

GAHC010191062018



2024:GAU-AS:11997

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6081/2018

FEROZE TEA CO. (P) LTD.
HAVING ITS REGISTERED OFFICE AT CHALIHA NAGAR, NEAR BORDOLI
NAGAR NAMGHAR, TINSUKIA- 786125, ASSAM. REPRESENTED BY ITS
AUTHORISED SIGNATORY, SHRI PAWAN KUMAR JAIN, SON OF (L) LATE
BHANWARILAL JAIN, AGED ABOUT 58 YEARS, RESIDENT OF L.N.B. ROAD,
NALBARI TOWN, DISTRICT NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY ITS SECRETARY, CO-OPERATION DEPTT., GOVT. OF ASSAM,
DISPUR, GUWAHATI- 781006.

2:ASSAM CO-OPERATIVE APEX BANK LTD.
REP. BY ITS GENERAL MANAGER
ADVANCE GENERAL DEPTT.
HAVING ITS HEAD OFFICE AT PANBAZAR
GUWAHATI- 781001.

3:MANAGING DIRECTOR
ASSAM CO-OPERATIVE APEX BANK LTD.
ADVANCE GENERAL DEPTT.
PANBAZAR
GUWAHATI- 781001

Advocates for the petitioners : Dr. A Todi

Advocates for the respondents : Mr. I Borthakur
For respondent Nos.1 and 2.

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Date : 27-11-2024

JUDGMENT & ORDER(ORAL)

Heard Dr. A Todi, the learned counsel appearing on behalf of the petitioner. Mr. I Borthakur, the learned counsel who appeared on behalf of the respondent Nos.2 and 3, submitted that he is associated with Mr. PN Goswami, the learned Standing Counsel for the respondent Bank, and had been entrusted by the learned Standing Counsel to appear on behalf of the said respondents.

2. The present writ petition is filed being aggrieved by the communications dated 31.05.2017, 27.07.2017 and 24.05.2018 and further seeking a direction upon the respondent Nos. 2 and 3 to release the original Title Deeds and documents of the petitioner and also to issue the No Due Certificate in favour of the petitioner with regard to STTL loan accounts.

3 From a perusal of the materials on record, it transpires that the petitioner who is the owner of a Tea Factory had availed loans from the respondent No.2 by deposit of original title deeds, mortgage and hypothecation of all properties i.e. lands, buildings, machineries, sheds, structures and fixtures and proceeds of

its tea factory as per the deed of mortgage dated 27.11.1998 executed in favour of the respondent No.2.

4. In view of the fact that the petitioner failed to make payment of its dues on time, the account of the petitioner was made a non-performing asset. The petitioner was offered to settle the dues of the loan amount by way of a Special Tea Term Loan (STTL) for repayment in installments as per the Indian Bank Association (IBA) Tea Revival Package. This offer was made on the basis of a communication dated 30.06.2008. Clause 4 of the said communication being relevant is reproduced hereinunder:

".....4. The interest at the rate of 10% (Ten Percent) simple interest per annum to be accrued from the second year onward and parked in an interest free Account W.E.F.30.06.2009 to 30.06.2015 for Rs.22.12 Lakhs (Rupees Twenty Two Lakhs Twelve Thousand) only will have to be deposited in four quarterly equal installments of Rs.5.53 Lakh in full within 30.06.2016."

5. It is further seen that in the said communication, the manner in which the deposit of the quarterly installments were to be paid have also been mentioned. The interest which was required to be paid was Rs.22.12 lakhs in four installments on 30.09.2015, 31.12.2015, 31.03.2016 and 30.06.2016, respectively, of an amount of Rs.5.53 lakhs each, totaling to Rs.22,12,000/-. Further to that, it was also mentioned in the said communication dated 30.06.2008, that if the terms and conditions were acceptable, the petitioner was required to furnish a letter of acceptance along with the resolution of the Board

of Directions of the Company for necessary action. The petitioner duly accepted the same, as would appear from the records and thereupon an agreement was entered into on 15.07.2008 by and between the petitioner and the respondent No.2. The recital contained in the said agreement, more particularly, at Clause F and the terms so agreed mentioned in Clause 2.2 being relevant are reproduced hereinunder:

"F. The Bank has agreed to covert the LOAN AMOUNTs of Rs.315.94 Lac (Rupees Three Crore Fifteen Lac Ninety Four Thousand) only to STTL facility of interest of Rs.22.12 Lac (Rupees Twenty Two Lac Twelve Thousand) Only that shall accrue from second year onwards shall be calculated at the rate of 10% (TEN PERCENT) simple interest per annum and rested in a separate interest free account that shall be fully cleared by THE BORROWER COMPANY in 4(four) Quarterly equal installments on the eight years as the thirty second installment towards full and final settlement of the STTL facility."

