



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 178 of 2022

Date of Decision: 06.12.2024

M/s Marbaniang Projects Private Limited
Having its registered office at Springside,
Jingkieng, Nongthymmai, Shillong,
East Khasi Hills District, Meghalaya
Represented by Mahendra Jain, Finance
and Accounts Manager, M/s Marbaniang
Projects Private Limited, Resident of
Lamavilla, Shillong, Meghalaya

:::Petitioner

-Vs-

1.Punjab National Bank (United Bank of India),
regulated by the Reserve Bank of India Act, 1934
and Banking Regulation Act, 1949 having its
registered office at Dwarka, New Delhi and also
having one its branches at G.S. Road, Shillong, Meghalaya

2.The Chief Manager,
Punjab National Bank,
Shillong Branch,
Shillong – 793001
East Khasi Hills, Meghalaya

3.The General Manager
Punjab National Bank,
Shillong Branch,
Shillong – 793001
East Khasi Hills, Meghalaya



4. The Assistant General Manager,
Punjab National Bank,
Shillong Branch,
Shillong- 793001
East Khasi Hills, Meghalaya

:::Respondents

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Paul, Sr. Adv. with
Ms. B. Kharwanlang, Adv.

For the Respondent(s) : Mr. S. Dutta, Adv.
Ms. P. Riahtam, Adv.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER

1. The writ petitioner by this instant petition impugns the action of the respondent Bank in not releasing the amounts which is deposited in an Escrow Account, for payment of statutory liabilities including GST from the year 2017 onwards till date.

2. The brief facts are that the petitioner Company had approached the respondent Bank for financial assistance, for construction of a hotel -cum-



commercial complex, which was approved and a term loan of Rs. 22 Crores was sanctioned. Thereafter, in order to meet the business expansion, an additional term loan of Rs. 8 Crore was sought, which was agreed to by the Bank with the terms and conditions that all cash flows of the business was to be routed through a designated account such as revenue receipts/receivables from the project including deposits, service charges, equity/shareholders contribution and deposited into the Project Escrow Account. Accordingly, an Escrow Agreement was executed on 20.02.2015, by the parties with the condition that further withdrawals from the Escrow Account upto the final settlement under the financing agreements, shall be permitted for the purposes of taxes and statutory requirements. However, the petitioner Company received an email dated 05.11.2020 from one of its tenants, informing that the GST amount had not been paid to the concerned authorities, whereafter it was discovered that the respondent Bank despite the stipulated conditions had adjusted the entire funds towards its debt repayment. Hence the writ petition.

3. Mr. K. Paul, learned Senior counsel assisted by Ms. B. Kharwanlang, learned counsel for the petitioner has submitted that under the Escrow Agreement, it had been specifically provided that withdrawals from the Escrow Account upto the final settlement was that taxes and statutory payments would take first precedence over other dues such as project



expenses, payment interest, debt service reserve account and debt repayment. However, he submits the respondent Bank without any intimation, had wrongly adjusted all the rental deposits towards the loan repayment, which is in absolute violation of the said Escrow Agreement. The action of the Bank he contends despite the stipulated conditions, in adjusting the entire funds including its debt repayment, has led to a cascading effect, whereby the Escrow Agreement stood frustrated leading to the non-payment of taxes further compounding the petitioner's GST liabilities. He then submits that with the input tax credit not being passed down the same has resulted in the non-payment of rent by the tenants of the petitioner Company, which led to the petitioner Company being classified as NPA in 2019.

4. The learned Senior counsel then submits that admittedly the petitioner Company, does not operate or have control over the Escrow Account, and the respondent Bank has been adjusting amounts since 2017 from the receivables deposited in the Escrow Account, and that any statutory payments can only be paid by the respondent Bank on the standing instructions/mandate of the account holder i.e. the petitioner Company. The learned Senior counsel has then referred to the additional affidavit filed by the respondent Bank on 01.08.2023, to support his contention and has also placed reliance on 2(two) letters of the petitioner



Company on this point, wherein request for Viewing Rights and request for Permission to Operate had been made.

