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IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petitions No. 17793 of 2017.

In the matter of:

An application under article 102(2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Antim Knit Composite Limited represented
by its Managing Director.

..... Petitioner

-Versus-

Bangladesh Bank represented by its
Governor and others.

..... Respondents

Ms. Mahfuza Chowdhury, Advocate

..... For the petitioner

Mr. Shaikh Mohammad Zakir Hossain, Advocate

... For the respondent No.4

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Md. Khairul Alam

Heard and Judgment on 24.01.2019.

J.B.M. Hassan, J.

This Rule Nisi was issued calling upon the respondents to show cause as to why the respondents No.2-5 should not be directed to allow the petitioner to adjust the principal loan amount i.e Tk. 1.5051 crore within 1(one) year without any interest and /or pass such other or further order or orders as to this Court may seem fit and proper.

Relevant facts leading to issuance of the Rule Nisi are that the petitioner, a private limited company obtained loan facilities from the respondent No.2, Sonali Bank Limited. Thereafter, the liability was

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rescheduled by letter dated 14.12.2009 calculating total out standing liability at Tk. 6.4591 crore to be paid within eight years from June, 2009 by three months installments. But the petitioner could not continue to make the payment due to business loss and non-cooperation of the Bank by providing further capital. Subsequently, the petitioner filed an application on 22.11.2017 before the respondent No.1 (Bangladesh Bank) for rescheduling the liability within 15 years without any further interest. But there being no response from the respondent, the petitioner filed this writ petition and obtained the present Rule.

The Bank as respondent No.4 by filing an affidavit in opposition has controverted the statements made in the writ petition. The respondent contends that the petitioner has defaulted to pay their loan installments which are considered as non compliance of their loan acceptance conditions. As such considering the non compliance of the terms and conditions in the sanction letter and the BRPD circular requiring cash down payment for loan restructure, the name of the petitioner company and its proprietorship concerns have been published in the CIB report of the Bangladesh Bank as classified. It is further contended that challenging ad-interim order of Hon'ble High Court Division directing the respondent Bank to allow the writ petitioner to adjust the principal loan amount within one year by waivering the interest and also to release mortgage property after receiving the said principal loan amount the respondent Bank filed Civil Petition for Leave to Appeal No. 546 of 2018. The Hon'ble Judge in Chamber was pleased to stay the interim order of the High Court Division on 04.02.2018 and ultimately

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the civil petition was disposed of by order dated 15.03.2018 observing to dispose of the Rule before the High Court Division and the Hon'ble Court also allowed to continue the order of stay granted earlier by the learned Judge-in-chamber till disposal of the Rule of the High Court Division.

The respondent further states that section 45(1)(d) of the Bank Companies Act (amended in 2013) provides to secure the proper management of any banking company, the Bangladesh Bank on its satisfaction may issue directions to banking companies generally or to any banking company, in particular, as it deems fit and the banking company concerned shall be bound to comply with such direction. The respondent No.4 asked the petitioner to submit cash down payment in accordance with the BRPD Circular No.4 in order to avail long term loan reschedule and the respondent bank has no scope to go beyond the said circular issued by the Bangladesh Bank. The respondent Bank is a branch of Sonali Bank Limited, which is governed by the Bangladesh Bank and regulated under the Bank companies Act, 1991 (amendment 2013) and hence, the Contract Act, 1872 is not applicable for the respondent bank.

Ms. Mahfuza Chowdhury, the learned Advocate appearing for the petitioner submits that due to business loss and non cooperation of the respondent Bank, the petitioner could not adjust the loan liability although the petitioner made maximum payment of the liability. She further submits that for ends of justice in order to accommodate the petitioner the outstanding liable may be rescheduled directing the respondent Bank.

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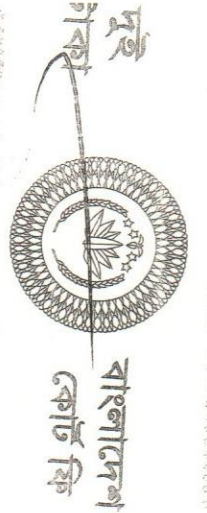
On the other hand, Mr. Shaikh Mohammad Zakir Hossain, the learned Advocate appearing for the respondent No.4 contends that the petitioner did not file any application for rescheduling the outstanding liability in accordance with the prevailing BRPD circular for loan restructure and as such, there was no scope for rescheduling liability. He further contends that earlier in the year 2009 the loan was restructured but the petitioner failed to make the payment as per said restructure and as such, the Rule is liable to be discharged.

We have gone through the writ petition, affidavit in opposition and other materials on record.

It appears that there is a scope for restructuring the loan liability under consideration of the Bank but as per BRPD circular, for obtaining such restructuring facility of the liability, the borrower has to pay down payment but here it appears that the petitioner without making any application in compliance of the BRPD circular, has just filed an application for restructuring the loan and therefore, it is not at all an application for consideration of restructuring loan liability.

It further appears that under an agreement in the form of sanction letter, the petitioner obtained loan from the respondent Bank wherein it has been clearly stipulated as to accruing interest on the principal loan amount. On the other hand, the petitioner has now filed this writ petition for allowing it to make the payment without any interest which is absolutely beyond the agreement between the Bank and the petitioner under the sanction letter.

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Therefore, this Court is not inclined to interfere in such understanding between the Bank and its customer.

In view of the above, we do not find any merit in this Rule.

In the result, the Rule is discharged without any order as to costs.

Communicate a copy of this judgment and order to the respondents at once.

J.B.M. Hassan.

Md. Khairul Alam, J:

I agree.

Md. Khairul Alam.

Typed by: Altaf: 14.05.2019.

Read by: 14-05-19

Exam. by: 14.05.19

Readied by:

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বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১ম অফিসের)
৯৬ ধারাবাহিক কক্ষের প্রাচীর