

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 4748 of 2013

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M/s Eclat Industries Limited, a Public Limited Company, incorporated under the provisions of the Companies Act, 1956 having its Registered Office at C-30/31, Industrial Area, Patna - 800013 - through Sri Bashisth Narayan Choubey its Managing Director.

.... Petitioner

Versus

1. The State of Bihar through its Chief Secretary.
2. Department of Industries, Government of Bihar, Patna through its Principal Secretary.
3. Industries Development Commissioner, Department of Industries, Government of Bihar, New Secretariat, Bailey Road, Patna.
4. Director, Office of the Directorate of Technical Development Department of Industries, Government of Bihar-Cum-Chairman, Empowered Committee on Rehabilitation of Medium, Small and Micro Enterprises, Government of Bihar, Patna.
5. Bank of Baroda (Operating Agency) through its Chief Manager, Shree Krishna Puri Branch, Naval Arcade, Shree Krishna Puri, Boring Road, Patna.
6. International Asset Reconstruction Co. Pvt. Ltd. (IARC), A/508, 5th Floor, 215, Atrium, Kanakia Spaces, Andheri Kurla Road, Andheri (East), Mumbai-400093.
7. Canara Bank through its Chief Manager, South Gandhi Maidan, Patna.

.... Respondents

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Appearance:

For the Petitioner	: Mr. Kamal Nayan Choubey, Sr. Advocate Mr. Rajeev Ranjan Prasad, Advocate Mr. Nilanjan Chatterjee, Advocate Mr. Sudhanshu Trivedi, Advocate Ms. Surbhi, Advocate
For the Resp. No. 6(IARC)	: Mr. P.K.Shahi, Sr. Advocate Mr. Ravi Shankar, Advocate
For the Resp. No.7	: Mr. Rajan Ghoshrahe, Advocate
For the State	: Mr. Nasimul Hoda Khan, SC 01 Mr. Md. Harun Quareshi, AC to SC 01
For the Resp. No. 5 (Bank of Baroda)	: Mr. Sanjeev Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 29.08.2016

Heard learned senior counsel for the petitioner, learned
counsel for the respondent Canara Bank and learned counsel for State.



2. The present writ petition has been filed for a direction to the respondent nos. 1 to 4 to provide relief by way of funds to the petitioner company out of the “Corpus Fund” as envisaged under the Industrial Incentive Policy, 2011, framed by the State of Bihar to help the revival of sick industrial undertakings falling in the small, medium and micro sector; and in the meantime to refrain from taking any coercive action against the petitioner under the Securitization and Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the SARFAESI Act”).

3. Interlocutory Application No. 784 of 2015 has been filed for amendment of the writ petition in view of subsequent developments. Of the two prayers enumerated in paragraph 9 thereof, learned senior counsel for the petitioner does not press the second prayer and the same is dismissed as not pressed. The only prayer sought to be added to the writ petition is as follows —

“This Hon’ble Court may further be pleased to issue a writ of certiorari to quash and cancel the report dated 08.12.2014 submitted by the PAC, Patna Circle of the Canara Bank and the report dated 15.12.2014 issued by the Project Appraisal Group of the H.O., Canara Bank, Bangalore and issue a mandamus directing the Canara Bank to forthwith accord the loan amounts in the terms of the final decision dated 28.10.2014 under the 2008 Act and/or reconsider the proposal of the petitioner company in the light of the materials available on the record as also legitimate expectation given by the Bank itself earlier to the petitioner and the Apex Level Committee

decision and rehabilitation package while considering the revival plan of the company.”

4. Having regard to the nature of the prayer, I.A. No. 784 of 2015 is allowed and the petitioner is permitted to make appropriate amendment in the prayer portion of the writ petition.

5. The petitioner makes a short submission in support of its grievance with regard to the inordinate delay by Canara Bank, Patna (Respondent no. 7, hereinafter ‘the Bank’) in disbursing the amounts of the term loan of Rs. 2.80 crore and the working capital loan of Rs. 2.65 crore, in terms of the Bank’s letter dated 25.10.2014 (Annexure-21).

6. Mr. Kamal Nayan Choubey, learned senior counsel appearing for the petitioner, invites attention to the Bihar State Micro and Small Enterprises Rehabilitation Act, 2008 (hereinafter referred to as “the Act”) enacted for the purpose of providing and regulating rehabilitation of micro and small enterprises. Section 3 of the Act provides for the constitution of a “State Level Committee” (for short, ‘the Committee’) under the chairmanship of the Director of Industries for the purposes of the Act. In terms of Section 5(4) of the said Act, the rehabilitation package approved by the Committee is binding upon all concerned. It is submitted that upon a consideration of the aforesaid letter of the Bank dated 25.10.2014, the State Level Committee in its meeting dated 28.10.2014 approved the rehabilitation package of the petitioner on a total



project cost of Rs. 9.65 crore, *inter alia*, providing various sources of finance including a term loan of Rs. 2.80 crore and a working capital loan of Rs. 2.65 crore. It is stated that upon such loans aggregating Rs. 5.45 crore being sanctioned by the Bank, the petitioner would be entitled to an amount of Rs. 2.04 crore as a Soft Loan out of the Revolving Fund from the State Government. The State Level Committee's decision was reiterated in a meeting held on 17.02.2016 under the chairmanship of the Secretary, Industries Department. The Bank's representative was required to explain the reasons for the under-finance as it had sanctioned an aggregate loan of only Rs. 3.34 crore, but the Senior Manager of the Bank present at the meeting expressed his inability to do so. Accordingly, the Secretary, Industries Department issued directions to correspond with the respondent Bank in the light of provisions of Section 5(4) of the Act. Consequently, the Director of Industries-cum-Chairman of the State Level Committee, by memo No. 1337 dated 07.04.2016 (Annexure-27), directed the Bank, in the background of its letter dated 25.10.2014, to sanction the term loan of Rs. 2.80 crore and working capital loan of Rs. 2.65 crore as proposed by the Bank's head office project appraisal group and subsequently approved by the Apex Committee. Yet again, in its meeting dated 26.05.2016, the Committee-members were unanimous in their agreement with the view and opinion of the Secretary, Industries Department which



had been expressed in course of the meeting held on 17.02.2016. By subsequent letter dated 29.06.2016, the Director, Industries Department once again wrote to the respondent Bank with reference to the meeting held on 17.02.2016 under the Chairmanship of the Secretary, Industries Department.