5. On another limb of submission i.e. the impact on GST compliance, it is submitted that the Company had filed GSTR-1 returns and as the Escrow Agreement had been violated by the respondent Bank by the wrongful adjustments made towards debt repayment, and consequently, the non-release of the statutory payments towards the GST Department, the petitioner Company could not file its GSTR-3B returns, which fell foul of Rule 59(5)(a) of the Central Goods and Services Tax Rules, 2017, as amended. This Rule it is submitted provides that a registered person shall not be allowed to furnish the details of outward supplies of goods and services or both under Section 37 in Form GSTR-1, if he has not furnished the return in Form GSTR-3B.

6. With regard to the respondent Bank's contention, as to set off being provided under Section 19(8) of the Recovery of Debts and Bankruptcy Act, 1993, the learned Senior counsel submits that the same is of no relevance, and is immaterial in the instant case, as the relief of prayer sought for by the petitioner Company is towards making good of the payments wrongfully and illegally adjusted by the Bank towards debt repayment. Apart from submitting that the said payments of dues towards GST must be made from the Bank itself, it is contended that the said



Section 19(8) as referred to above, is not applicable, as there is no counter claim being made by the petitioner, and no monetary relief is being sought directly from the respondent Bank. In support of his arguments, reliance has been placed in the case of ***Employees Provident Fund Commissioner vs. Official Liquidator of Esskay Pharmaceuticals Ltd.*** reported in (2011) 10 SCC 727, wherein he submits it has been held that all revenues, taxes, cesses and rates due from a Company to the Central or the State Government as also wages, gratuity etc. are payable in priority to all other debts. As such, he submits, the respondent Bank cannot as a defence, state that GST compliance and liability is the responsibility of the petitioner Company, when the admitted position states otherwise. He therefore prays that a writ mandamus be issued directing the respondent Bank to make good of payment of the entire amount adjusted from the Escrow Account to the extent of statutory liabilities/taxes including GST from the year 2017 onwards till date.

7. Mr. S. Dutta, learned counsel with Ms. P. Riahtam, learned counsel appearing on behalf of the respondent, has raised questions of maintainability of the writ petition, first on the ground that the GST Authority has not been made party respondent, inasmuch as, the prayer sought is to make good of payment adjusted from the Escrow Account of the GST amount, and that the petitioner had also impugned the notice dated



14.06.2021, issued by the GST authorities. Secondly, a ground has also been taken that the petitioner Company had converted the Escrow Account, as if the same was specifically designated and earmarked for the purpose of payment of statutory dues and to ensure timely payments thereof, which is incorrect, inasmuch as, it is mandatory that an Escrow Agreement be executed, so that all receipts, in whatever form be routed through the said account. This he submits is to maintain transparency by the borrowers, so far as routing of proceeds are concerned and also to keep an accounting tab on the cash flow, with regard to the project finance and to this end the Escrow Agreement had been executed, which was to continue through the currency of the loan till the final settlement under the agreement. He therefore submits that the Escrow Agreement is an integral part of a financial contract and commercial arrangement between the creditor (respondents) and the writ petitioner (borrower).

8. The learned counsel then submits that both the term loan accounts were classified as NPAs on 31.03.2019, meaning thereby no outward transactions could be allowed from any accounts, which are a part of the financial agreement and the respondent Bank is at liberty to adjust any amount out of the receipts to bring down the outstanding debts/dues. The amounts from the Escrow Account it is contended, have not been used for



any other purpose, but for adjustment in the loan accounts in terms of the Escrow Agreement.

9. It is also contended that the writ petitioner as reflected from the notice dated 14.06.2021 (Annexure – 9 to the writ petition), which required the submission of 9(nine) documents by the petitioner to the GST authorities, which was a pre-condition to the final quantification of GST amount was not complied with by the petitioner, as it failed to file a single GSTR-3B, since the roll out of GST w.e.f. July, 2017. The petitioner he asserts, cannot hold the respondent Bank responsible as the petitioner did not produce any GSTR-3B filings that had been submitted to enable the Bank to take required steps, and further merely on the basis of letters to release the GST amount without providing the actual amount to be released, cannot be permitted. He submits that the petitioner having failed to submit the required documents which are mandatory in nature, the claim against the Bank is nothing but a tactic to avoid the payment of the outstanding dues of both the Bank and the GST. The petitioner Company he submits, did not maintain proper communication with the tenants who had deposited their share of GST amount in the Escrow Account, and did not inform the Bank also in this regard.

