IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17322 of 2015
Along with
Interlocutory Application No. 9886 of 2015

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1. Om Shivam Modern Rice Mill Pvt. Ltd., having its registered office at Village & P.O.-Konar, P.S.-Shivsagar (Rohtas), Bihar, through its Managing Director, Ajay Kumar.
2. Ajay Kumar, Managing Director of Om Shivam Modern Rice Mill Pvt. Ltd., S/o Shri Sudarshan Sah, resident of Mohalla-Raj Colony, 174 C, Companysarai, Circle-Sasaram, Rohtas.

.... Petitioner/s

Versus

1. The United Bank of India through its Managing Director, Head office at 11, Hemant Basu Sarani, United Tower, 5th Floor, Kolkata-700001.
2. The Managing Director, the United Bank of India, Head Office at 11, Hemant Basu Saran, United Tower, 5th Floor, Kolkata-700001.
3. The Executive Director, the United Bank of India, Head Office at 11, Hemant Basu Saran, United Tower, 5th Floor, Kolkata-700001.
4. The Chief Regional Manager, United Bank of India, Regional Office, Fraser Road, Patna-1.
5. The Senior Branch Manager, United Bank of India, Sasaram Branch, Sasaram.
6. The General manager (Credit), United Bank of India, Regional Office, Abhay Bhawan, 3rd floor, Fraser Road, Patna-1.
7. The DGM & CRM, United Bank of India, Regional Office, Abhay Bhawan, 2nd floor, Fraser Road, Patna-1.
8. The Senior Manager (Credit), United Bank of India, Abhay Bhawan, 2nd floor, Fraser Road, Patna-1.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 08-01-2016

Heard learned counsel for the parties.

The writ petition was initially filed for a direction to the respondents to consider the application of the petitioners dated 24.08.2015 relating to enhancement of cash credit limit, new term loan and also for rescheduling the existing term loan.

During the pendency of the application, the respondent Bank responded to the petitioners by letter dated 24.09.2015 showing reasons why such prayer could not be considered. The petitioners has impugned the said communication in Interlocutory Application No. 9886 of 2015 by seeking amendment in the writ petition. The said letter being related to the dispute in question, the prayer is allowed.

The undisputed facts of the case are that the petitioners applied for term loan from the respondent Bank some time in the year 2008 which was not finally approved and later in the year 2012 also allegedly an application dated 24.08.2012 was made seeking term loan of Rs. 395.00 lakhs and cash credit limit of Rs. 95.87 lakhs which, according to the Bank, was processed and finally resulted in sanction of term loan of Rs. 395.00 lakhs and cash credit limit of Rs. 100 lakhs. Thereafter, the Bank wrote to the petitioners on 22.06.2015 asking it to deposit at least Rs. 12 lakhs to prevent the asset from turning into NPA and it was also indicated that it could submit proposal for enhancement to the Bank. The petitioners pursuant to such communication had applied on 24.08.2015 and its non-consideration led to filing of the writ.

Learned counsel for the petitioners submits that the act of the Bank has not been fair right from the beginning. It is submitted that when the DPR itself indicated that investment of over Rs.12 crores was required, the sanctioning of only Rs. 5 crores was unrealistic and thus from the very beginning the intention of the Bank was not to let the unit come into production and be viable. It is submitted that the acceptance of the sanction of a lesser amount was in the background of the fact that the petitioners were assured by the Bank officials that it should initially accept the amount sanctioned and proceed with the work and lateron his proposal for enhancement would be favourably considered. Learned counsel submits that on the lesser amount the petitioners made construction and installed certain machineries and thereafter even an amount of Rs. 50 lakhs which was already sanctioned was not actually disbursed to the petitioners on the ground that biomass gasifier and two godowns were not constructed which was not a valid ground since by the time the constructions were made, the electric supply position in the State of Bihar had improved and thus it was no more viable or required to invest a heavy amount in the gasifier. It is submitted that the Bank had charged Rs. 5 lakhs for making study of the DPR which itself showed that the project required an amount of Rs. 12 crores and odd and thus sanctioning an amount of Rs. 5 crores only could not have served the purpose of making the unit become functional or run so as to make it viable for return of the loan amount. It is further submitted that the Bank should not have sanctioned a lesser amount without taking an undertaking from the petitioners that it was in a position to make good the remaining amount from other sources. It is thus submitted that the conduct of the Bank right from the beginning has been to frustrate the genuine claim of the petitioners even when the industry is a model industry and probably one of the best in eastern India. It is submitted that even at this stage, if there is a favourable consideration for enhancement of loan the petitioners have the capacity not only to run the industry but also become viable and pay all dues of the Bank as per the revised DPR. Learned counsel submits that in the supplementary counter affidavit filed on behalf of the respondent Bank, Annexure-C which is a letter purportedly written by the petitioner no. 2 dated 24.08.2012 bearing his signature, is forged and fabricated and not written by him and thus the stand of the Bank based on such letter is denied.