"2.2. The Bank shall accept the advance payment of the entire LOAN AMOUNTS inclusive of the interest by way of 28 (Twenty Eight) numbers of post-date cheques amounting to Rs.11.29 Lac (Rupees Eleven Lac Twenty Nine Thousand) only for the STTL amount and shall collect the value on 30th Day of each quarter for credit of the company's STTL A/C. w.e.f. September 2008 to June 2015 and 4 Post dated cheques for Rs.5.53 Lac (Rupees Five Lac Fifty Three Thousand) only per cheque to be realized w.e.f. 30.12.2015 upto September 2016."

6. The record further reveals that the petitioner duly paid in terms with the offer made on 30.06.2008 as well as the agreement which was entered into on 15.07.2008 and thereupon requested the respondent Bank to return the original mortgaged documents and also the No Due Certificate.

7. The respondent No.3 issued a communication dated 31.05.2017 to the petitioner that while issuance of the communication dated 30.06.2008 as well as in the agreement entered into on 15.07.2008, there were certain arithmetical mistakes in calculation of the interest. It was mentioned that the interest which ought to have been paid was Rs.81,23,400/- and not Rs.22,12,000/- as mentioned in the communication dated 30.06.2008 as well as in the agreement dated 15.07.2008. The Managing Director of the respondent No.2 further admitted receipt of the amount of Rs.22,12,000/-, however, directed the petitioner to deposit a further amount of Rs.59,11,400/- in order to get the release of the original title deeds. Subsequent thereto, another communication was issued by the General Manager, In-Charge of the respondent No.2 on 27.07.2017 and followed by another communication dated 24.05.2018. Being aggrieved by these communications dated 31.05.2017, 27.07.2017 and 24.05.2018, the petitioner has, therefore, approached this Court by filing the instant writ petition.

8. Pursuant to the filing of the instant writ petition, this Court vide the order dated 06.09.2018 issued notice. An affidavit was filed by the respondent Bank reiterating its contentions on the basis of the communications dated 31.05.2017, 27.07.2017 and 24.05.2018 to the effect that there was a mistake in

incorporating the interest, in the communication dated 30.06.2008 and the agreement dated 15.07.2008 which ought to have been Rs.81,23,400/- and not Rs.22,12,000/-.

9. On the basis of the above pleadings, this Court had heard the learned counsel appearing on behalf of the petitioner as well as the counsel appearing on behalf of the respondents.

10. From a perusal of the materials on record, it is seen that the respondent No.2 had given an offer for conversion to STTL facility of dues payable by the petitioner. In the said communication dated 30.06.2008, it was categorically mentioned that the interest which was to be payable was Rs.22,12,000/- and the chart so mentioned in the internal Page No.2 of the communication dated 30.06.2008 also mentioned as to how the payment is required to be made. In the said communication, it was also mentioned that the petitioner was required to accept the said offer so made by the respondent No.2 Bank. The petitioner duly accepted the said offer and in pursuance to that, on 15.07.2008, an agreement was entered into containing the similar conditions which have been mentioned in the communication dated 30.06.2008.

11. From the above, therefore, it would be seen that the respondent No.2 Bank never took any steps for making any corrections during the period when the said amount was required to be repaid by the petitioner to the respondent No.2 Bank. It is only after the entire amount having been liquidated and the petitioner requested for the original documents on 22.04.2017 that the

respondent No.2 had made the additional demand of Rs.59,11,400/-. In the opinion of this Court, the said demand of Rs.59,11,400/- made on 31.05.2017 and subsequently followed on 27.07.2017 and 24.05.2018 are on the face of it, contrary to the stipulations of the offer, so given by the respondent No.2 to the petitioner, which was duly accepted, as well as also contrary to the agreement which was entered into on 15.07.2008.

12. This Court at this stage further finds it relevant to mention that respondent No.2 is a 'State' within the meaning of Article 12 of the Constitution and under such circumstances, it is bound to act fairly and reasonably. The action on the part of the respondent No.2 to further demand an amount of Rs.59,11,400/- was not only contrary to the communication dated 30.06.2008 as well as the agreement dated 15.07.2008, but also shows that the respondent No. 2 had acted unreasonably, unfairly, and arbitrarily.

13. Accordingly this Court, therefore, sets aside the communication dated 31.05.2017 as well as the subsequent communications dated 27.07.2017 and 24.05.2018 and further directs the respondent Nos.2 and 3 to hand over the original mortgaged documents which were submitted by the petitioner to the respondent No.2 Bank at the time of creation of the mortgage and also issue a 'No Due Certificate' in respect to the STTL facility, so availed by the petitioner. The same be done within 15 days from the date a certified copy of this judgment is served upon the respondent No.3.

14. With the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant