

In the High Court of Judicature at Madras

Dated: 23.01.2015

Coram:

The Hon'ble Mr. Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr. Justice M. VENUGOPAL

W.P.No.29608 of 2014

and

M.P.No.1 of 2014

M/s.Unicare Pharma Ltd.,
43, 44, Mehta Nagar,
Kunrathur, Chennai-600 069
rep. by its Managing Director
RamKumar moorthy. .. Petitioner

Vs.

- 1.The Chairman & Managing Director,
Syndicate Bank,
Corporate Office, Gandhi Nagar,
Bengalure-560 009.
- 2.The Regional Manager,
Syndicate Bank,
Regional Office,
Chennai-600 001.
- 3.The Assistant General Manager,
Syndicate Bank,
Mylapore Branch,
Chennai-600 004. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records of the Second Respondent in the impugned communication dated 30.10.2014, to quash the same and consequentially direct the respondents to consider the petitioner's restructuring proposal dated 19.09.2014 granting restructuring and rehabilitation of the credit facilities enjoyed by petitioner company and forbearing the respondents from in any manner proceeding against the securities under the provisions of the SARFAESI Act pending consideration of such restructuring and rehabilitation package as contained in the request dated 19.09.2014 of the Petitioner.

For Petitioner : Ms.S.Anuradha Balaji
For Respondents : Mr.AR.Prakash

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner has filed the instant Writ Petition before this Court in calling for the records of the Second Respondent in the impugned communication dated 30.10.2014 and to quash the same. Further, it has sought for passing of a consequential order in directing the Respondents to consider its restructuring proposal dated 19.09.2014, granting restructuring and rehabilitation of the credit facilities enjoyed by it and forbearing the Respondents from in any manner proceeding against the securities under the provisions of the SARFAESI Act pending consideration of such restructuring and rehabilitation package as contained in its request.

2.The long and germane facts of the Writ Petition:-

a)According to the Petitioner/Company, it was promoted by the first generation entrepreneurs with the main object of establishing a state of art facility for Milk Processing/Sasening Unit (Agri-priority sector) at Devadanapatti Panchayat, Theni District. The Company has been authorised capital of Rs.2 Crores and the same is fully paid up. Although, the Petitioner/Company is a limited Company, it is held closely only with 10 share holders. As a matter of fact, the Petitioner/Company commenced its business and as on date, extended to a turnover of Rs.22.5 Crores with unit at Devadanapatti, Theni for dairy farming. There are 120 families and people in large numbers are directly or indirectly depend on the business of the Petitioner/Company.

b)It is the case of the Petitioner/Company that it started its business with a turnover of Rs.15 lakhs and today, it has a turnover of Rs.21,49,00,000/- (say Rs.21.5 Crores). In fact, the Petitioner/Company has a potential to achieve a turnover of Rs.100 crores. The Petitioner/Company is carrying on its business since 1990 and was originally banking with Vijaya Bank, Saidapet Branch, enjoying a credit limit of Rs. 84 lakhs. In June 2009, the Petitioner/Company approached the Respondents/Corporate Finance Branch, Alwarpet, for a Letter of Credit (LC) limit for the purpose of import of butter from Australia. It has deposited a sum of Rs.1.3 Crores with the said bank to enable them to issue a letter of credit for the said import of butter from Australia. The

Petitioner/Company had such source of funds at their disposal. Subsequently, the Petitioner/Company closed the credit of limit being enjoyed with Vijaya Bank out of their own accrued funds. With a growth of potential being established, the Respondents came forward to sanction a credit of letter of Rs.1.3 Crores to the Petitioner on 08.09.2009. Indeed, the said limit was availed by the Petitioner by executing necessary documents and creation of security and the facility was primarily utilised to carry on the business in Kunrathur unit near Chennai. During the Financial Year 2009-2010, the Petitioner/Company achieved a turnover of Rs.9.80 crores from their business of Ghee export, Protein Powder and Milk trading. With the said turnover and a prospective proposal, the Petitioner approached the Respondents in September 2010 seeking for a Working Capital limit of Rs.2 Crores being 20% of their turnover. The then existing limits is also due for renewal and the Petitioner has been pursuing the Respondents for renewal of the limits. However, the Respondents have not come forward to sanction the limits. During the year 2010-2011, the Petitioner achieved an increased turnover of Rs.11.10 Crores which made them eligible for Rs.2.2 crores for Working Capital limit to sustain their business. Still the Respondents did not even considered their annual renewal with increased limit to the Petitioner.

