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IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 4TH DAY OF OCTOBER, 2021 BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.13071 OF 2020 (GM-RES)

BETWEEN:

1. TRAEGEN SYSTEMS PRIVATE LIMITED A COMPANY REGISTERED UNDER COMPANIES ACT HAVING ITS REGISTERED OFFICE AT: 209, 1ST FLOOR, HBR LAYOUT, 1ST STAGE, 2ND BLOCK, BENGALURU – 560 043. REPRESENTED BY ITS MANAGING DIRECTOR TIMOTHY CHARLES.

2. TIMOTHY CHARLES AGED ABOUT 32 YEARS, S/O MR.DAVID PRABAHAR, RESIDING AT 2B, DAFFODILS, TRINITY FORTUNE LAYOUT, GEDDALAHALLI, BENGALURU – 560 077.

3. JEFFERSON ELEAZER DHARMARAJ, AGED ABOUT 36 YEARS, S/O MR.PHILEMON VIJAYAKUMAR DHARMARAJ, RESIDING AT NO.40, BLOCK 1, BLESSING GARDEN, OFF. HENNUR ROAD, BYRATHI, BENGALURU – 560 077.

...PETITIONERS

(BY SRI. ADHITHY SONDHI, SENIOR COUNSEL
A/W SRI. DHANUSH M, ADVOCATE)

AND:

1. SOUTH INDIAN BANK LIMITED, THE CHIEF MANAGER, SIB ARCADE, # 61, WHEELER ROAD, COX TOWN, BENGALURU – 560 005.

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2. UNION OF INIDA,
REPRESENTED BY
THE SECRETARY,
MINISTRY OF MICRO,
SMALL AND MEDIUM ENTERPRISES
UDYOG BHAWAN, RAFI MARG,
NEW DELHI – 110 011. ... RESPONDENTS

(BY SRI. FRANCIS XAVIER, ADVOCATE FOR C/R1;
SRI. H. SHANTHI BHUSHAN, ASG FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE DECISION OF R1 BANK AS PER COMMUNICATIONS DATED 01.09.2020 ANNEXURE-G AND 01.10.2020 ANNEXURE-H AND ETC.,

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

First petitioner-Company being a registered MSME Enterprise has been carrying on the business of *inter alia* musical instruments, audio equipments & allied things; the second petitioner happens to be its Promoter and Managing Director; the third petitioner is a Co-promoter cum Director; petitioner-Company has availed from the 1st respondent-Bank Cash Credit Open Loan facilities and Term Loans which in all amount to a few crores of rupees; the second & third petitioners along with others happen to be the guarantors for the repayment of the debts contracted by the petitioner-Company.

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2. The loan account of the petitioner company having been declared as 'NPA' in December 2019, the respondent-Bank has taken coercive recovery proceedings in terms of SERFAESI Act 2002; petitioners' request for financial assistance under Credit Guarantee Scheme for Subordinate Debt (hereafter 'Credit Guarantee Scheme') being rejected, they are knocking at the doors of Writ Court for assailing the same.

3. The 1st respondent-Bank having entered Caveat through its Panel Counsel has filed the Statement of Objections; notice to 2nd respondent-UOI is dispensed with, it being neither a necessary nor proper party for the adjudication since the *lis* is essentially between the bank and the borrowers; learned Panel Counsel for the Bank vehemently resists the writ petition making submission in justification of the impugned communications.

4. Though this matter was in the Orders List, both the sides have vociferously argued the same on merits and for long. Having heard learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter for the following reasons:

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(a) Learned Sr. Advocate, Mr. Aditya Sondhi appearing for the petitioners argues that the impugned Communication dated 01.09.2020 is bad in law since it does not contain reasons and that now reasons cannot be supplied by way of Objection Statement, vide MOHINDER SINGH GILL vs. CHIEF ELECTION COMMISSIONER, **AIR 1978 SC 851**; the said communication is a simple letter sent by the respondent-Bank to the first petitioner-loanee, with the following text:

> "*Dear Sir,*
>
> *Subject: CGSSD request letter dated 08.06.2020 & 21.08.2020*
>
> *With reference your request for financial assistance under Credit Guarantee Scheme for subordinate Debt, we hereby bring to your notice that the same is not considered favourably by sanctioning authority."*

This communication has not fallen at the hands of the petitioners as a bolt from the blue; a lot of interaction has preceded its arrival since SARFAESI proceedings were already taking shape.

