

22.

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

+ Date of Decision: 01.05.2012

% W.P.(C) 1579/2012 and C.M. Nos. 3475-76/2012

ORIENT CLOTHING COMPANY PRIVATE LIMITED Petitioner

Through: Ms. Maneesha Dhir and
Mr.R.S.Paliwal, Advocates.

versus

STATE BANK OF BIKANER & JAIPUR & OTHERS Respondents

Through: Mr. Jai Mohan, Advocate for the
respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (Oral)

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek issuance of a writ, order or direction in the nature of mandamus to direct respondent No.1, i.e. the State Bank of Bikaner & Jaipur, Karol Bagh Branch and State Bank of India Overseas Branch, i.e. respondents No.1 & 2 respectively to accept the restructuring of the petitioner's dues as per the Corporate Debt Restructuring (CDR) Package stated to have been submitted by the petitioner under the parameters of the Reserve Bank of India (RBI) guidelines, on the ground that they are binding on respondents No.1

and 2. The petitioner also seeks a declaration to the effect that the letter dated 06.01.2012 issued by respondent No. 1 is null & void on the ground that the same is mala fide, arbitrary, unfair & an abuse of power. The petitioner also seeks a declaration that the notices dated 25.01.2012 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFEASI Act) issued by respondent No. 1, i.e. the State Bank of Bikaner & Jaipur to the petitioner is null & void, on the ground that the same is mala fide, arbitrary, unfair and an abuse of power of the said respondent.

2. The case of the petitioner is that the petitioner is engaged in the business of manufacture and export of garments. The petitioner was banking with respondents No. 1 & 2 and had obtained various facilities. According to the petitioner, the petitioner's business suffered losses on account of slump & recession in the overseas markets. The further case of the petitioner is that the petitioner sought the restructuring of the loan under the CDR mechanism. The petitioner submits that a flash report was submitted to the CDR Empowered Group.

3. This was followed by the Techno-Economic Viability (TEV) Study report prepared by an independent third party, viz, Mr. Sonalal Datta, in June 2011, to assess the feasibility and economic viability of the rehabilitation cum restructuring proposal. The petitioner submits that

the petitioner responded to the issues raised by the lenders upon consideration of the TEV study. The records shows that the Monitoring Committee of the joint lenders in its meeting held on 14.07.2011 raised various issues and also advised the petitioner to, inter alia, not resort to concealment of facts relating to, inter alia, diversion of funds. Respondent No. 1 vide letter dated 04.08.2011 forwarded the final restructuring report for the petitioner company.

4. The petitioner submits that in the CDR meeting held on 12.08.2011 the respondent No. 1, State Bank of Bikaner & Jaipur, gave its in-principle approval to the restructuring proposal subject to four conditions, which were accepted by the petitioner. However, respondent No. 2 had no mandate and stated that it could take a call only upon approval of the final report by its appropriate authority. Since there was no supermajority, the case was deferred to the next CDR EG meeting for a decision.

5. However, the admitted position is that respondents No. 1 & 2 did not give their final approval. It is also not in dispute that the closing date by when the CDR had to be achieved was fixed as one hundred eighty days beginning from 25.03.2011. This period expired on 24.09.2011. By then the restructuring of the petitioner's outstanding loan had not taken place.

6. It is the case of the petitioner that, while issuing the notice under

Section 13(2) of the SARFEASI Act, respondent No. 1 observed that the account of the petitioner had turned into a Non-Performing Asset (NPA) on 31.08.2011, whereas till the CDR mechanism was operating the account could not have been treated as an NPA. Learned counsel for the petitioner Ms. Dhir has made various submissions and shown to the Court the record in support of her submissions.

7. At this stage itself I may note that this submission does not appear to be correct. The CDR mechanism guidelines in clause 4.4.2 provides as follows:

“4.4.2 During pendency of the case with the CDR system, the usual asset classification norms would apply. The process of reclassification of an asset should not stop merely because the case is referred to the CDR Cell. However, if a restructuring package under the CDR system is approved by the Empowered Group, and the approved package is implemented within four months from the date of approval, the asset classification status may be restored to the position which existed when the reference was made. Consequently, any additional provisions made by banks towards deterioration in the asset classification status during the pendency of the case with the CDR system may be reversed.”