c)The Petitioner proposed an establishment of a new unit at Theni, primarily for milk processing and other allied activities in production of Ghee, Butter and Protein powder. The project report of the new unit was prepared with an outlay of Rs.6 Crores to be utilized only for construction, purchase of machinery etc. The Petitioner approached the Respondents for renewal of the existing facilities and for a new Term Loan to fund the purchase of machinery and construction of building for the new unit at Theni. The Third Respondent having found the project commercially viable and after appraising the same, came forward to sanction a total credit limit of Rs.4.35 Crores with Rs.2.25 crores as Term Loan and Rs.2.10 Crores as Working Capital Cash credit limits by sanction letter dated 01.10.2011. The said Working Capital limit was sanctioned for the existing ghee manufacturing facility at Kunrathur and the Term Loan was sanctioned for the construction of new unit at Theni. But, no separate Working Capital limit was sanctioned for the Theni unit. However, the Petitioner was assured by the then Branch Head of the Third Respondent that necessary additional sanction would be obtained from higher authorities on the commissioning of the Theni Unit.

d)During the Financial Year 2011-2012, with all constraints the Petitioner/Company achieved a good turnover of Rs.21.50 Crores and post sanction of the credit limits and 3 months into the project, the Petitioner faced a peculiar situation of satisfying

norms of newly formed "Food Safety Standards Authority of India (FSSAI)". In terms of which, it had to put up an additional constructed area of 100% to the original proposed project for the process flow to satisfy the licensing norms. The Third Respondent/Bank issued necessary NOC without any additional limits and on assurance to consider with the sanction from higher authorities. The Petitioner/Company pooling in all the resources proceeded with the completion of the project by external borrowings and own funds. Even the moratorium period was fixed only as six months and the same had not helped the Petitioner/Company as the project would not be over in six months and required a substantial period for completion. Further, promises for sanction of additional limits was not honoured by the Respondents, resulting in serious financial strain to the Petitioner/Company. Based on the promises of the Respondents, the Petitioner had pumped in all the cash flows and reserves for completing the project. The Petitioner had spent a total sum of Rs.9 Crores whereas the Respondents had sanctioned only Rs.2.10 Crores as Term Loan.

e)The clear cut stand of the Petitioner is that the Third Respondent/Bank had only disbursed a sum of Rs.1,02,84,498/- namely, about 46% of the sanctioned limit till March 2012. However, the Respondents started debiting the accounts of the Petitioner/Company with interest and equated monthly instalments (EMI) in respect of the Term loans from April 2012. However, till November 2012, 8 EMIs were paid, which time, the entire financial plan became fractured and haywire. The financial strain started reflecting the performance of the Petitioner/Company and therefore, the Petitioner made a request for additional disbursement of the Term Loan in June 2012 supported with bills, which was not considered by the Respondents till date. The bills submitted for reimbursement to the branch on 12.06.2012 is kept pending till date for unknown reasons.

f)At this juncture, many of the officers of the Third Respondent/Bank were transferred and the file of the Petitioner/Company gone unnoticed and unattended by the Third Respondent. In fact, the Petitioner took up the matter with the higher authorities including the First Respondent/Chairman and Managing Director of Syndicate Bank, Bengalure by sending E-mails and letters. Due to this delay, the Petitioner Company approached the State Bank of Mauritius and State Bank of India and obtained new credit sanction letter from State Bank of Mauritius for Rs.1.50 Crores towards Working Capital requirements. After obtaining the said sum, the Petitioner/Company approached the Third Respondent/Bank and requested them to consider the additional loan for completion of the project and Working Capital or to consider multi banking by issuing "pari passu" charge to State Bank of

Mauritius as mentioned in their credit sanction. The Third Respondent/Bank failed to consider the request made by the Petitioner/Company and their sincere efforts to run the industry. It also neglected the enquiry made by the State Bank of India, Agri Finance Branch to grant facilities to the Petitioner.

g)The Respondents had refused the request of the Petitioner/Company for enhancement of Working Capital and Term Loan limits citing that the sanctioned project is not in order by letter 6015/2012/UPL/2012 dated 22.10.2012. Apart from that, it was also reported in the said letter that the Third Respondent is holding back sanctioned credit limit because the Petitioner was holding sanctioned letter from other banks.