(b) The argument that the Bank being an instrumentality of the State, u/a 12 of the Constitution of India ought to have given reasons in the impugned

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communication itself for rejecting petitioners' request for financial assistance under Credit Guarantee Scheme, cannot be countenanced; the Respondent – Bank is not a statutory authority in the sense, the Election Commission of India was treated in **Mohinder Singh Gill** *(supra);* the response of a Bank to the requirement of its borrower, made in the course of its commercial dealings cannot be approximated to an order of a statutory authority; the principles on which a Bank's response to its customers have to be examined in a judicial review are much different from the ones that ordinarily apply to the review of administrative actions of the statutory functionaries; a decision is an authority for the proposition that is actually laid down in a given fact matrix, and not for all that which logically follows from what has been so laid down, said **Lord Halsbury** more than a century ago in QUINN vs. LEATHAM, **1901 A.C. 495**; therefore the ratio in MOHINDER SINGH GILL is not readily invokable in the case at hands.

(c) The respondent – bank, ideally speaking, could have given the gist of its contentions as taken up in the Statement of Objections in these proceedings, in the very impugned communication itself; had it been done, there

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would have been no scope for the argument that the impugned order is not a speaking order and therefore it should be voided, the super adding of reasons through affidavit or counter not being permissible; as already mentioned above a response of a commercial bank cannot be equated to an order of a statutory authority; added to this it was open to the petitioners to solicit a detailed reply from the bank as to why it was not favoring their request for extending the benefit of Credit Guarantee Scheme; this has not been done.

(d) Apparently, the transactions between a banker and the borrower have the overtones of contractual relationship; it is so even if the lender bank happens to be an instrumentality of 'State' under Article 12 of the Constitution of India; **Lord Chorley** in his **'LAW OF BANKING'** 4th Edn. at page 18 wrote: "*This debtor and creditor relationship is the basic principle of the law of Banking. It does not, however, provide a sufficiently wide formula for the solution of all the problems, or the understanding of all the business of modern Banking";*

what one has to see is the essence of the transaction that has given rise to the impugned communication, regardless of status of the respondent as to its being an agency of

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'State' or not under Article 12 of the Constitution; the Credit Guarantee Scheme of the kind does not make the impugned communication an "administrative decision" having elements of public law sufficient to invoke writ jurisdiction in the light of Apex Court decision in LIC OF INDIA vs. ESCORTS INDIA LTD. **1986(1) SCC 264.**

(e) The claim for the relief which the petitioners had pressed into service before the lender Bank under the Credit Guarantee Scheme, does not exclude the exercise of "**Bankers Prudence"** which as of necessity is invocable while making commercial decisions of the kind; after all, the Banks which handle public money as trustees, cannot be compelled to undertake the ventures which may possibly be detrimental to public money at its hands; the following paragraphs 9(v) & 19(ii) of the Credit Guarantee Scheme lend credence to this view:

> *"9(v) MLIs shall carry out their own due diligence to assess the viability, need and requirement of sub-debt facility in respect of restructuring of stressed MSME units.*
>
> *19(ii) The lending institution shall evaluate credit applications by using prudent Banking judgments and shall use their business discretion/due diligence in selecting commercially viable proposals and conduct the account(s) of the borrowers with normal Banking prudence".*

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(f) The Writ Courts neither have the means nor the knowledge to re-evaluate the "prudential decisions" of the Banks that are made in the course of commercial transactions; after all, the scope of judicial review of 'Bankers Decisions' is too restrictive, as observed by a Division Bench of this Court in MANNE GURUPRASAD vs. M/S.PAVAMAN ISPAT PVT. LTD., Writ Appeal No.100103/2021 (GM-RES), disposed off on 13.07.2021; in the said judgment paragraphs III (iii) & (iv) of the decision read as under:

> *"(iii) In matters between the Banker & borrower, a Writ Court has no much say except in two situations: where there is a statutory violation on the part of the Bank/financial institution, or where the Bank acts unfairly/unreasonably; Courts exercising constitutional jurisdiction u/A 226 do not sit as Appellate Authorities over the acts & deeds of the Bank and seek to correct them; even the doctrine of fairness/reasonableness does not convert the Writ Courts into appellate authorities over administrative decisions concerning the Banking business; unless the action of the Bank is apparently malafide, even a wrong decision taken by it cannot be interfered.*
>
> *(iv) It is not for the Court or a third party to substitute it's decision howsoever prudent or business like it may be, for the decision of the Bank; in commercial matters, the Courts do not risk their judgments for the judgments of the bodies to which that task is assigned; a Public Sector Bank or a Financial Institution cannot wait indefinitely to recover its dues; the*