Learned counsel for the Bank submits that the writ petition itself is misconceived for the reason that the petitioners were sanctioned a term loan of Rs. 395 lakhs and working capital of Rs. 100 lakhs on 20.05.2013 and further that as per the application made by the petitioner no. 2 dated 24.08.2012, copy of which has been made Annexure-C to the supplementary counter affidavit, the application itself was for sanction of Term Loan of Rs. 395 lakhs and Cash Credit Limit of Rs. 95.87 for stock of Paddy and Rice for running the Rice Mill. It is submitted that pursuant to the same, the sanction was made by order dated 20.05.2013 where the Term Loan was Rs. 395 lakhs and Cash Credit Limit was Rs. 100 lakhs. It is submitted that in the same sanction letter it is mentioned that the promoter shall implement the project strictly as per the project report submitted by M/s Rajeev Ranjan and Associates and any modification/deviation in the project scope will be carried out strictly after obtaining written approval. It is submitted that the contention of the petitioners that the sanction was pursuant to the subsequent DPR of the year 2013 prepared by the I.L. & F.S. Clusters is thus not tenable. Learned counsel submits that the Rules of the Bank stipulated that once any unit or account is declared NPA, there cannot be any further consideration of enhancement and thus to give the petitioners a chance to justify their case for further enhancement of the amount financed by the Bank, it was communicated to save the assets from going into NPA with further observation that thereafter the unit may submit proposal for enhancement to the Bank. It is submitted that the petitioners neither deposited the actual amount of Rs. 12 lakhs and rather only Rs. 10 lakhs was deposited and also that mere application for enhancement does not confer a right on the petitioners that the same shall be sanctioned as it has to be scrutinized on various parameters by the Bank so as to judge the viability of such enhancement depending on the track record of the concerned and the potential of the unit to repay the loan. It is submitted that even the communication of the Bank which has been impugned in the Interlocutory Application is not a rejection of the proposal for enhancement but only discloses the reason why it cannot be considered and unless the petitioners overcome the limitations relating to their account, the Bank as a financial institution cannot overlook and grant indulgence to him by allowing the enhancement. It is submitted that the petitioners were well aware of the repayment schedule which was clearly reflected in the sanction order dated 20.05.2013 on which the petitioners have also signed and thus the onus was on the petitioners to adhere to the repayment schedule. It is further submitted that it cannot be believed that on oral assurance, the petitioners would start such a big project knowing fully well that the officers of the Bank are not stationed at a particular place permanently and keep moving under orders of transfer and further any oral assurance cannot take the shape of a guarantee or bind the Bank to enhance the loan amount to the petitioners. It is submitted that the petitioners have not been able to arrange for the funds and further that even if for the sake of argument it is taken that the petitioners had submitted a second DPR in the year 2013, even the same discloses that the amount of Term Loan including working capital came to only about Rs. 500 lakhs. It is thus submitted that without going into the merits of the stand of the petitioners with regard to them not having sufficient fund, the conduct and action of the Bank cannot be questioned as they have acted strictly in confirmity with the terms and conditions of the sanction and even subsequently all the notices and actions have been in accordance with law.

After having considered the rival contentions, the

Court is unable to agree to the submissions advanced on behalf of the petitioners with regard to the Bank having acted in an arbitrary or illegal manner. The petitioners having been fully aware of the terms and conditions of the sanction cannot claim enhancement as a matter of right moreso, in view of it having defaulted in the payment schedule which is incorporated in the sanction order itself. Even the contention that the Bank was aware as per the DPR of the requirement for further money, the Court does not find any substance in such submission for the reason that even the subsequent DPR of 2013 discloses requirement of term loan only of about Rs. 500 lakhs and the petitioners were granted term loan for Rs. 495 lakhs by the respondent Bank.

For the reasons aforesaid, the Court does not find any merits in the writ application and the same stands dismissed.

Interlocutory Application No. 9886 of 2015 stands disposed off.

(Ahsanuddin Amanullah, J.)

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