h)It is the case of the Petitioner/Company that the last disbursement of the Term Loan was made in December 2012 after various follow ups and request made by the Petitioner together with rephrasement. The Managing Director and Director of the Petitioner/Company instead of concentrating on completing the unit at Theni, were made to run from pillar to post at Chennai and to follow branch people at all hours and in reality, Petitioner desperately require rehabilitation and the same is also permitted by the guidelines of Reserve Bank of India. The Petitioner through a letter dated 18.12.2012 wrote to the First Respondent/Chairman and Managing Director of Syndicate Bank, Bengalure by pointing out their grievance and seeking intervention but nothing took place in this regard. However, the Petitioner completed the project and obtained licenses. The trial production was done and the officers of the Respondents witnessed the same on 09.02.2013 and unit is working till now with very low utility but holding to break even. It is suffering in meeting the working cost, labour cost and other overheads.

i)The Petitioner obtained power supply of 10 KVA whereas requirement is of 125 KVA. The Petitioner was not able to procure as they were not in a position to make any capital expenditure and all the resources stand utilised. The Petitioner had shifted their Kundrathur unit also to Theni to reduce on the operation costs and to comply with FSSAI norms.

j)The real grievance of the Petitioner is that inspite of adverse situation and after having pooled in their finances in making the unit viable and functional, no kind of support whatsoever forthcoming from the Respondents and in fact, the Respondents only made rephrasement of the Term Loan with a holiday period of nine months in December and was not forthcoming to rehabilitate or restructure and compensate the Petitioner for the financial lackasidical attitude. After much delay, the Respondents

came forward for an inspection and even after the inspection, nothing moved forward. For nearly 10 months from February 2013 to December 2013, there was no action on the part of the Respondents and they were negligent and lethargic without even one official visiting the unit and the Respondents classified the accounts of the Petitioner as Non Performing Assets in April 2013. The Petitioner/Company made a payment of Rs.10,40,000/- to clear the outstanding and to regularise the over dues. Further, it made a request for restructuring the entire loan and sanction of additional Working Capital. On 11.09.2013, the Petitioner made a written request addressed to the Third Respondent/Bank not to proceed any recovery process as it is a genuine customer who believed the banking system and also sought help to revive the unit. Also in the said letter, it made a request for finance as well as to await for clearing of export bills to Rs.45 lakhs which was submitted for collection through Mount Road Branch. Since the consent was not forthcoming from the Respondents to sanction of other banks in respect of the sharing of the assets, the sanction given by other banks had lapsed.

k) Proceeding further, it is represented on behalf of the Petitioner/Company that the sanction of Working Capital limit by NSIC, a Government Body also could not be perused as the second and Third Respondent had not issued NOC. The Respondents repeatedly insisted the Petitioner to bring in funds from outside sources from through letters dated 27.09.2013, 07.10.2013, 05.11.2013, 24.11.2013, had appraised the Respondents about the progress being made as well as pointed out the part payments received from the Export Bill for Rs.32.78 lacs on 19.11.2013 and restructured for additional limits to be sanctioned for the unit. Further, the Petitioner also pointed out that L.C. Obtained by it for supply of Ghee to Saudi Arabia and request for Working Capital. However, this correspondence were not considered in right spirit by the Respondents and officials slept over the matter which affected the Petitioner's unit and also pushing them to a sickness still continuing the classification of NPA.

1) The Petitioner on 08.12.2013 submitted an application for restructure proposal justifying the same by enclosing copy of various orders received by them from their customers. It also made a representation to the Chief Minister of Tamil Nadu pointing out the difficulty faced by the SME Sector. The said representation was forwarded to the Reserve Bank of India and that the District Collector of Theni and the AGM attached to the Reserve Bank of India along with officials of the Collector office visited the unit on 28.11.2013. Pursuant thereto, the Reserve Bank of India had also sent a communication to the Petitioner stating that the Bank would consider necessary restructuring and the issue sought for is

closed at the ends.

m) By means of a letter of the Petitioner dated 13.12.2013 addressed to the First Respondent wherein a request was made for restructuring and also for seeking appointment to meet the Chairman and Managing Director of the First Respondent/Bank and the said request and meeting was also reiterated by means of other letters dated 10.12.2013, 23.12.2013, 24.12.2013 and e-mail dated 27.12.2013. On 02.01.2014, the Petitioner/Company was given an audience by the First Respondent wherein the First Respondent agreed to look into the matter and consented to provide bank guaranty which was one of the request made by the Petitioner/Company before the Respondent against debenture to raise funds from the market. By letter dated 27.01.2014, the Petitioner made a request to the First Respondent to look into the grievance pursuant to the meeting it had with him and reiterated for the bank guarantee as per the confirmation together with the sanction accorded by NSIC, Chennai for Rs.3 Crores against raw material assistance scheme. But it had not yielded positive results.