(Emphasis supplied)

8. Therefore, the submission of the petitioner that respondent No. 1 had erroneously observed in its impugned notice that the account of the petitioner company had been turned into a Non-Performing Asset (NPA), even when the CDR mechanism was pending consideration and the ‘Holding-on Operations’ instructions had been issued, is

unsustainable and entirely untenable. In view of Clause 4.4.2 of the CDR Guidelines which, expressly and in unequivocal words, states that *“During pendency of the case with the CDR system, the usual asset classification norms would apply. The process of reclassification of an asset should not stop merely because the case is referred to the CDR Cell”*, there is no merit in the said submission of the petitioner.

9. It appears that the petitioner vide letter dated 22.12.2011 informed respondent No. 1 that it is trying to submit some acceptable proposal to the member banks and also to arrange some more funds to keep the project alive. It further requested respondent No. 1 to not recall the account and keep in abeyance the decision and continue to allow ‘Holding on Operations’ till 31.12.2011.

10. However, no such proposal appears to have been submitted by 31.12.2011. It appears that only thereafter respondent No. 1 vide impugned letter dated 06.01.2012 informed the petitioner that it has been decided to initiate recovery process in line with the decisions taken in the consortium meeting held on 21.12.2011. It was, inter alia, stated, *“that despite being allowed ample time, the company has failed to come out with any acceptable proposal to the satisfaction of the bankers. It has, therefore, been decided to initiate recovery process in line with decisions taken in the consortium meeting held on 21.12.2011. Please also note that ‘Holding-on-Operation in your*

account has ceased to exist after 31.12.2011".

11. During the course of hearing on 18.04.2012, learned counsel for the respondent had pointed out that even according to the petitioner, the petitioner is carrying on its business operations from its various plants/factories. The submission of learned counsel for the respondent was that the petitioner was not carrying on its business operations through the respondent bank, and the petitioner had obviously started banking with other banks without the knowledge of the respondent bank, through whom the business operations were being carried out.

12. The petitioner was required to file an affidavit making various disclosures including its banking operations with the other banks. The petitioner was also required to produce before the Court the bank statements of its other bank accounts.

13. The petitioner filed an additional affidavit which contains some details, however, the petitioner was reluctant to disclose the details of the banks with whom the petitioner had been banking of late, on the ground that the running of its business operations could be adversely affected in case the respondent is furnished with such information. The petitioner, however, produced before this Court an account statement of one of its bank accounts, which does not contain the name of the bank, but only the account number. This statement of account was for the period from 01.01.2012 to 19.04.2012.

14. On 25.04.2012, the Court directed the petitioner to provide a copy of the said bank account statement to learned counsel for the respondent so that the respondent bank may be in a position to study the said account statement and to make submissions. The purpose of this exercise was to enable the petitioner to establish its bona fides and bring in transparency so as to generate confidence in the minds of the respondent banker/lender. The petitioner was permitted to blank out the account number. In this regard, I may reproduce the order dated 25.04.2012 which reads as follows:

“The petitioner has filed an affidavit dated 23.04.2012 making certain disclosures. A copy of the same has been furnished to counsel for the respondents. The petitioner has also shown to the Court the bank statements for the period 01.01.2010 to 19.04.2012 of the account maintained for the purpose of carrying out its business with an undisclosed bank. Let a copy of the said statement be provided to counsel for the respondents by tomorrow after blanking out the account number. Counsel for the respondents may examine the same and make his submissions on that basis as well on the next date.

List on 01.05.2012.”

15. A copy of the said bank account statement was furnished to the respondent. However, the petitioner has blanked out various other entries in the statement as furnished to the learned counsel for the respondent.

16. The Court has retained the statement of account furnished by

learned counsel for the petitioner while the account number has been blanked out, and all other entries are clearly visible.

17. Learned counsel for the respondent on the basis of the truncated statement of account submitted by the petitioner points out that the cash withdrawals during the period 01.01.2012 to 24.04.2012 are to the tune of Rs.5.12 Crores. The foreign remittance receipt during the said period are to the tune of Rs.17 Crores. According to the petitioner, the cash withdrawals during the said period are to the tune of Rs. 4,16,35,000/-. However, the petitioner claims that it has paid salaries to the tune of Rs.3,43,57,191/-, from out of the said cash withdrawals. Ms. Dhir submits that the petitioner has the vouchers in respect of the said salaries which had been paid by the petitioner.

