IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8055 of 2017

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1. M/s Apex Steel Private Limited, a Company incorporated under the Indian Companies Act, 1956 having its registered office at 106, Ashiana Tower, Exhibition Road, Patna- 1, through one of its' Director Shri Sanjiv Kumar, S/o Late K.K. Bhagat, resident of 102 B, Saket Plaza, Jamal Road, Patna- 1.

.... Petitioner/s

Versus

1. The Indian Overseas Bank, having its Head office at 763, Anna Salai, Chennai-600002 (Tamil Nadu), through its General Manager (S.M.E.),
2. The Zonal Manager, Indian Overseas Bank, Zonal Office, at 119, White House, Park Street, Kolkata.
3. The Senior Regional Manager, Indian overseas Bank, Saboo Complex, Near Republic Hotel, Exhibition Road, Patna.
4. The Senior Manager/Branch Manager, Indian Overseas Bank, Saboo Complex, Near Republic Hotel, Exhibition Road, Patna.
5. The Universal Sompo General Insurance Company Limited, having its registered office at 201-208, Kristal Plaza, Opposite infiniti Mall, Link Road, Andheri (West) Mumbai- 400058, through its Branch Manager, having a Joint Venture with Indian Overseas Bank.
6. The Branch Manager, Universal Sompo General Insurance Company Limited, having its Branch at 2nd Floor, Magadh Plaza, Balmichak, above Indian Overseas Bank, Anishabad, Patna-2.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Raj Kishore Prasad
For the Respondent/s : Mr. Sanjay Singh Thakur

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 27-07-2017

Heard learned counsel for the petitioner and learned counsel for the Bank.

In the present case, petitioner is challenging the notice issued vide letter no. IOB/BR/1484/015/2017-18 dated 20.4.2017 under Section 2 of Section 13 of the SARFAESI ACT by which the petitioner has been asked to liquidate the outstanding dues of the Bank to the tune of Rs. 12,48,68,419.70.

The petitioner has taken a loan for establishment of factory from the Indian Overseas Bank and the factory was ensured by the Insurance Company, namely, the Universal Sompo, General Insurance Company Limited. During October, 2016 there was a heavy flood in Ganga river which causes financial loss and on that account petitioner could not deposit the installment and the account of the Company has been declared NPA.

The notice under Section 13(2) of the SARFAESI ACT has been issued for settlement of the account standing in the Company, the petitioner instead of liquidating the outstanding dues, filed this writ petition, taking a plea that the Company on the recommendation of the Bank has been ensured by the Insurance Company. It has further been stated that it is joint venture of the Bank as well as the Insurance Company and it is obligation on the part of the Bank that they would not take action under SARFAESI ACT for realization of the amount and declared the account NPA unless insurance is settled by the Insurance Company. Initiation of proceeding is violative of Articles 14, 16 and 19 of the Constitution of India and as such it requires interference. Petitioner further submitted that it had defaulted in making payment of installment.

Learned counsel for the Bank submits that petitioner has taken loan from the Bank and if the account has been declared NPA the Bank is under statutory obligation to recover outstanding dues against the Company as provided under SARFAESI ACT. At the stage of Section 13(4) of the SARFAESI ACT the petitioner will be at liberty to approach to the Tribunal as provided under SARFAESI ACT. It has further been submitted that submission of the petitioner is not sustainable on the ground that it is a public money which has been taken as loan and Bank is obliged to protect the interest of public. It has nothing to do with the settling the account with the Insurance Company. There is no bar under the law, the Bank cannot realize the money till the insurance amount is settled.

Having considered the rival contentions of the parties learned counsel for the Bank is quite correct in his submission. It is the duty of the Bank to protect its interest and realize the outstanding dues from the petitioner to Company. If the account has not been settled by the Insurance Company it must approach the appropriate authority. If such nature of plea is allowed, the financial health of the Bank will crumble down.

In such view of the matter, this Court does find any merit in this writ petition. It is accordingly dismissed.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.7.2017
Transmission Date	NA