n) After various meetings and requests it ordered notice to the Petitioner Company and accordingly, two officials of the Corporate Credit Department visited the unit and after procuring the required evidences assured that the matter will be looked into. In fact, the Petitioner was informed that the officials had submitted the report to the First Respondent/Bank but nothing was reiterated to him. Also, the Petitioner made all efforts in making the unit viable and procured orders from Aavin and Ponlait.

o) The Petitioner made payment to the Electricity Board for higher power supply from and out of the accounts made in operating the account and the same was also informed to the Respondent by letter dated 15.04.2014. That apart, further letters were sent pointing out the difficulties faced by the Company as well as obligations of the Respondents to ensure the restructuring proposal. The officials of the Respondents based on a field visit and raised unsustainable contentions that the unit had not been functioning during the date of visit. Further, it pointed out that because of the power supply, only the name board of Siddhi Vinayak Milk supplies was not found and the same was explained and the said person was only milk agent, chilling milk on contract basis in the unit, since the unit cannot utilize the optimum capacity. However, nothing was forthcoming from the Respondents, the Petitioner by letter dated 19.09.2014 had given a fresh and complete restructuring proposal without any request for additional finance from the Respondents.

p) In the meanwhile, because of the classification of accounts of the Petitioner as NPA, the Respondents issued the Demand notice dated 08.04.2013 under Section 13(2) of the SARFAESI Act to enforce the securities. The said demand notice was primarily replied by the Petitioner/Company. Further, the Respondents invoking Section 13 (4) of the Act by issuing possession notice on 22.07.2014 by which, it took symbolic possession of the secured assets. When the Petitioner took up the matter with the Respondents in regard to possession notice issued by them, the Respondents had assured that the re-structuring proposal would be considered and took part in deliberation. After a period time, the Respondents without even considering the re-structuring proposal dated 19.09.2014, sent an oral information about physical possession of the assets of the Petitioner.

q) The Petitioner being prejudiced by the arbitrary action of the Respondents in invoking the provisions of SARFAESI Act and not considering the act of the Petitioner although the same is permitted by the Reserve Bank of India, approached this Court by way of filing a writ petition in W.P.No.27682 of 2014 and after being served with the notice and having entered appearance, the Second Respondent addressed the impugned communication dated 30.01.2014 to the Petitioner rejecting the request of the Petitioner dated 19.09.2014 seeking for restructuring of the credit limits. The said communication is in clear non application of mind and the said reasons are not tenable and sustainable in the facts and circumstances of the Court.

3. Petitioner's contentions:

i) The Learned Counsel for the Petitioner urges before this Court that the action of the Respondents in proceeding under SARFAESI Act, 2002 as against the secured assets by issuing demand notice dated 08.04.2013 followed by possession notice dated 22.07.2014 are against law because of the fact that the rehabilitation and restructuring of the Petitioner/Company was not considered in proper and real perspective.

(ii) The Learned counsel for the Petitioner contends that Respondents having rejected the request of the Petitioner/Company for rehabilitation would proceed further under SARFAESI Act and take physical possession of the unit and also that, as on date, more than 120 families are depending on the running unit of the Petitioner/Company. In fact, Petitioner had closed its unit at Kunrathur and moved to Theni and functioning as an integrated unit and if the unit is taken over, the activities would come to an end and the machinery would lose its value and become redundant. Moreover, the present turnover of the Petitioner/Company would be affected causing serious repercussions to the employees who are

dependent on their daily bread and butter.

(iii) The Learned counsel for the Petitioner projects an argument that the Petitioner had lost the right of challenging the SARFAESI measures even on the irregularities committed in enforcing under the SARFAESI Act and as such, to protect its interest, has filed the present writ petition before this Court.

(iv) In this connection, this Court very relevantly points out that in the impugned communication in Ref. No./6022/REC/2014 dated 30.10.2014, the Second Respondent/Bank while considering the representation of the Petitioner dated 19.09.2014 in regard to restructuring proposal had inter-alia stated that since the Petitioner/Company had not come forward with the proposal to put the unit on stream by infusing additional funds after regularising the liabilities and informed the decision not to take further exposure and to restructure the account and accordingly, informed the Petitioner.