10. In the facts and circumstances of the case, he contends the respondent Bank cannot be faulted on the issue of non-release of GST



amounts, but at the same time, it had even allowed the withdrawal of a sum of Rs.23,53,507/- (Rupees Twenty Three Lakhs Fifty-Three Thousand Five Hundred and Seven only) on 06.03.2020, from the Escrow Account through RTGS transfer in the account of one Smti. K.S. Kharkongor. It is also submitted that the Escrow Agreement entails payment in the order of; (i) taxes and statutory payments (ii) project expenses etc. (iii) payment of interest (iv) debt service reserve account and (v) debt repayment, and that apart from Serial No. 1, all other heads of payments relate to the financial agreement and transaction pertaining to the project finance under which term loan facilities was sanctioned. In this context he submits that, it is settled law that blanket priority is towards payment of debt and interest payment to financial creditors, and the reference can be drawn from Section 26-E of the SARFAESI Act 2002, and Section 31-B of the RD & B Act 1993, with the only exception being the statutory dues under the Employees Provident Fund Act, 1952.

11. It is also further contended that the whole dispute has arisen from a commercial contract and the disputes being before the Debts Recovery Tribunal in O.A. No. 103/2023, the said transactions and the Escrow Agreement being part and parcel of the financial arrangements and the subject matter of commercial dispute pending adjudication, the same should be dealt with before the Debts Recovery Tribunal. The validity or



invalidity of the Escrow Agreement, it is argued cannot be decided by a writ court, as the said document is part of the entire financial agreement. It is lastly prayed that the writ petition be dismissed as not maintainable in law and facts, and that the petitioner has a remedy before the Debts Recovery Tribunal by raising all pertinent issues.

12. Heard learned counsel for the parties. On considering the submissions and on perusal of the materials on record, three issues have arisen that are to be considered and adjudicated. They are:-

- (i)** Whether the writ petition is maintainable considering that on other disputes arising from the projects, the matter is pending adjudication before the Debts Recovery Tribunal.
- (ii)** Whether the adjustments made by the respondent Bank to the receivables deposited in the Escrow Account, constitute a breach of the Escrow Agreement.
- (iii)** Whether the petitioner Company had control or the right to operate the Escrow Account.

13. On the first issue, as can be seen from the submissions recorded above, no doubt proceedings instituted by the respondent Bank, are pending before the Debts Recovery Tribunal in the form of O.A. No. 103/2023, wherein the relief sought for as given in the prayer, is for recovery of the amounts release under 2(two) term loans, and for order of



attachment and sale of hypothecated properties and mortgage properties given in the schedule thereto. However, in the considered opinion of this Court, the issue raised in the instant petition is different and distinct, inasmuch as, the issue herein is regarding payment of debt, which was adjusted by the respondent Bank, leading to non-payment of GST by the petitioner, which is alleged, is contrary to the Escrow Agreement. On the aspect of non-joinder of the GST authorities as necessary party, again as the sole issue stems from the violation of the Escrow Agreement, the non-impleadment will not disable the instant writ petition. The Escrow Agreement also does not relate to any monetary claim by either of the parties, but is an agreement that was to govern all the cash flow of the business to be routed through the said account in the order agreed to. The grievance of the writ petitioner shorn of all other accompanying circumstances, incidents and details is basically with the action and conduct of the Bank in not adhering to the agreed order of withdrawals to satisfy payments for different purposes enumerated therein.

Further, the pointed defence taken by the respondent Bank that as the proceedings are pending before the Debts Recovery Tribunal, the writ petition will not be sustainable, is disregarded. This is in view of the fact that the instant writ petition had been instituted against the breach of the Escrow Agreement, as far back as on 13.05.2022, whereas the Original



Application No. 103/2023, before the Debts Recovery Tribunal was filed only on 11.03.2023. Therefore, the instant writ petition having been entertained by this Court much prior to the institution of the recovery proceedings by the Bank against the petitioner, it is held that the same is maintainable in its present form.

14. On the second issue i.e. whether the adjustments made by the respondent Bank to the receivables deposited in the Escrow Account, constitute a breach of the Escrow Agreement, for the sake of convenience, the Escrow Agreement dated 20.02.2015, is reproduced herein below.