7. In the above circumstances, it is submitted that despite the binding decision of the Committee under the Act, the Bank has resiled from its commitment of providing a term loan of Rs. 2.80 crore and working capital loan of Rs. 2.65 crore. By its sanction letter dated 26.10.2016 (Annexure-22), the Bank has sanctioned in all only Rs. 3.34 crore (term loan of Rs. 2.24 crore and working capital loan of Rs. 1.10 crore), which amounts to a clear denial of the benefits to which the petitioner is entitled under the rehabilitation package approved by the Committee.

8. Learned counsel for the respondent Canara Bank on the other hand, submits that no doubt the proposal of the petitioner company had been considered on a total project cost of Rs. 7 crore, it is evident from the Bank's letter dated 25.10.2014 that the consideration of the petitioner's proposal with regard to financing by way of a term loan of Rs. 2.80 crore and a working capital loan of Rs. 2.65 crore was only tentative which was not sanctioned. In the meeting held on 10.04.2015, the project was re-examined and re-drawn and a Techno Economic Viability Study was made. On the



basis of the TEV report dated 30.05.2015, the project was found to be technically feasible and economically viable only for a project cost of Rs. 6.46 crore. Accordingly, the Bank had sanctioned term loan of Rs. 2.24 crore and working capital loan of Rs. 1.10 crore in terms of its sanction letter dated 26.10.2016 (Annexure-22). It is pointed out that the Bank was not present in the meeting of the State Level Committee held on 28.10.2014 when the rehabilitation package was approved, and as soon as the Bank came to know about such approval, it had approached the Director of Industries Department by its letter dated 06.11.2014 informing that a final decision with regard to the project cost would be taken by the Bank.

9. Learned Senior Counsel, Mr. P.K. Shahi, appears on behalf of International Asset Reconstruction Co. Pvt. Ltd. (the Respondent No. 6, hereinafter the "IARC"), a securitization and reconstruction company within the meaning of SARFAESI Act, 2002, which has taken over the loans of the secured creditors under a deed of assignment, and expresses concern over IARC's inability to recover the loans in question from the petitioner, resulting from the delay on the part of the Bank in making funds available to the petitioner.

10. Having heard the parties and on a careful consideration of the materials on record, this Court finds merit in the writ petition. It is a matter of record that the State Level Committee approved the rehabilitation package relating to the petitioner's unit on a project



cost of Rs. 7 crore, for which the source of finance included a term loan of Rs. 2.80 crore and a working capital loan of Rs. 2.65 crore. In view of Section 5(4) of the Act, the decision of the Committee is binding on all concerned, and as such the respondent Canara Bank was also bound to abide by the decision of the Apex Committee. If the respondent Canara Bank was aggrieved by such decision taken in the meeting in which it was not present, it ought to have taken recourse to the forum of appeal provided under Section 6 of the Act. It is an admitted fact that this was not done, and instead the Bank approached the Director of Industries by letter dated 06.11.2014 (Annexure-‘B’ to the Bank’s counter affidavit).

11. In that view of the matter, this Court is of the view that having regard to the provisions of Section 5(4) of the Act, the decision of the State Level Committee taken in its meeting held on 28.10.2014 attained finality. In absence of an appeal being filed, the respondent Canara Bank was required to abide by the decision of the committee and accordingly it became bound to provide the term loan of Rs. 2.80 crore and the working capital loan of Rs. 2.65 to the petitioner. The Bank admittedly did not avail of the forum of appeal which was available to it, nor did it take any other steps before any other Court or authority as may have been available to it for having the decision of the State Level Committee recalled or set aside, and thus allowed such decision to attain finality. The letter dated

06.11.2014 addressed to the Director of Industries was of little consequence in the face of the decision of the State Level Committee which had statutory force in view of Section 5(4) of the Act.

12. This Court accordingly directs the Canara Bank (respondent no. 7) to take immediate steps to give effect to the decision of the Committee taken in its meeting dated 28.10.2014 (Annexure 'C' to the counter affidavit of the Director, Industries Department, Respondent No. 4) insofar as it concerns the Bank in the matter of approval granted to the rehabilitation package of the petitioner on the terms enumerated therein, by providing a term loan of Rs. 2.80 crore and a working capital loan of Rs. 2.65 crore to the petitioner within a period of four weeks from the date of receipt/production of a copy of this judgment. Needless to say, the petitioner shall co-operate in the matter and complete all formalities in this regard as may be required, by the Bank.

13. Consequently, the State Government shall also take appropriate steps at the appropriate time for making payment of the Soft Loan of Rs. 2.04 crore from the Revolving Fund to the petitioner without undue delay after completion of all requisite formalities in this regard.

14. The petitioner undertakes to make payment of the entire outstanding amount payable by it to the IARC (respondent

no. 6) without delay, and in any event within a period of two weeks of receiving the amount of the Soft Loan from the State Government.

15. The writ petition stands allowed with the aforesaid observations and directions. Pending interlocutory applications, if any, also stand disposed of.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30.08.2016
Transmission Date	N.A.