4. Respondents' submissions:

1) In response, it is the submission of the Learned counsel for the Respondents that Respondent/Bank is a corporate body which holds and run by the public money and in fact, the Petitioner/Company was sanctioned with credit facilities, Working Capital Limit of Rs.2,10,00,000/-, Term Loan of Rs.2,25,00,000/- and the physical loan of Rs.8 lakhs on 05.11.2011 (vide loan A/c. No.6015-779-0000111).

2) The Learned counsel for the Respondents brings it to the notice of this Court that the Petitioner/Company at the time of availing the aforesaid loan submitted that Loan Applications, Agreement of Hypothecation of machineries, Mortgages of the properties and Memorandum of Deposit of Title Deeds, Guarantee Agreement, Undertaking letters given by the Directors etc., and later after availing the loan facilities, the Petitioner/Company failed to repay the same as agreed and Respondent/Bank issued notice to the Petitioner. Also that, the Respondent issued notice under Section 13 (2) of the SARFAESI Act to the Petitioner, but the Petitioner after receiving the same had neither sent the reply nor repay the dues in question.

3) The Learned counsel for the Respondents drew the attention of this Court that Respondent/Bank issued possession notice under Section 13(12) r/w. Rule 3 of the Security Interest (Enforcement) Rules 2002 but after receiving the same, Petitioner took no efforts to repay the debts. The possession notice was published by the Respondent/Bank on 26.07.2014 in various dailies namely, in Tamil Daily 'Dinakaran' Dindugul Edition as well as Chennai Circulation,

English Daily 'Times of India' Trichy Edition and in 'Deccan Chronicle', however the said notice yielded no results.

4)The Learned counsel for the Respondents submit that Petitioner on earlier occasion filed Writ Petition No.27682 of 2014 before this Court praying for passing of an order in directing the Respondent/Bank to consider its representation relating to rehabilitation and restructuring proposal which was dismissed by this Court on 07.11.2014 and after dismissal of the said writ petition, the Petitioner has filed the present Writ Petition with a view to drag on the subject matter in issue without making any payment. At this juncture, the Respondents contend that Respondent/Bank had filed O.A.No.245/2014 on the file of the Debts Recovery Tribunal and that the Petitioner in the said proceedings appeared through an Advocate. Since the Bank had already initiated the aforesaid O.A. proceedings before the Tribunal, under SARFAESI Act the present Writ Petition filed by the Petitioner is not maintainable in law. Finally, it is the stand of the Respondents that the Petitioner/Company is a chronic defaulter but never kept its promise in repaying the due amounts despite several proposals and discussions and as such, the Bank is unable to restructure the credit limits of the Petitioner/Company as requested by it.

5.This Court has heard the Learned counsel for the Petitioner and the Learned counsel for the Respondents and noticed their contentions.

6.Disposition:

On a careful consideration of respective contentions and in view of the fact that the Respondent/Bank had filed O.A.No.245/2014 on the file of the Debts Recovery Tribunal, wherein Petitioner/Company had entered appearance and the said Original Application is pending as on date, this Court is of the considered view that the present Writ Petition filed by the Petitioner is not Per-se maintainable in law. Viewed in that perspective, the Writ Petition fails.

7.In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is also closed. However, it is made clear that the dismissal of the Writ Petition by this Court will not preclude the Petitioner/Company to make a request in the pending original proceedings before the Tribunal for settling the due amount in question and when such a request is made by the Petitioner/Company, the Debts Recovery Tribunal is directed to

consider the same on merits and in accordance with law and to dispose of the Original Application to prevent an aberration of justice and to secure the ends of justice.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

DP

To

1.The Chairman & Managing Director,
Syndicate Bank,
Corporate Office, Gandhi Nagar,
Bengalure-560 009.

2.The Regional Manager,
Syndicate Bank,
Regional Office,
Chennai-600 001.

3.The Assistant General Manager,
Syndicate Bank,
Mylapore Branch,
Chennai-600 004.

+1cc to Ms.D.S.Praba, Advocate SR.No.3886

+1cc to Ms.S.Anuradha Balaji, Advocate SR.No.3636

W.P.No.29608 of 2014

TEJ[co]
gp/12.2.15

WEB COPY