ESCROW AGREEMENT

This Escrow Agreement made on this the 20.02.2015 between United Bank of India, having its head office at 11, Hemanta Basu Sarani, Kolkata, 700001 and Branches all over India, including its Shillong Branch represented by AGM, Shillong Branch, Shillong, herein after called the first party (the said Bank) and M/s Marbaniang Project Pvt. Ltd. Having Regd. Office at spring side Road, Jingkieng, Nongthymmai, Shillong 793014 represented by its Directors Shri. Mayven Taurus Marbaniang and Mrs. Eva Daritee Bareh herein after called the second party (the borrower).



Whereas M/s Marbaniang Project Pvt. Ltd. has been sanctioned overall Term Loan limit of Rs.22.00 crore by Head Office.

Whereas M/s Marbaniang Project Pvt. Ltd. has approached the bank for enhancement of limit to Rs.30.00 crore and to which the Head Office of the bank has agreed to enhance and enhanced the limit to Rs.30.00 crore vide sanction letter No.SH/BR/ADV/MPPL/5515/2014-15 dated 03.02.2015 on the following terms and conditions, voluntarily agreed upon by and between both the parties and set forth herein below.

Now this Escrow agreement Witnessh as follows:-

All the cash flows of the business shall be routed through designated account is to be executed. All revenue receipts/receivables of the project including deposits, service charges etc. drawdown under the facility and equity/shareholders contribution relating to the project, shall be deposited into designated Project Escrow Account, up to final settlement under the Financing Agreement shall be permitted for the following purposes of the project and in the following order:

- 1. Taxes & Statutory payments*



2. Project expenses including fees and other dues payable under the agreement related to the project and Operational Expenses

3. Payment of interest

4. Debt service Reserve Account

5. Debt Repayment

In Witness whereof both the parties set and subscribed their respective hands along seal on the day, month and year first above written.

15. From the table given in the said Agreement as quoted above, taxes and statutory payments are placed at Serial No. 1, meaning thereby priority be given to this payment, whereas, debt repayment is at Serial No. 5. Before proceeding further in the discussion, it would be pertinent to mention herein that there has been sweeping changes in many Acts that govern commercial transactions such as the SARFAESI Act and the Recovery of Debts due to Banks and Financial Institutions Act, 1993, aimed at faster recovery and resolution of bad debts by banks and financial institutions. These changes, accord priority to secured creditors to be paid in priority to over all other debts, taxes, cesses and other rates payable to the Central Government or State Government or local authorities. As such, there is statutory recognition of priority claim of secured creditors because



of these amendments. The respondents have relied upon decisions, wherein Government dues with statutory charges remain categorized as Government dues treated at lower priority compared to secured creditors such as in the following cases:

- (i) *Paschimanchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Ltd.* reported in (2023) 10 SCC 60
- (ii) *ICICI Bank Ltd. vs. Sidco Leathers Ltd.* reported in (2006) 10 SCC 452
- (iii) *Andhra Bank vs. Official Liquidator & Anr.* reported in (2005) 5 SCC 75.

16. However, coming back to the issue in question, it can be clearly seen that the dispute of the petitioner with the Bank is not on monetary claims or counter claims, but is with regard to the non-adherence to the Escrow Agreement, and to the priorities of payment contained therein, and is not a case where it concerns the apportionment of assets on liquidation to the various entities that hold charges, or claims on the same. The recovery proceedings initiated by the Bank before the Debt Recovery Tribunal is distinct from the dispute stemming from the Escrow Agreement and that too, the recovery proceedings were initiated as recently as in 2023, whereas, the instant dispute had arisen since 2020. What can be gathered from the submissions is that though the Escrow Agreement had specifically



provided that first priority be given to taxes and statutory payments, which includes GST, the inaction of the respondent Bank in not processing and provisioning for the same, had resulted in the petitioner not being able to comply with the requirement of payment of GST, which has had an adverse impact on the tenants who remitted rental amounts, as the input tax credit was not being passed down. The cascading effect that resulted in not provisioning for payment of statutory dues/GST component by the Bank, it appears resulted in the non-payment of rent by the tenants of the petitioner, which also significantly contributed to the petitioner being classified as a NPA in 2019. Paragraph – 3 of the affidavit filed by the respondent Bank on 01.08.2023, has infact, also substantiated this position, wherein it is acknowledged that the receivables in the Escrow Account had stopped since 24.07.2021, and that there were no credit deposits from any of the tenants thereafter.