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fairness required of the Bank cannot be carried to the extent of disabling it from recovering what is due; in matters of loan transactions, fairness cannot be a one-way street; both the Bank & the borrower have to be equally fair to each other …"

(g) The petitioner-Company vide Sanction Letters dated 11.12.2014 & 07.10.2016 has availed Term Loans of Rs.5 Lakh & Rs.30 Lakh respectively; subsequently, it has taken a Cash Credit Open Loan of Rs.2.00 Crore vide Sanction Letter dated 07.09.2017; the other petitioners happen to be the guarantors, along with two more; this apart, the petitioners No.2 & 3 have also availed from the Bangalore-Potanuru Branch, a mortgage loan of Rs.97.00 Lakh vide Sanction Letter dated 26.03.2019; the Bank has classified all the Loan accounts as NPA on 31.01.2020 and took SERFAESI proceedings for recovery of about Rs. 2.45 Crore as on 02.09.2020; this apart, the loan of the petitioner Nos. 2 & 3 has swelled beyond Rs.1.07 Crore way back in September, 2020; the Balance Sheet for the Financial Year 2017-18 shows that the Share Capital is Rs.61 Lakh; however, the reserves & surplus are minus **Rs.94,23,059/-** (accumulated losses); for the Financial year 2018-19, although the Share Capital remains Rs.61 Lakh, the accumulated loss has swelled to

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Rs.1,74,65,651/-; thus, the net worth of the petitioner-Company is apparently in the negative.

(h) The latest Annual Financial Statement vouches that, since 2016-17, the petitioner-Company has been running under heavy losses and there is no fresh Capital infusion; that being the position, the respondent – Bank after assessing and conducting due a diligence of the accounts in its wisdom, has come to a conclusion that the proposal of the petitioner-Company is **not commercially viable**; even if some fund is infused by the guarantors by way of personal loans that will not strengthen the case of the petitioners, in view of increased accumulated losses in the succeeding Financial Years.

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(i) A little less than a century ago, the Bombay Provincial Banking Enquiry Committee (1929-30) had famously observed "***Banking is my brains and other people's money***"; banking has traditionally been treated not just as a business but as a profession in as much as the banking business is vested with public interest; banks deal in other peoples' money; funds are parked with the banks by broad segments of the public and this establishes a public trust which compels the banker to act

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with a greater care than individuals engaged in commerce & industry; if prudence and the promotion of public confidence have been basic ingredients of good banking then surely an extra measure of those indispensable ingredients is called for; ordinarily vigilant customers do closely scrutinize their banks' financial condition, and some uneasy money could decide to seek haven elsewhere if signs of weakness should manifest; **Mr.Robert C.Holland**, an American Economist and Member, Board of Governor of the Federal Reserve System (1973) had given a slogan to the bankers **"HUSBAND YOUR BANKING RESOURCES"**; this becomes pronouncedly relevant nowadays when about two dozen public sector banks have been closed down or merged with other banks, unscrupulous lending being one of the main causes.

(j) The **T.R.Andhyarujina Committee on Banking Sector Reforms** at Chapter VII, para 7.13 of its Report dated 31.10.2001 recommended as under:

> *"The Committee recommends that to improve the soundness and stability of the Indian banking system, the regulatory authorities should make it obligatory for* ***banks to take into account risk weights for market risks****".*

In terms the Committee recommendations, there are enactments that address banking sector reforms; the

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provisions of Credit Guarantee Scheme have to be construed consistent with all this. The individual benefit of a customer under the Scheme cannot outweigh the public trust which all banks are saddled with; an argument to the contrary may imperil the interest of other valuable customers of the bank, which is not a desirable thing to happen.

(k) It is also true that good bankers will not dodge their responsibility to lend to creditworthy regular customers, whether large or small, the minimum amounts needed to keep those customers' activities viable; banking needs to be run with great caution, while adventure to a certain extent may be necessary for other kinds of business i.e., Industry & Commerce; reckless speculation and greedy eyeing of profits compromising safety of public funds are shunned by prudent bankers all over the world; there is a kind of dynamic tension between the forces impelling the progressive activities of banks and the compelling need for prudent conduct of banking business; in considering petitioners claim of the kind, the respondent-bank cannot be asked to keep its commercial prudence in the cold storage; it is more so when the

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balance sheet of the borrower does not reflect a healthy picture.

In the above circumstances, this writ petition being devoid of merits, fails; however, this judgment shall not come in the way of Bank reconsidering its decision if the petitioners come forward with a viable proposal.

No costs.

Sd/-
JUDGE

Snb/

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