18. Pertinently, the petitioner has furnished yet another statement before this Court which shows the inflows & outflows during the period from January 2012 to March 2012. This statement under the column 'Outflows' shows an entry of Rs.1,38,44,404/- towards salaries, wages and other payments to staff/workers. The amount of Rs.3,43,57,191/- claimed to have been paid as salaries, wages and other payments to staff/workers from the cash withdrawal is in addition to the said salaries of Rs.1,38,44,404/- paid through the banking channel.

19. Learned counsel for the respondent points out that the business done by the petitioner, whereby it has earned remittances of

approximately Rs. 17 Crores during the said period, has been done by utilizing the limits granted by the respondent bank and, consequently, the receipts should have been credited to the respondent bank's accounts. He also points out that even before 01.01.2012, the petitioner was maintaining the said bank account. In this respect, he points out that the first entry in the account statement furnished by the petitioner is a withdrawal of Rs.84,402/-. Even after the said withdrawal, there is a balance of Rs.1,29,046/- which shows that the said account was in existence and in operation even before 01.01.2012. This, according to the respondent, is in breach of the RBI guidelines, which prohibits a customer from operating different bank accounts with different banks, when the customer has obtained loans from one of the banks, without the consent and without information to the bank from whom the loan had been taken.

20. Learned counsel for the respondent further points out that there are large amounts of transfers from the account of the petitioner company into the personal accounts of the Directors, namely Ms. Ranju Dhingra and Mr. Ravi Dhingra. He further points out by reference to entry No. 203 dated 17.01.2012 that the petitioner company is maintaining yet another account since the amount of Rs.50 Lakhs and Rs.38 Lakhs were transferred through RTGS from the account "VYSAH12013706503/M/S Orient Clothing Company" and

“VYSAH12017700710/M/S Orient Clothing Company” into the account of the petitioner company, whose statement of account has been furnished to the Court. A close scrutiny of the statement of accounts for the period from January 2012 to April 2012, reveals the maintenance of several bank accounts by the petitioner company in different banks. It appears that the petitioner has been maintaining around 12 bank accounts – 4 with Axis Bank Ltd, 8 with UTI Bank Ltd. However, the petitioner has not disclosed the said account even to the Court, let alone the respondents.

21. The inflow and outflow statement furnished by the petitioner in respect of the account whose statement of account has been furnished shows an inflow of over Rs.25,72,00,000/- during the said period of January to March 2012. It also shows an outflow of nearly Rs.25,71,00,000/-, which includes cash withdrawals of Rs.4,16,35,000/-

22. The aforesaid analysis casts serious doubts about the bona fides of the petitioner. It is clear that the petitioner has suppressed vital information not only from the respondents, but also from the Court and it appears to me, that the petitioner is a willful defaulter and it cannot be said that the petitioner is merely a victim of bad business environment or recession. Clearly the petitioner is carrying on its business operations of garments export and is receiving substantial amounts and remittances which are being siphoned off by cash

withdrawals of very large amounts and by also transferring various amounts to the personal accounts of the Directors. The petitioner has not been able to explain as to why such large amounts, i.e. to the tune of Rs.4,13,48,454/- are being expended in cash which includes salaries, wages and other payments to staff & workers of Rs.3,43,57,191/- and administrative and other expenses of Rs.35,72,719/-. I may hasten to add that these are the figures given by the petitioner itself.

23. The extraordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked by a person or an entity who does not come to the Court with full disclosure and with clean hands. Clearly, the petitioner is guilty of suppression of information from this Court and also from the respondent No. 1 and it has also not come to the Court with clean hands. I may also observe that when this Court sought to pursue the matter to require the petitioner to make further disclosure, learned counsel for the petitioner has stated that this Court may take its own decision and may dismiss the petition. The petitioner is, however, not willing to make further disclosure.

24. Accordingly, I dismiss this petition with Costs quantified at Rupees Five Lakhs to be paid to the respondent No. 1.

VIPIN SANGHI, J

MAY 01, 2012

'BSR'