote 14) during the

> monitoring period. If the restructured asset fails to perform satisfactorily during the monitoring period or does not qualify for upgradation at the end of the monitoring period, the additional finance shall be placed in the same asset classification category as the restructured debt.
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> 14. Similarly, any interim finance [as defined in section 5 (15) of the IBC] extended by the lenders to debtors undergoing insolvency proceedings under IBC may be treated as 'standard asset' during the insolvency resolution process period as defined in the IBC. During this period, asset classification and provisioning for the interim finance shall be governed by the Master Circular – Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated July 1, 2015 (amended from time to time). Subsequently, upon approval of the resolution plan by the Adjudicating Authority, treatment of such interim finance shall be as per the norms applicable to additional finance, as per paragraph 13 above."

18. On perusal of the scheme, we are of the view that it is the Expert Body like Reserve Bank of India, which has taken the aforesaid decision, in larger interest and since it is in a better position to take decision involving the economic policy of the country, since we do not find any arbitrariness in the said scheme, as it has repealed the earlier circular alongwith 27 other circulars, including the circular pertaining Corporate Debt Restructuring as well as Restructuring Advances by banks and the Restructuring of Dues of the Small and Medium Enterprises (SMEs) etc., in absence of any *mala fides* being attributed or arbitrariness being established, it is not within our powers to grant any indulgence.

We, therefore, dismiss the Writ Petition by upholding the impugned circular as it is not only the Petitioners, who are impacted by the same, but definitely the entire infrastructure sector is bound by the same.

The Petition is dismissed. Rule is discharged.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**