17. Though it has been argued that the Bank on its own cannot calculate or quantify the amount of GST/statutory dues against a particular head or any transaction by a third party, from the Index of Disbursement of Funds and letters from the petitioner to the respondent Bank regarding release of GST, a compilation of which has been filed before the Court, it is noted that requests had been made since the year 2017, and invoices submitted to the respondent to enable them to comply with the filing of returns, which



however appears went unheeded. Compliance with GST requirements i.e. GSTR-1, which is a monthly or quarterly return that captures the details or outward supplies or sales made by a tax payer, and GSTR-3B which is a self-declared summary return that businesses must file monthly includes details of sales, input tax credit claims and tax liability for the reporting period, is essential for paying GST, as tax payers calculate the tax liability and pay it with this filing. Further, GSTR-3B is a summarized return and does not provide itemized invoice details, but is essential for finalizing monthly tax payments and compliance, and the failure to file GSTR-3B for two consecutive tax periods, can lead to a restriction on filing of GSTR 1, impacting compliance and input tax credit for buyers. In the considered opinion of this Court, the GST liabilities arising from the Banks adjustment to loan repayment have resulted in the non-compliance of the statutory requirements, and apart from worsening the financial challenges faced by the petitioner, has also led to the initiation of proceedings against the petitioner by the GST authorities on the non-filing of GSTR-3B and non-payment of GST under Section 70 of the Central Goods and Services Tax Act, 2017. As such therefore, the action of the respondent Bank in not adhering to the order of payment or withdrawal, as given in the Escrow Agreement is clearly a breach of the same, and the Bank is held liable.



18. On the third issue i.e. whether the petitioner Company had control or the right to operate the Escrow Account, it is seen that the respondent Bank had been adjusting amounts since 2017, from the receivables deposited in the Escrow Account, and also from the statement of the Bank itself on affidavit, whereby it has maintained that the Bank was well within its right to adjust any reasonable amount as deemed fit and proper towards debt repayment. Further, the Escrow Agreement having provided for the Escrow Account to be operated by the respondent Bank, which was required to pay such statutory dues is confirmed by the Bank itself in Para – 8 of its affidavit filed on 01.08.2023, wherein it has been stated as follows:

“8. That the Deponent submits that the Respondent Bank had been adjusting amounts since 2017 from the receivables deposited in the Escrow Account and the Respondent bank is well within its right to adjust any reasonable amount as deem fit and proper at the relevant time towards service and debt and repayment as is stated in the said Escrow Agreement entered into and executed between and by the Petitioner Company and Respondent Bank and it is clarified that the said Escrow Account is maintained and operated by the Respondent Bank and any statutory payments i.e. taxes if required to be paid to such Statutory Authorities, the same can only be paid by the Respondent Bank on the basis of standing instruction/mandate by the Escrow Account holder



i.e. the Petitioner Company and on receipt of connected invoices, tax returns and amounts etc. for proper provisioning and appropriation under appropriate head of the tax in connection thereof.....”

19. Though an affidavit has been filed at the hearing stage by the respondent bringing on record an instance where there has been a transaction through the Escrow Account for third party payment through an account payee cheque for RTGS payment, on examining the same especially the cheque and the payment slip thereof, this appears to be only an aberration from the established process. This observation is made in view of the fact that as in the compilation of the Index of Disbursement of Funds as supplied to this Court, it is seen that on 11.06.2019, a request has been made by the petitioner for grant or permission to operate the account, and even as far back as on 22.06.2015, the petitioner had requested the respondent Bank for permission for viewing the account, in order to enable the petitioner to keep track of the accounts and amounts, which have been credited. As such, there is no doubt that the petitioner Company had no control or any right to operate the Escrow Account.

20. As such, in view of the discussions and findings made herein above, the contentions as put forward by the petitioner are accepted, but however, to the full relief claimed in the writ petition, the fact that the issue also



involves the GST authorities who have not been made party in the instant proceedings, the same cannot be granted, but is limited only to directing the respondent Bank to redeem the matter by taking corrective measures with regard to the facilitation of filing of GST returns, payable by the petitioner Company from the year 2017 onwards, as mandated by law.

21. Accordingly, the writ petition is allowed to the extent indicated above and is disposed of.

Judge

Meghalaya
06.12.2024
"D.Thabab-PS"